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As filed with the Securities and Exchange Commission on April 6, 2012

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

BLOOMIN' BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware	5812	20-8023465
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

2202 North West Shore Boulevard, Suite 500
Tampa, Florida 33607
(813) 282-1225
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Joseph J. Kadow
Executive Vice President and Chief Legal Officer
Bloomin' Brands, Inc.
2202 North West Shore Boulevard, Suite 500, Tampa, Florida 33607
(813) 282-1225
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copies to:

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Boston, Massachusetts 02199-3600
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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462 under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)(2)	Amount of Registration Fee
Common Stock, $.01 par value per share	$300,000,000	$34,380

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) promulgated under the Securities Act.
(2) Includes shares of common stock that may be issuable upon exercise of an option to purchase additional shares granted to the underwriters.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion
Preliminary Prospectus dated April 6, 2012

PROSPECTUS

Shares

Common Stock

This is Bloomin' Brands, Inc.'s initial public offering. We are selling shares of our common stock.

We expect the public offering price to be between $ and $ per share. Currently, no public market exists for the shares. After pricing of the offering, we expect that the shares will trade on the under the symbol "BLM."

Investing in the common stock involves risks that are described in the " Risk Factors" section beginning on page 13 of this prospectus.

	Per Share	Total
Public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to us	$	$

The underwriters may also exercise their option to purchase up to an additional shares from us, at the public offering price, on the same terms and conditions as set forth above, for 30 days after the date of this prospectus.

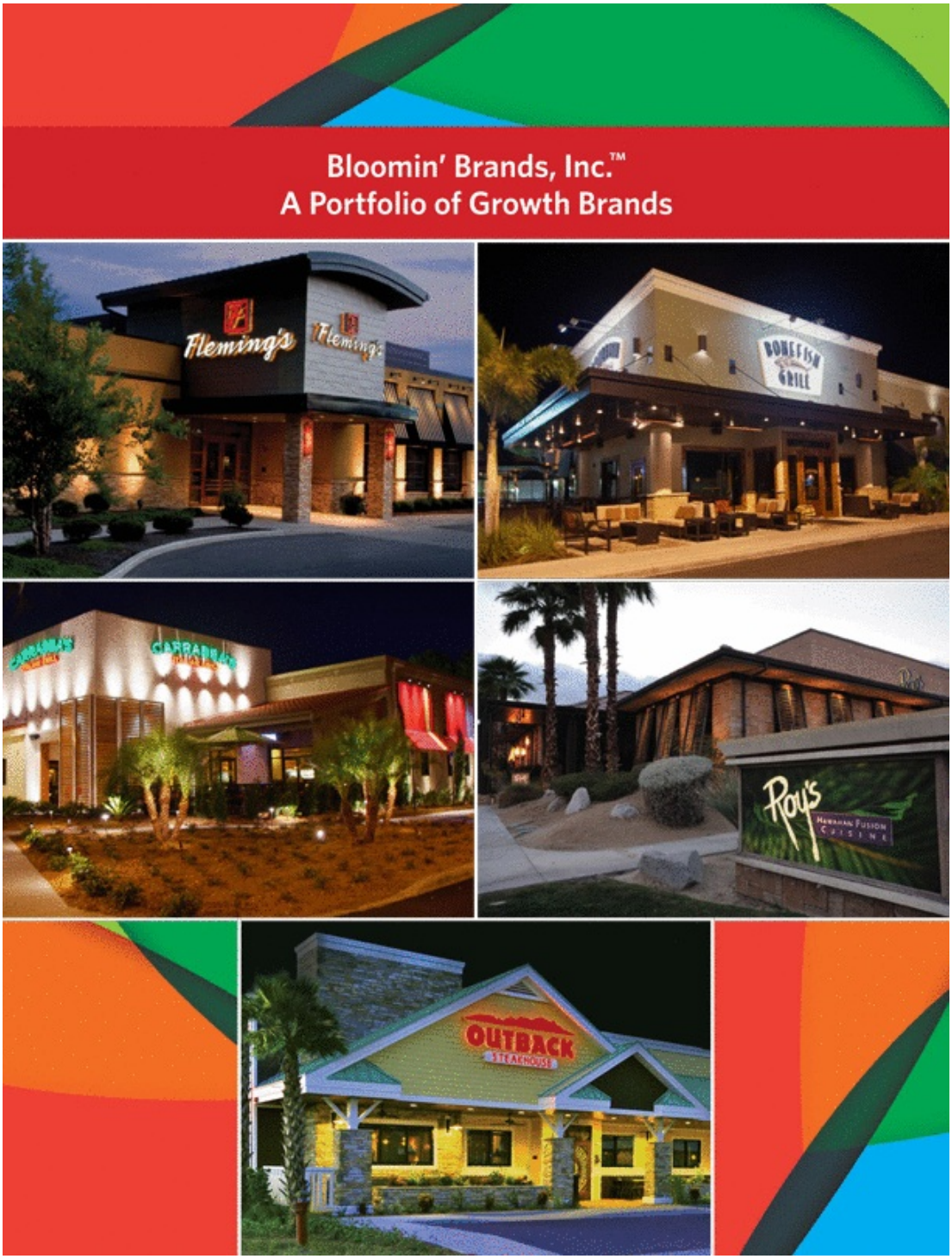
Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

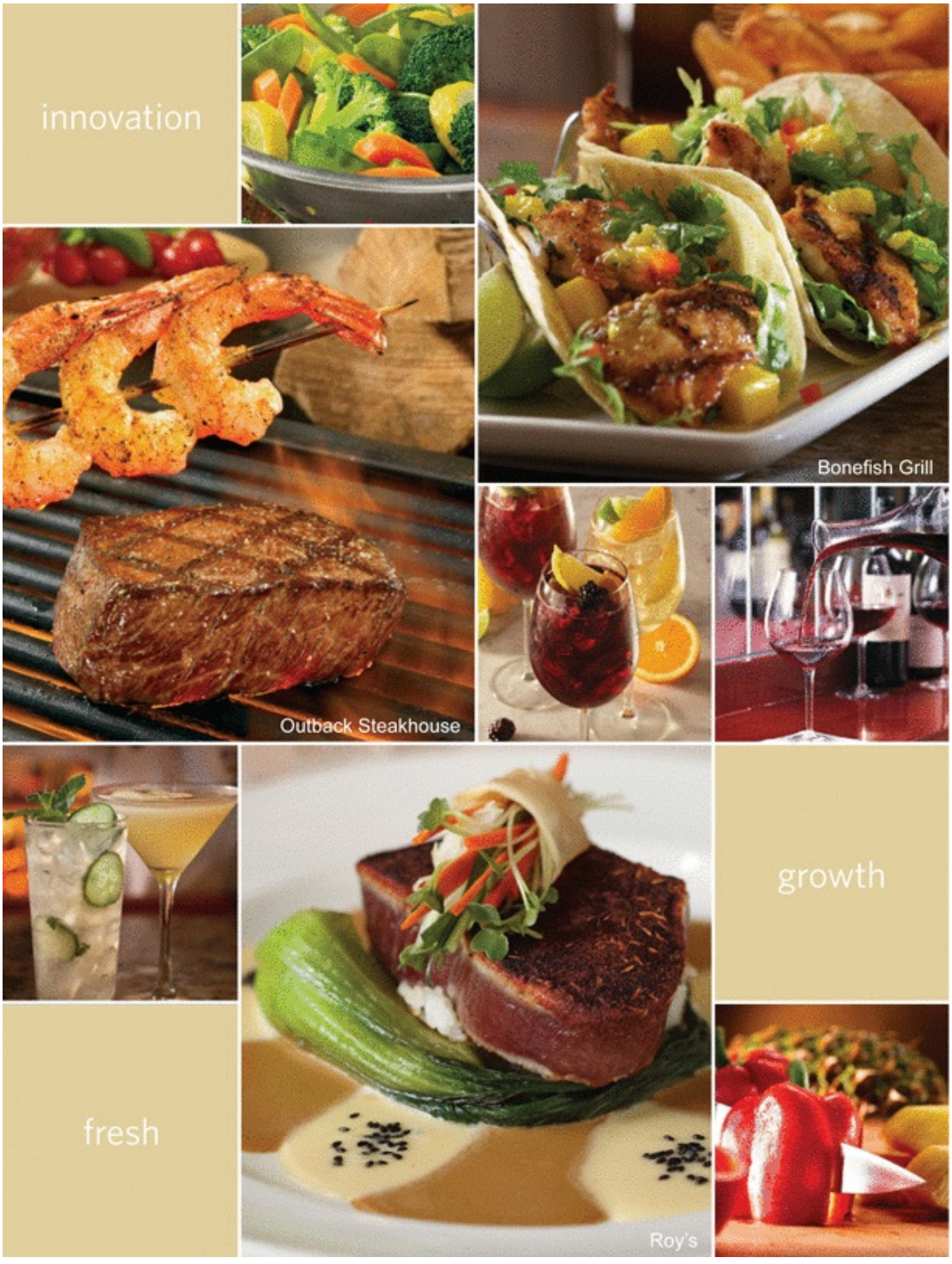
The shares will be ready for delivery on or about , 2012.

BofA Merrill Lynch **Morgan Stanley** **J.P. Morgan**

Deutsche Bank Securities **Goldman, Sachs & Co.**

The date of this prospectus is , 2012.


Bloomin' Brands, Inc.™
A Portfolio of Growth Brands
Fleming's
Fleming's
BONEFISH GRILL
CARRABBA'S
CARRABBA'S
Roy's
OUTBACK
STEAKHOUSE


innovation
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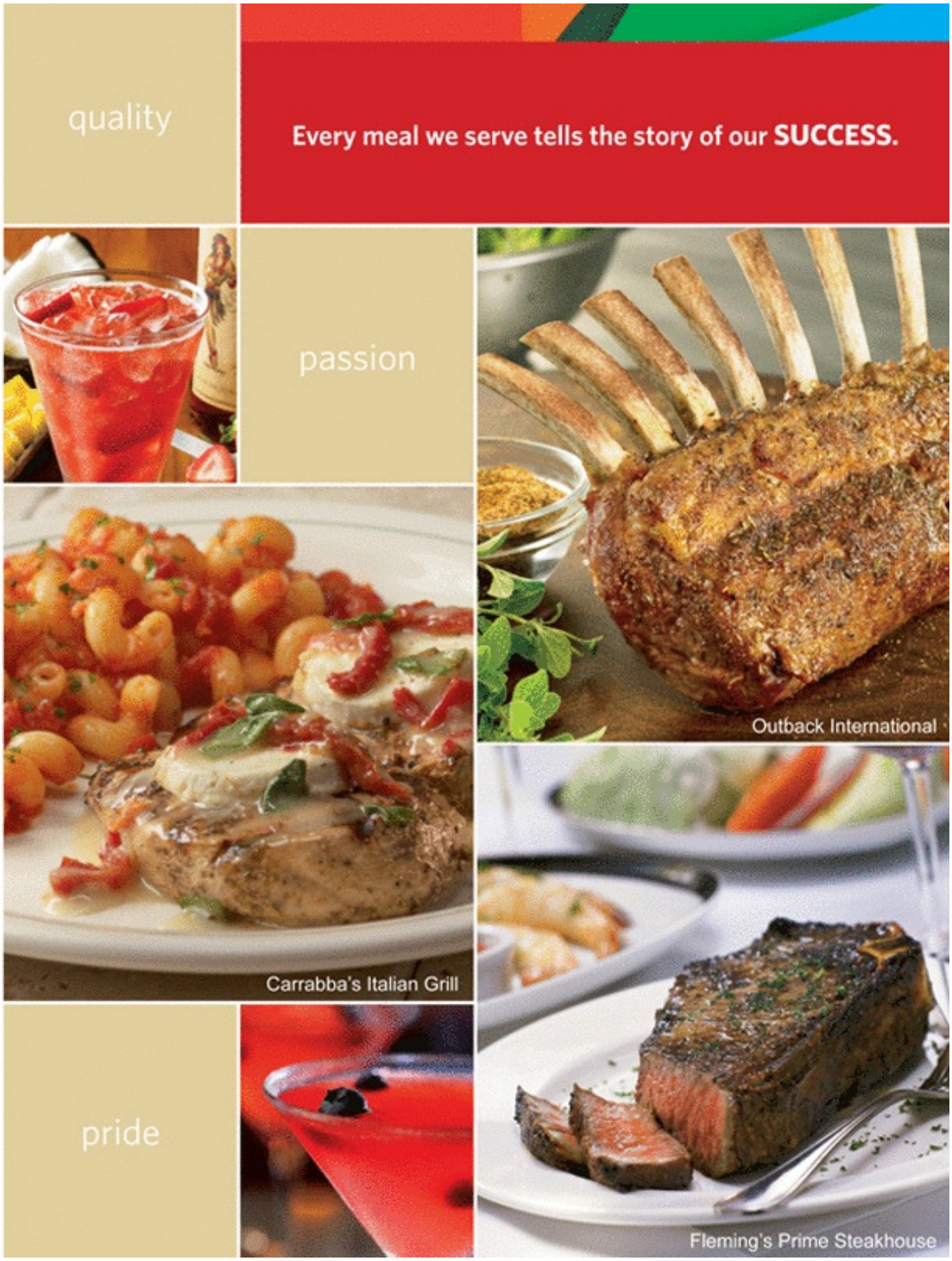
growth
fresh
Roy's


quality
Every meal we serve tells the story of our SUCCESS.
passion
Outback International
Carrabba's Italian Grill
pride
Fleming's Prime Steakhouse

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You should rely only on the information contained in this prospectus or in any free writing prospectus that we authorize be distributed to you. We have not, and the underwriters have not, authorized anyone to provide you with additional or different information. This document may only be used where it is legal to sell these securities. You should assume that the information contained in this prospectus is accurate only as of the date of this prospectus.

No action is being taken in any jurisdiction outside the United States to permit a public offering of the common stock or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of the prospectus applicable to that jurisdiction.

Until , 2012, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

MARKET AND OTHER INDUSTRY DATA

In this prospectus, we rely on and refer to information regarding the restaurant industry, sectors within the restaurant industry, such as full-service restaurants, and categories within the full-service sector that are generally defined by price point (e.g., casual or fine dining) and menu type (e.g., steak or Italian), based on information published by industry research firms Technomic, Inc., The NPD Group, Inc. (which prepares and disseminates Consumer Reported Eating Share Trends ("CREST®") data), Euromonitor International and Knapp-Track, or compiled from market research reports, analyst reports and other publicly available information. Delineations of our competitors by price or menu categories may vary by data source.

Unless otherwise indicated in this prospectus:

- market data relating to the U.S. market positions of Outback Steakhouse, Carrabba's Italian Grill, Bonefish Grill or Fleming's Prime Steakhouse and Wine Bar was published by, or derived by us from, Technomic, Inc. and is based on 2011 calendar year sales;
- market data relating to the size of the U.S. full-service restaurant sector's menu categories of steak, Italian and seafood was published by Technomic, Inc. and is based on 2010 calendar year sales, which is the most recent available data;
- market data relating to the U.S. full-service restaurant sector's casual dining category was published as CREST ® data and is based on sales for the 12 months ended November 30, 2011, as reported by The NPD Group, Inc. as of January 5, 2012; and
- market data relating to a foreign country's full-service restaurant sector or the market position of Outback Steakhouse restaurants in a particular foreign market was published by, or was derived by us from, Euromonitor International, and such data is as of December 31, 2010, which is the most recent available data.

All other industry and market data included in this prospectus are from internal analyses based upon publicly available data or other proprietary research and analysis. We believe these data to be accurate as of the date of this prospectus. However, this information may prove to be inaccurate because this information cannot always be verified with complete certainty because of the limitations on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties. As a result, you should be aware that market and other similar industry data included in this prospectus, and estimates and beliefs based on that data, may not be reliable.

TRADEMARKS, SERVICE MARKS AND COPYRIGHTS

We own or have rights to trademarks, service marks or trade names that we use in connection with the operation of our business, including our corporate names, logos and website names. Solely for convenience, some of the trademarks, service marks, trade names and copyrights referred to in this prospectus are listed without the ©, ® and ™ symbols, but we will assert, to the fullest extent permissible under applicable law, our rights to our copyrights, trademarks, service marks and trade names. All brand names or other trademarks appearing in this prospectus are the property of their respective owners, and their use or display should not be construed to imply a relationship with, or an endorsement or a sponsorship of us by, these other parties.

PROSPECTUS SUMMARY

This summary highlights information appearing elsewhere in this prospectus. This summary does not contain all of the information that you should consider before investing in our common stock. You should carefully read the entire prospectus, including the financial data and related notes and the section entitled "Risk Factors" before deciding whether to invest in our common stock. Unless otherwise indicated or the context otherwise requires, references in this prospectus to the "company," "Bloomin' Brands," "we," "us" and "our" refer to Bloomin' Brands, Inc. and its consolidated subsidiaries.

Our Company

We are one of the largest casual dining restaurant companies in the world, with a portfolio of leading, differentiated restaurant concepts. We own and operate 1,248 restaurants and have 195 restaurants operating under franchise or joint venture arrangements across 49 states and 21 countries and territories. We have five founder-inspired concepts: Outback Steakhouse, Carrabba's Italian Grill, Bonefish Grill, Fleming's Prime Steakhouse and Wine Bar and Roy's. Outback Steakhouse holds the #1 U.S. market position, and Carrabba's and Bonefish Grill hold the #2 U.S. market position, in their respective full-service restaurant categories. Fleming's is the fourth largest fine dining steakhouse brand in the U.S. In 2010, we launched a new strategic plan and operating model leveraging best practices from the consumer products and retail industries to complement our restaurant acumen and enhance our brand competitiveness. This new model keeps the customer at the center of our decision-making and focuses on continuous innovation and productivity to drive sustainable sales and profit growth. We have significantly strengthened our management team and implemented initiatives to accelerate innovation, improve analytics and increase productivity. We have made these changes while preserving our entrepreneurial culture at the operating level. Our restaurant managing partners are a key element of this culture, each of whom shares in the cash flows of his or her restaurant after making a required initial cash investment.

We believe our new strategic plan and operating model have driven our recent market share gains and improved margins while providing a solid foundation for continuing sales and profit growth. In 2011, we had $3.8 billion of revenue, $100.0 million of net income and $361.5 million of Adjusted EBITDA. In the U.S., each of our four core concepts generated positive comparable restaurant sales over the last seven consecutive quarters, and in 2010 and 2011, our combined comparable restaurant sales at our core concepts grew 2.7% and 4.9%, respectively. Additionally, over the last two years, Outback Steakhouse, Carrabba's and Bonefish Grill have significantly outperformed the Knapp-Track Casual Dining Index on traffic growth by 8.5%, 11.2% and 20.2%, respectively. Over the three years ended December 31, 2011, our net income increased from a net loss of $64.5 million to net income of $100.0 million, and Adjusted EBITDA increased from $319.9 million to $361.5 million. Over the same period, our Adjusted EBITDA margins grew from 8.9% to 9.4%.

Our concepts provide a compelling customer experience combining great food, highly attentive service and lively and contemporary ambience at attractive prices. Each of our concepts maintains a unique, founder-inspired brand identity and entrepreneurial culture, while leveraging our scale and enhanced operating model. Below is an overview of our four core concepts:

A casual dining steakhouse featuring high quality, freshly prepared food, attentive service and Australian décor at a compelling value. As of December 31, 2011, we owned and operated 669 restaurants and franchised 106 restaurants across 49 states, and we owned and operated 111 restaurants, franchised 47 restaurants and operated 34 restaurants through a joint venture across 21 countries and territories. Outback Steakhouse holds the #1 market position in the U.S. in the full-service steak restaurant category based on 2011 sales. In 2010, Outback Steakhouse also held the #1 position in Brazil in the full-service restaurant sector and in South Korea among western full-service restaurant concepts. The average check per person at our domestic Outback Steakhouse restaurants was approximately $20 in 2011.

An authentic Italian casual dining restaurant featuring high quality handcrafted dishes, an exhibition kitchen and warm Italian hospitality. As of December 31, 2011, we owned and operated 231 restaurants and had one franchised restaurant across 32 states. Carrabba's holds the #2 market position in the full-service Italian restaurant category based on 2011 sales in the U.S. The average check per person at Carrabba's was approximately $21 in 2011.

A polished casual seafood restaurant featuring market fresh grilled fish, high-end yet approachable service and a lively bar. Bonefish Grill's bar provides an energetic setting for drinks, dining and socializing with a popular bar menu featuring a large selection of specialty cocktails, wine and beer. As of December 31, 2011, we owned and operated 151 restaurants and franchised seven restaurants across 28 states. Bonefish Grill holds the #2 market position in the U.S. full-service seafood restaurant category based on 2011 sales. Bonefish Grill ranked "Top Overall" across all full-service restaurant chains according to Zagat's in 2010 and 2011 and was ranked #1 for all casual dining chains according to Nation's Restaurant News in 2011. The average check per person at Bonefish Grill was approximately $23 in 2011.

An upscale, contemporary prime steakhouse for food and wine lovers seeking a stylish, lively and memorable dining experience. Fleming's features a large selection of wines, including 100 quality wines available by the glass. As of December 31, 2011, we owned and operated 64 restaurants across 28 states. Fleming's is the fourth largest fine dining steakhouse brand in the U.S based on 2011 sales. The average check per person at Fleming's was approximately $68 in 2011.

Recent Evolution of Our Business

In November 2009, we hired Elizabeth A. Smith as Chief Executive Officer. Ms. Smith brought close to 20 years of consumer products experience, including five years as a senior executive at Avon Products, Inc. and 14 years at Kraft Foods Inc. Under Ms. Smith's leadership, we launched our new strategic plan and operating model. The key initiatives we implemented as part of this plan and model, many of which are ongoing, are summarized below:

- *Enhanced Our Brand / Concept Competitiveness.* Based on extensive consumer research, we have undertaken the following initiatives to enhance our brand relevance and competitiveness:
  - Evolved our menus by supplementing our classic items with a greater variety of lighter dishes and lower priced items, such as small plates and handhelds, and enhanced bar and happy hour offerings to broaden appeal, improve our value perception and increase traffic.
  - Shifted our marketing strategy away from principally using brand awareness messages to traffic generating messages focused on quality, value and limited-time offers.
  - Initiated a remodel program focused on Outback Steakhouse and Carrabba's to refresh the restaurant base, through which we have remodeled one-third of our domestic Outback Steakhouse restaurants to date; we are testing remodel designs at Carrabba's.
  - Refocused our service to improve execution on aspects of the dining experience that matter most to our customers as indicated through ongoing customer surveys.

- *Strengthened Management Team and Organizational Capabilities*. We added senior executives with experience from leading consumer products and retail companies and added resources in key functional support areas to build an organization that maintains deep restaurant industry expertise at the operating level, coupled with a functional corporate support team that drives innovation, productivity and scale efficiencies.

- *Accelerated Innovation*. We strengthened our innovation capability by increasing our resources focused on a collaborative process to develop, test and roll out new menu, service and marketing initiatives, allowing us to introduce these initiatives faster than we have in the past.

- *Improved Analytics and Information Flow*. In order to provide our management team with improved visibility regarding consumer trends and a better basis for making product, pricing and marketing decisions, we instituted an enterprise-wide, analytical approach that relies on extensive consumer research and feedback, product testing and data analysis.

- *Increased Productivity and Generated Significant Cost Savings*. In 2008, we began to focus on increased productivity by leveraging our scale and corporate support infrastructure. From 2008 through 2011, we implemented productivity and cost management initiatives that we estimate allowed us to save over $200 million in the aggregate, while improving our customer ratings on quality and service.

- *Invested in Information Technology Infrastructure.* In 2010, we launched a multi-year upgrade of our technology infrastructure to support our analytical focus and growth opportunities.

Competitive Strengths

We believe the following competitive strengths, when combined with our strategic plan and operating model, provide a platform to deliver sustainable sales and profit growth:

Strong Market Position With Highly Recognizable Brands. We have market leadership positions in each of our core concepts domestically, as well as in our core international markets. Based on 2011 sales in the U.S., Outback Steakhouse ranked #1 in the full-service steak restaurant category, Carrabba's ranked #2 in the full-service Italian restaurant category, Bonefish Grill ranked #2 in the full-service seafood restaurant category and Fleming's is the fourth largest fine dining steakhouse brand. In 2010 Outback Steakhouse ranked #1 in market share in Brazil among full-service restaurants and in South Korea among western full-service restaurant concepts. We believe our market leadership positions and scale will allow us to continue to gain market share in the fragmented restaurant industry.

Compelling 360-Degree Customer Experience. We offer a compelling 360-degree customer experience with superior value by providing great food, highly attentive service and lively and contemporary ambience at attractive prices. We believe our customer experience and value perception are differentiating factors that drive strong customer loyalty.

- *Great Food.* We deliver consistently executed, freshly prepared meals using high quality ingredients. Our customers have validated our food quality at several of our concepts through recent recognition in Zagat's surveys.

- *Highly Attentive Service.* We seek to deliver superior service to each customer at every opportunity. We offer customers prompt, friendly and efficient service, keep wait staff-to-table ratios high and staff each restaurant with experienced managing partners to ensure consistent and attentive customer service.

- *Lively and Contemporary Ambience.* Each of our restaurant concepts offers a distinct, energetic atmosphere. We are committed to maintaining a contemporary look and feel at each of our concepts that is consistent with its individual brand positioning.

- *Attractive Prices*. Since 2009, we have enhanced the value we offer our customers through menu and promotional innovation, rather than aggressive discounting. At each of our concepts, we have increased the mix of lower priced menu items to broaden appeal and increase traffic. We have also expanded our limited-time offers of menu specials in order to offer price points that deliver superior value to customers while maintaining attractive margins.

Diversified Portfolio With Global Presence. Our diversified portfolio of distinct concepts and global presence provide us with a broad growth platform to capture additional market share domestically and internationally. We are diversified by concept, category and geography as follows:

- *By Concept and Category*. We believe our concepts are differentiated relative to each other by category and to their respective key competitors. Our core concepts target three separate large and highly fragmented menu categories of the full-service restaurant sector: steak ($13.6 billion in 2010 sales), Italian ($14.8 billion in 2010 sales) and seafood ($8.3 billion in 2010 sales). Outback Steakhouse, Carrabba's and Bonefish Grill target the casual dining price category, and Fleming's targets the fine dining category.

- *By Geography*. The system-wide sales of our international Outback Steakhouse restaurants represent 15% of our total system-wide sales. A majority of our international restaurants are company-owned or operated through a joint venture, and we believe this differentiates us relative to our casual dining peers, which primarily operate through franchises internationally. Our restaurants are located across 49 states and 21 countries and territories around the world.

Business Model Focused on Continuous Innovation and Productivity. Our business model keeps the customer at the center of our decision-making and focuses on innovation and productivity to drive sustainable sales and profit growth. We reinvest a portion of productivity savings in innovation to enable us to respond to continuously evolving consumer trends.

- *Innovation.* We have established an enterprise-wide innovation process to enhance every dimension of the customer experience. Cross-functional innovation teams collaborate across research and development, or R&D, purchasing, operations, marketing, finance and market intelligence to manage a pipeline of new menu, service and marketing ideas.

- *Productivity.* Without compromising the customer experience, we continuously explore opportunities to increase productivity and reduce costs. Our cost-savings allow us to reinvest in innovation initiatives, enhance our strong value proposition and increase margins. We have a dedicated team that coordinates all productivity initiatives and actively manages a pipeline of ideas from testing through implementation.

Experienced Executive and Field Management Teams. Our organization maintains deep restaurant experience at the operating level coupled with a functional corporate support team that drives innovation, productivity and scale efficiencies. Our management team is led by our Chairman and Chief Executive Officer, Elizabeth A. Smith, and since she joined us in November 2009, we have further enhanced our senior leadership team by adding executives from best-in-class consumer and retail companies. Our senior team possesses strong brand management and innovation expertise, which facilitates our focus on analytics and customer testing. This complements our field operating and management teams, who have deep experience operating our restaurants and in the restaurant industry. Our core concept presidents have been with us for an average of 20 years and have an average of 30 years of industry experience. Our regional field management team has an average of over 13 years of experience working with us at the managing partner level or above.

Our Growth Strategy

We believe there are significant opportunities to continue to drive sustainable sales and profit growth through the following three strategies:

Grow Comparable Restaurant Sales. Building on the strong momentum of the business, we believe we have the following opportunities to continue to grow comparable restaurant sales:

- *Remodel Our Restaurants.* In the near term, we are focused on continuing our successful remodel program at Outback Steakhouse and applying this knowledge as we implement a similar program to update our Carrabba's restaurants. For Outback Steakhouse, we plan to complete 160 remodels in 2012 and a cumulative total of approximately 450 remodels by the end of 2013.

- *Continue to Improve Promotional Marketing to Drive Traffic.* We plan to continue to improve our limited-time offers and multimedia marketing campaigns. By promoting continuously evolving, high quality and affordable menu items, we seek to drive traffic and maintain brand relevance without sacrificing margins.

- *Expand Share of Occasions and Increase Frequency.* We believe we have a strong market share of weekend dinner occasions and a significant opportunity to grow our share of other dining occasions across all concepts. We realized meaningful traffic gains in 2011 through our Sunday lunch expansion at Outback Steakhouse, and in 2012, we are planning to roll out Saturday lunch at most of our Outback Steakhouse locations. We are also evaluating the selective expansion of weekday lunch in markets where demographics support doing so.

- *Continue Innovating New Menu Items and Categories.* Our R&D team will continue to introduce innovative menu items that match evolving consumer preferences and broaden appeal.

Pursue New Domestic and International Development With Strong Unit Level Economics. We believe that a substantial development opportunity remains for our concepts in the U.S. and internationally. We expect to open 30 company-owned and five joint venture units in 2012 and increase the pace of development thereafter.

- *Pursue Domestic Development Focused on Bonefish Grill and Carrabba'* s. We believe we have the potential to double the Bonefish Grill concept over time. Bonefish Grill unit growth will be our top domestic development priority in 2012, with 20 or more new restaurants planned. Over the last five years, Bonefish Grill restaurants open for more than a year have averaged a pre-tax return on initial investment of greater than 20%. We also see significant opportunities to expand Carrabba's. We are developing an updated restaurant design for Carrabba's, and we plan to test this model in ten to 15 units over the next two years. Based on the results of this test, we plan to accelerate new unit development.

- *Accelerate International Growth Focused on Outback Steakhouse.* We believe we are well-positioned to expand internationally beyond our 192 restaurants located across 21 countries and territories. In 2012, we plan to open six or more company-owned or joint venture units in existing markets. Our international units have produced attractive returns with an average pre-tax return on initial investment above 30%. In 2011, the system-wide sales of our international Outback Steakhouse restaurants represented 15% of our total system-wide sales. We believe the international business represents a significant growth opportunity. We will approach growth in a disciplined manner, focusing on existing markets such as South Korea, Brazil and Hong Kong, while expanding in strategically selected emerging and high growth developed markets. In the near term, we plan to focus our new market growth in China, Mexico and South America. We plan to utilize company-owned and joint venture arrangements rather than franchises in markets with the most potential for unit growth.

Drive Margin Improvement. We believe that we have the opportunity to increase our margins through continued productivity and increased fixed-cost leverage as we grow comparable restaurant sales. We have developed a multi-year productivity plan that focuses on high value initiatives across four categories: labor, food cost, supply chain and restaurant facilities. This strategy is expected to yield productivity and cost savings of approximately $50 million in 2012 and additional savings in future years.

Risk Factors

Before you invest in our common stock, you should carefully consider all of the information in this prospectus, including matters set forth under the heading "Risk Factors." Risks relating to our business include the following, among others:

- we face significant competition for customers, real estate and employees that could affect our profit margins;
- general economic factors and changes in consumer preference may adversely affect our performance;
- our plans depend on initiatives designed to increase sales, reduce costs and improve the efficiency and effectiveness of our operations, and failure to achieve or sustain these plans could affect our performance adversely;
- damage to our reputation or infringement of our intellectual property could harm our business; and
- our substantial leverage could adversely affect our ability to raise additional capital to fund our operations.

Our History

Our predecessor, OSI Restaurant Partners, Inc., was incorporated in August 1987, and we opened our first Outback Steakhouse restaurant in 1988. We became a Delaware corporation in 1991 as part of a corporate reorganization completed in connection with our initial public offering.

Bloomin Brands, Inc., formerly known as Kangaroo Holdings, Inc., was incorporated in Delaware in October 2006 by an investor group comprised of funds advised by Bain Capital Partners, LLC, Catterton Management Company, LLC, and Chris T. Sullivan, Robert D. Basham and J. Timothy Gannon, who we collectively refer to as our Founders, and members of our management. On June 14, 2007, we acquired OSI Restaurant Partners, Inc. by means of a merger and related transactions, referred to in this prospectus as the Merger. At the time of the Merger, OSI Restaurant Partners, Inc. was converted into a Delaware limited liability company named OSI Restaurant Partners, LLC, or OSI. In connection with the Merger, we implemented a new ownership and financing arrangement for our owned restaurant properties, pursuant to which Private Restaurant Properties, LLC, or PRP, our indirect wholly-owned subsidiary, acquired 343 restaurant properties then owned by OSI and leased them back to subsidiaries of OSI. In March 2012, we refinanced the commercial mortgage-backed securities loan that we entered into in 2007 in connection with the Merger with a new $500.0 million commercial mortgage-backed loan. See Note 20 of our Notes to Consolidated Financial Statements. Following the refinancing, OSI remains our primary operating entity and New Private Restaurant Properties, LLC, another indirect wholly-owned subsidiary of ours, continues to lease 261 of our owned restaurant properties to OSI subsidiaries.

Our Sponsors

Upon completion of this offering, Bain Capital, LLC and Catterton Management Company, LLC, which we refer to as our Sponsors, will continue to hold a controlling interest in us and will continue to have significant influence over us and decisions made by stockholders and may have interests that differ from yours. See "Risk Factors—Risks Related to this Offering and Our Common Stock."

Bain Capital Partners, LLC

Bain Capital, LLC, whose affiliates include Bain Capital Partners, LLC, or Bain Capital, is a global private investment firm that manages several pools of capital including private equity, venture capital, public equity, credit products and absolute return investments with approximately $60 billion in assets under management. Since its inception in 1984, Bain Capital has made private equity investments and add-on acquisitions in more than 300 companies in a variety of industries around the world, including such restaurant concepts as Domino's Pizza, Dunkin' Brands, Burger King and Skylark Company (Japan), and retail businesses including Toys "R" Us, AMC Entertainment, Michael's Stores, Staples and Gymboree. Headquartered in Boston, Bain Capital has offices in New York, Palo Alto, Chicago, London, Munich, Hong Kong, Shanghai, Tokyo, and Mumbai.

Catterton Management Company, LLC

Catterton Management Company, LLC, or Catterton, is a leading private equity firm with a focus on providing equity capital in support of small to middle-market consumer companies that are positioned for attractive growth. Since its founding in 1989, Catterton has invested in approximately 80 companies and led equity investments totaling over $3.6 billion. Presently, Catterton is actively managing more than $2.5 billion of equity capital focused on all sectors of the consumer industry.

Company Information

Our principal executive offices are located at 2202 North West Shore Boulevard, Suite 500, Tampa, Florida 33607 and our telephone number at that address is (813) 282-1225.

The Offering

Common stock offered by us	shares
Common stock to be outstanding immediately after completion of this offering	shares
Option to purchase additional shares	We have granted the underwriters a 30-day option to purchase up to an additional shares.
Use of proceeds	We expect to receive net proceeds, after deducting estimated offering expenses and underwriting discounts and commissions, of approximately $ million (or $ million if the underwriters exercise their option to purchase additional shares in full), based on an assumed offering price of $ per share (the midpoint of the price range set forth on the cover of this prospectus). We intend to use the net proceeds from this offering to retire all of our outstanding 10% notes due 2015, or Senior Notes. There were approximately $248.1 million in aggregate principal amount of Senior Notes outstanding as of December 31, 2011. We will use any remaining net proceeds for working capital and for general corporate purposes. See "Use of Proceeds" and "Description of Indebtedness."
Dividend policy	We do not currently pay cash dividends on our common stock and do not anticipate paying any dividends on our common stock in the foreseeable future. Any future determinations relating to our dividend policies will be made at the discretion of our board of directors and will depend on various factors. See "Dividend Policy."
Principal stockholders	Upon completion of this offering, investment funds affiliated with our Sponsors will beneficially own a controlling interest in us. As a result, we currently intend to avail ourselves of the controlled company exemption under the corporate governance rules of . See "Management—Board Structure and Committee Composition."
Risk factors	You should read carefully the "Risk Factors" section of this prospectus for a discussion of factors that you should consider before deciding to invest in shares of our common stock.
Proposed symbol	"BLM"

The number of shares of our common stock to be outstanding after this offering excludes (1) outstanding options to purchase 11,863,378 shares of our common stock at a weighted average exercise price of $7.52 per share, of which options to purchase 5,673,525 shares were exercisable as of March 15, 2012, and (2) an additional shares of our common stock issuable pursuant to future awards under our 2012 Incentive Award Plan.

SUMMARY CONSOLIDATED FINANCIAL AND OTHER DATA

The following table sets forth our summary consolidated financial and other data as of the dates and for the periods indicated. The summary consolidated financial data as of December 31, 2010 and December 31, 2011 and for each of the three years in the period ended December 31, 2011 presented in this table have been derived from the audited consolidated financial statements included elsewhere in this prospectus. The summary consolidated balance sheet data as of December 31, 2009 have been derived from our historical unaudited consolidated financial statements for that year, which are not included in this prospectus. The total number of system-wide restaurants in the following table is unaudited for all periods presented. Historical results are not necessarily indicative of the results to be expected for future periods.

This summary consolidated financial and other data should be read in conjunction with the disclosures set forth under "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Unaudited Pro Forma Consolidated Financial Statements" and the consolidated financial statements and the related notes thereto appearing elsewhere in this prospectus.

	Years Ended December 31,		
	2009	2010	2011
	($ in thousands, except per share amounts)		
Statement of Operations Data:			
Revenues			
Restaurant sales	$ 3,573,760	$ 3,594,681	$ 3,803,252
Other revenues	27,896	33,606	38,012
Total revenues	3,601,656	3,628,287	3,841,264
Costs and expenses			
Cost of sales	1,184,074	1,152,028	1,226,098
Labor and other related	1,024,063	1,034,393	1,094,117
Other restaurant operating	849,696	864,183	890,004
Depreciation and amortization	186,074	156,267	153,689
General and administrative (1)	252,298	252,793	291,124
Recovery of note receivable from affiliated entity (2)	—	—	(33,150)
Loss on contingent debt guarantee	24,500	—	—
Goodwill impairment	58,149	—	—
Provision for impaired assets and restaurant closings (3)	134,285	5,204	14,039
Income from operations of unconsolidated affiliates	(2,196)	(5,492)	(8,109)
Total costs and expenses	3,710,943	3,459,376	3,627,812
Income (loss) from operations	(109,287)	168,911	213,452
Gain on extinguishment of debt (4)	158,061	—	—
Other income (expense), net	(199)	2,993	830
Interest expense, net	(115,880)	(91,428)	(83,387)
Income (loss) before provision (benefit) for income taxes	(67,305)	80,476	130,895
Provision (benefit) for income taxes	(2,462)	21,300	21,716
Net income (loss)	(64,843)	59,176	109,179
Less: net income (loss) attributable to noncontrolling interests	(380)	6,208	9,174
Net income (loss) attributable to Bloomin' Brands, Inc.	$ (64,463)	$ 52,968	$ 100,005
Basic net income (loss) per share (5)	$ (0.62)	$ 0.50	$ 0.94
Diluted net income (loss) per share (5)	$ (0.62)	$ 0.50	$ 0.94
Weighted average shares outstanding			
Basic	104,442	105,968	106,224
Diluted	104,442	105,968	106,689

	Years Ended December 31,		
	2009	2010	2011
	($ in thousands)		
Statement of Cash Flows Data:			
Net cash provided by (used in):			
Operating activities	$ 195,537	$ 275,154	$ 322,450
Investing activities	(39,171)	(71,721)	(113,142)
Financing activities	(137,397)	(167,315)	(89,300)
Other Financial and Operating Data:			
Number of system-wide restaurants at end of period	1,477	1,439	1,443
Comparable domestic restaurant sales (6)	(8.6)%	2.7%	4.9%
Capital expenditures	$ 57,528	$ 60,476	$ 120,906
Adjusted EBITDA (7)	319,925	338,898	361,478
Adjusted EBITDA margin (7)	8.9%	9.3%	9.4%
Balance Sheet Data (at period end, 2009 unaudited):			
Cash and cash equivalents	$ 330,957	$ 365,536	$ 482,084
Net working capital (deficit) (8)	(187,648)	(120,135)	(248,145)
Total assets	3,340,708	3,243,411	3,353,936
Total debt (4)(9)	2,302,233	2,171,524	2,109,290
Total shareholders' (deficit) equity	(116,625)	(55,911)	40,297
Pro Forma Balance Sheet Data (9):			
Cash and cash equivalents			$
Net working capital (deficit)			$
Total assets			$
Total debt			$
Total shareholders' equity			$

(1) Includes management fees and out-of-pocket and other reimbursable expenses paid to a management company owned by our Sponsors and Founders of $10.7 million, $11.6 million and $9.4 million for the years ended December 31, 2009, 2010 and 2011, respectively, under a management agreement that will terminate upon the completion of this offering. See "Related Party Transactions—Arrangements With Our Investors."

(2) In November 2011, we received a settlement payment from T-Bird Nevada, LLC (together with its affiliates, "T-Bird"), a limited liability company affiliated with our California franchisees of Outback Steakhouse restaurants, in connection with a settlement agreement that satisfied all outstanding litigation with T-Bird.

(3) During 2009, our Provision for impaired assets and restaurant closings primarily included: (i) $46.0 million of impairment charges to reduce the carrying value of the assets of Cheeseburger in Paradise to their estimated fair market value due to our sale of the concept in the third quarter of 2009, (ii) $47.6 million of impairment charges and restaurant closing expense for certain of our other restaurants and (iii) $36.0 million of impairment charges for the domestic Outback Steakhouse and Carrabba's Italian Grill trade names.

(4) In March 2009, we repurchased $240.1 million of our outstanding Senior Notes for $73.0 million. This resulted in a gain on extinguishment of debt, after the pro rata reduction of unamortized deferred financing fees and other related costs, of $158.1 million in 2009.

(5) Basic and diluted net income (loss) per share are calculated on net income (loss) attributable to Bloomin' Brands, Inc.

(6) Represents combined comparable restaurant sales of our domestic company-owned restaurants open 18 months or more.

(7) EBITDA (earnings before interest, taxes, depreciation and amortization), Adjusted EBITDA (calculated by adjusting EBITDA to exclude stock-based compensation expense, certain non–cash expenses and other significant, unusual items) and Adjusted EBITDA margin (Adjusted EBITDA as a percentage of total revenues) are supplemental measures of profitability that are not required by or presented in accordance with generally accepted accounting principles in the United States ("U.S. GAAP"). They are not measurements of our financial performance under U.S. GAAP and should not be considered as alternatives to our Net income (loss) or any other performance measures derived in accordance with U.S. GAAP.

Adjusted EBITDA is presented because: (i) we believe it is a useful measure for investors to assess the operating performance of our business without the effect of non-cash charges such as depreciation and amortization expenses and asset impairment expenses and (ii) we use Adjusted EBITDA internally as a benchmark for certain of our cash incentive plans and to evaluate our operating performance or compare our performance to that of our competitors. The use of Adjusted EBITDA as a performance measure permits a comparative assessment of our operating performance relative to our performance based on our GAAP results, while isolating the effects of some items that vary from period to period without any correlation to core operating performance or that vary widely among similar companies. Companies within our industry exhibit significant variations with respect to capital structures and cost of capital (which affect interest expense and income tax rates) and differences in book depreciation of property, plant and equipment (which affect relative depreciation expense), including significant differences in the depreciable lives of similar assets among various companies. Our management believes that Adjusted EBITDA facilitates company-to-company comparisons within our industry by eliminating some of these foregoing variations. Adjusted EBITDA as presented may not be comparable to other similarly-titled measures of other companies, and our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by excluded or unusual items.

Our management recognizes that Adjusted EBITDA has limitations as an analytical financial measure, including the following:

- Adjusted EBITDA does not reflect our capital expenditures or future requirements for capital expenditures;
- Adjusted EBITDA does not reflect the cost of stock-based compensation;
- Adjusted EBITDA does not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, associated with our indebtedness;
- Adjusted EBITDA does not reflect depreciation and amortization, which are non-cash charges, although the assets being depreciated and amortized will likely have to be replaced in the future, and it does not reflect cash requirements for such replacements; and
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs.

A reconciliation of EBITDA and Adjusted EBITDA to Net income (loss) attributable to Bloomin' Brands, Inc. is provided below:

	Years Ended December 31,		
	2009	2010	2011
		(in thousands)	
Net income (loss) attributable to Bloomin' Brands, Inc.	$ (64,463)	$ 52,968	$ 100,005
(Benefit) provision for income taxes	(2,462)	21,300	21,716
Interest expense, net	115,880	91,428	83,387
Depreciation and amortization	186,074	156,267	153,689
EBITDA	$ 235,029	$ 321,963	$ 358,797
Impairments and disposals	192,572	4,915	15,062
Stock-based compensation expense	15,215	3,146	3,907
Other losses (gains)	884	(1,833)	(90)
Deal-related expenses (a)	—	1,157	7,582
Management fees and expenses	9,786	9,550	9,370
Gain on extinguishment of debt	(158,061)	—	—
Unusual loss (gain) (b)	24,500	—	(33,150)
Adjusted EBITDA	$ 319,925	$338,898	$ 361,478

(a) Deal-related expenses incurred in 2011 primarily include costs associated with the sale of our restaurants in Japan and the sale of properties in the Sale-Leaseback Transaction.

(b) In March 2009, we recorded a loss related to our guarantee of an uncollateralized line of credit that permits borrowing of up to a maximum of $24.5 million for our joint venture partner in Roy's. We recorded this loss based on our determination that our performance under the guarantee was probable. See note (2) above.

(8) As a result of our current liability for unearned revenue from the sale of gift cards, we have a working capital deficit.

(9) On June 14, 2007, PRP entered into a commercial mortgage-backed securities loan (the "CMBS Loan") totaling $790.0 million, which had a maturity date of June 9, 2012. Effective March 27, 2012, New Private Restaurant Properties, LLC and two of our other indirect wholly-owned subsidiaries (collectively, "New PRP") entered into a new commercial mortgage-backed securities loan (the "2012 CMBS Loan") totaling $500.0 million and used the proceeds, together with the proceeds of a sale-leaseback transaction completed on March 14, 2012 and existing cash, to repay the CMBS Loan. The 2012 CMBS Loan and the repayment of the CMBS Loan are collectively referred to as the "CMBS Refinancing." The 2012 CMBS Loan is a five-year loan maturing on April 10, 2017. See "Description of Indebtedness" and Note 20 of our Notes to Consolidated Financial Statements. As a result of the CMBS Refinancing, the net amount repaid along with scheduled maturities within one year, $281.3 million, was classified as current at December 31, 2011.

(10) The unaudited pro forma consolidated balance sheet data at December 31, 2011 gives effect to (a) the 2012 CMBS Loan and repayment of the original CMBS Loan and the sale-leaseback transaction completed on March 14, 2012 in which we sold 67 restaurant properties to two third-party real estate institutional investors then simultaneously leased them back under nine master leases (the "Sale-Leaseback Transaction") and (b) the issuance of common stock in this offering and the application of the net proceeds to repay our Senior Notes and the termination of the management agreement with our Sponsors and our Founders in connection with this offering, as if each had occurred on December 31, 2011. See "Unaudited Pro Forma Consolidated Financial Statements."

RISK FACTORS

An investment in our common stock involves various risks. You should carefully consider the following risks and all of the other information contained in this prospectus before investing in our common stock. The risks described below are those that we believe are the material risks that we face. The trading price of our common stock could decline due to any of these risks, and you may lose all or part of your investment in our common stock.

Risks Related to Our Business and Industry

We face significant competition for customers, real estate and employees and competitive pressure to adapt to changes in conditions driving customer traffic. Our inability to compete effectively may affect our traffic, sales and profit margins, which could adversely affect our business, financial condition and results of operations.

The restaurant industry is intensely competitive with a substantial number of restaurant operators that compete directly and indirectly with us in respect to price, service, location and food quality, and there are other well-established competitors with significant financial and other resources. There is also active competition for management personnel as well as attractive suitable real estate sites. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number and location of competing restaurants often affect the restaurant business, and our competitors may react more efficiently and effectively to those conditions. Further, we face growing competition from the supermarket industry, with the improvement of their "convenient meals" in the deli section, and from quick service and fast casual restaurants, as a result of higher-quality food and beverage offerings by those restaurants. If we are unable to continue to compete effectively, our traffic, sales and margins could decline and our business, financial condition and results of operations would be adversely affected.

Challenging economic conditions may have a negative effect on our cash flows through lower consumer confidence and discretionary spending, availability and cost of credit, foreign currency exchange rates and other items.

Challenging economic conditions may negatively impact consumer confidence and discretionary spending and thus cause a decline in our cash flow from operations. For example, during the economic downturn starting in 2008, continuing disruptions in the overall economy, including the ongoing impacts of the housing crisis, high unemployment, and financial market volatility and unpredictability, caused a related reduction in consumer confidence, which negatively affected customer traffic and sales throughout our industry. These factors, as well as national, regional and local regulatory and economic conditions, gasoline prices, disposable consumer income and consumer confidence, affect discretionary consumer spending. If challenging economic conditions persist for an extended period of time or worsen, consumers might make long-lasting changes to their discretionary spending behavior, including dining out less frequently. The ability of the U.S. economy to continue to recover from these challenging economic conditions is likely to be affected by many national and international factors that are beyond our control, including current economic trends in Europe. Continued weakness in or a further worsening of the economy, generally or in a number of our markets, and our customers' reactions to these trends could adversely affect our business and cause us to, among other things, reduce the number and frequency of new restaurant openings, close restaurants or delay remodeling of our existing restaurant locations.

In addition, as noted in our other risk factors, our high degree of leverage could increase our vulnerability to general economic and industry conditions and require that a substantial portion of cash flow from operations be dedicated to the payment of principal and interest on our indebtedness. Further, the availability of credit already arranged for under our revolving credit facilities and the cost and availability of future credit may be adversely impacted by economic challenges. Foreign currency exchange rates for the countries in which we operate may decline. In addition, we may experience interruptions in supplies and other services from our third-party vendors as a result of market conditions. These disruptions in the economy are beyond our control, and there is no guarantee that any government response will restore consumer confidence, stabilize the economy or increase the availability of credit.

Loss of key management personnel could hurt our business and inhibit our ability to operate and grow successfully.

Our success will continue to depend, to a significant extent, on our leadership team and other key management personnel. If we are unable to attract and retain sufficiently experienced and capable management personnel, our business and financial results may suffer. If members of our leadership team or other key management personnel leave, we may have difficulty replacing them, and our business may suffer. There can be no assurance that we will be able to successfully attract and retain our leadership team and other key management personnel that we need.

We could face labor shortages that could slow our growth and adversely impact our ability to operate our restaurants.

Our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified employees, including managing partners, restaurant managers, kitchen staff and servers, necessary to keep pace with our anticipated expansion schedule and meet the needs of our existing restaurants. A sufficient number of qualified individuals of the requisite caliber to fill these positions may be in short supply in some communities. Competition in these communities for qualified staff could require us to pay higher wages and provide greater benefits. Any inability to recruit and retain qualified individuals may also delay the planned openings of new restaurants and could adversely impact our existing restaurants. Any such inability to retain or recruit qualified employees, increased costs of attracting qualified employees or delays in restaurant openings could adversely affect our business and results of operations.

Risks associated with our expansion plans may have adverse effects on our ability to increase revenues.

As part of our business strategy, we intend to continue to expand our current portfolio of restaurants. Current development schedules call for the construction of approximately 30 or more new restaurants in 2012. A variety of factors could cause the actual results and outcome of those expansion plans to differ from the anticipated results, including among other things:

- the availability of attractive sites for new restaurants and the ability to obtain appropriate real estate at those sites at acceptable prices;
- the ability to obtain all required governmental permits, including zoning approvals and liquor licenses, on a timely basis;
- the impact of moratoriums or approval processes of state, local or foreign governments, which could result in significant delays;
- the ability to obtain all necessary contractors and sub-contractors;
- union activities such as picketing and hand billing, which could delay construction;
- the ability to negotiate suitable lease terms;
- the ability to recruit and train skilled management and restaurant employees;
- the ability to receive the premises from the landlord’s developer without any delays; and
- weather, natural disasters and disasters beyond our control resulting in construction delays.

Some of our new restaurants may take several months to reach planned operating levels due to lack of market awareness, start-up costs and other factors typically associated with new restaurants. There is also the possibility that new restaurants may attract customers away from other restaurants we own, thereby reducing the revenues of those existing restaurants.

Development rates for each concept may differ significantly. The development of each concept may not be as successful as our experience in the past. It is difficult to estimate the performance of newly opened restaurants. Earnings achieved to date by restaurants open for less than two years may not be indicative of future operating results. Should enough of these new restaurants not meet targeted performance, it could have a material adverse effect on our operating results.

Our business is subject to seasonal fluctuations and past results are not indicative of future results.

Historically, customer spending patterns for our established restaurants are generally highest in the first quarter of the year and lowest in the third quarter of the year. Additionally, holidays may affect sales volumes seasonally in some of the markets in which we operate. Our quarterly results have been and will continue to be affected by the timing of new restaurant openings and their associated pre-opening costs, as well as restaurant closures and exit-related costs and impairments of goodwill, intangible assets and property, fixtures and equipment. As a result of these and other factors, our financial results for any quarter may not be indicative of the results that may be achieved for a full fiscal year.

Significant adverse weather conditions and other disasters could negatively impact our results of operations.

Adverse weather conditions and natural disasters, such as regional winter storms, floods, major hurricanes and earthquakes, severe thunderstorms and other disasters, such as oil spills, could negatively impact our results of operations. Temporary and prolonged restaurant closures may occur and customer traffic may decline due to the actual or perceived effects from these events.

We may be required to use cash to pay one of our franchisees in connection with a put right under a settlement agreement, which could have an adverse impact on our development plans and operating results.

In connection with the settlement of litigation with T-Bird, which include the franchisees of 56 Outback Steakhouse restaurants in California, we entered into an agreement with T-Bird pursuant to which T-Bird has the right, referred to as the Put Right, to require us to purchase for cash all of the equity interests in the T-Bird entities that own Outback Steakhouse restaurants. The Put Right will become exercisable by T-Bird for a one-year period beginning on the date of closing of this offering. The Put Right is also exercisable if we sell our Outback Steakhouse concept. If the Put Right is exercised, we will pay a purchase price equal to a multiple of the T-Bird entities' adjusted EBITDA, net of liabilities, for the trailing 12 months as of the closing of the purchase from T-Bird. The multiple will be equal to 75% of the multiple of our adjusted EBITDA for the same trailing 12-month period as reflected in our stock price in the case of this offering or, in a sale of our Outback Steakhouse concept, 75% of the multiple of adjusted EBITDA that we are receiving in the sale. We have a one-time right to reject the exercise of the Put Right if the transaction would be dilutive to our consolidated earnings per share. In that event, the Put Right is extended until the first anniversary of our notice to the T-Bird entities of that rejection. We have agreed to waive all rights of first refusal in our franchise arrangements with the T-Bird entities in connection with a sale of all, and not less than all, of the assets, or at least 75% of the ownership, of the T-Bird entities. If the Put Right is exercised, we will have to use cash to pay the purchase price that could have been allocated to more profitable development initiatives or other business needs, and we will then own restaurants that may not fit our current expansion criteria. This could have an adverse impact on our operating results.

We have limited control with respect to the operations of our franchisees and joint venture partners, which could have a negative impact on our business.

Our franchisees and joint venture partners are obligated to operate their restaurants according to the specific guidelines we set forth. We provide training opportunities to these franchisees and joint venture partners to fully integrate them into our operating strategy. However, since we do not have control over these restaurants,

we cannot give assurance that there will not be differences in product quality or that there will be adherence to all of our guidelines at these restaurants. The failure of these restaurants to operate effectively could adversely affect our cash flows from those operations or have a negative impact on our reputation or our business.

Our failure to comply with government regulation, and the costs of compliance or non-compliance, could adversely affect our business.

We are subject to various federal, state, local and foreign laws affecting our business. Each of our restaurants is subject to licensing and regulation by a number of governmental authorities, which may include, among others, alcoholic beverage control, health and safety, nutritional menu labeling, health care, environmental and fire agencies in the state, municipality or country in which the restaurant is located. Difficulty in obtaining or failing to obtain the required licenses or approvals could delay or prevent the development of a new restaurant in a particular area. Additionally, difficulties or inabilities to retain or renew licenses, or increased compliance costs due to changed regulations, could adversely affect operations at existing restaurants.

Approximately 15% of our consolidated restaurant sales are attributable to the sale of alcoholic beverages. Alcoholic beverage control regulations require each of our restaurants to apply to a state authority and, in certain locations, county or municipal authorities for a license or permit to sell alcoholic beverages on the premises and to provide service for extended hours and on Sundays. Typically, licenses must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our restaurants, including minimum age of patrons and employees, hours of operation, advertising, training, wholesale purchasing, inventory control and handling and storage and dispensing of alcoholic beverages. The failure of a restaurant to obtain or retain liquor or food service licenses would adversely affect the restaurant's operations. Additionally, we are subject in certain states to "dramshop" statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person.

Our restaurant operations are also subject to federal and state labor laws, including the Fair Labor Standards Act, governing such matters as minimum wages, overtime, tip credits and worker conditions. Our employees who receive tips as part of their compensation, such as servers, are paid at a minimum wage rate, after giving effect to applicable tip credits. We rely on our employees to accurately disclose the full amount of their tip income, and we base our FICA tax reporting on the disclosures provided to us by such tipped employees. Our other personnel, such as our kitchen staff, are typically paid in excess of minimum wage. As significant numbers of our food service and preparation personnel are paid at rates related to the applicable minimum wage, further increases in the minimum wage or other changes in these laws could increase our labor costs. Our ability to respond to minimum wage increases by increasing menu prices will depend on the responses of our competitors and customers. Further, we are continuing to assess the impact of federal health care legislation on our health care benefit costs. The imposition of any requirement that we provide health insurance benefits to employees that are more extensive than the health insurance benefits we currently provide, or the imposition of additional employer paid employment taxes on income earned by our employees, could have an adverse effect on our results of operations and financial position. Our distributors and suppliers also may be affected by higher minimum wage and benefit standards, which could result in higher costs for goods and services supplied to us.

The Patient Protection and Affordability Act of 2010 (the "PPACA") enacted in March 2010 requires chain restaurants with 20 or more locations in the United States to comply with federal nutritional disclosure requirements. The FDA has indicated that it intends to issue final regulations by the middle of 2012 and begin enforcing the regulations by the end of 2012. A number of states, counties and cities have also enacted menu labeling laws requiring multi-unit restaurant operators to disclose certain nutritional information to customers, or have enacted legislation restricting the use of certain types of ingredients in restaurants. Although the federal legislation is intended to preempt conflicting state or local laws on nutrition labeling, until we are required to comply with the federal law we will be subject to a patchwork of state and local laws and regulations regarding nutritional content disclosure requirements. Many of these requirements are inconsistent or are interpreted

differently from one jurisdiction to another. The effect of such labeling requirements on consumer choices, if any, is unclear at this time.

There is also a potential for increased regulation of food in the United States under the recent changes in the HACCP system requirements. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. Many states have required restaurants to develop and implement HACCP Systems and the United States government continues to expand the sectors of the food industry that must adopt and implement HACCP programs. For example, the Food Safety Modernization Act (the "FSMA"), signed into law in January 2011, granted the FDA new authority regarding the safety of the entire food system, including through increased inspections and mandatory food recalls. Although restaurants are specifically exempted from or not directly implicated by some of these new requirements, we anticipate that the new requirements may impact our industry. Additionally, our suppliers may initiate or otherwise be subject to food recalls that may impact the availability of certain products, result in adverse publicity or require us to take actions that could be costly for us or otherwise harm our business.

We are subject to the Americans with Disabilities Act, or the ADA, which, among other things, requires our restaurants to meet federally mandated requirements for the disabled. The ADA prohibits discrimination in employment and public accommodations on the basis of disability. Under the ADA, we could be required to expend funds to modify our restaurants to provide service to, or make reasonable accommodations for the employment of, disabled persons. In addition, our employment practices are subject to the requirements of the Immigration and Naturalization Service relating to citizenship and residency. Government regulations could affect and change the items we procure for resale such as commodities. We may also become subject to legislation or regulation seeking to tax or regulate high fat and high sodium foods, particularly in the United States, which could be costly to comply with. Our results can be impacted by tax legislation and regulation in the jurisdictions in which we operate and by accounting standards or pronouncements.

We are also subject to laws and regulations relating to information security, privacy, cashless payments, gift cards and consumer credit, protection and fraud, and any failure or perceived failure to comply with these laws and regulations could harm our reputation or lead to litigation, which could adversely affect our financial condition.

We face a variety of risks associated with doing business in foreign markets that could have a negative impact on our financial performance.

We have a significant number of franchised, joint venture and company-owned Outback Steakhouse restaurants outside the United States, and we intend to continue our efforts to grow internationally. Although we believe we have developed the support structure for international operations and growth, there is no assurance that international operations will be profitable or international growth will continue.

Our foreign operations are subject to all of the same risks as our domestic restaurants, as well as additional risks including, among others, international economic and political conditions and the possibility of instability and unrest, differing cultures and consumer preferences, diverse government regulations and tax systems, the ability to source high quality ingredients and other commodities in a cost-effective manner, uncertain or differing interpretations of rights and obligations in connection with international franchise agreements and the collection of ongoing royalties from international franchisees, the availability and cost of land and construction costs, and the availability of experienced management, appropriate franchisees and area operating partners.

Currency regulations and fluctuations in exchange rates could also affect our performance. We have direct investments in restaurants in South Korea, Hong Kong and Brazil, as well as international franchises, in a total of 21 countries and territories. As a result, we may experience losses from foreign currency translation, and such losses could adversely affect our overall sales and earnings.

We are subject to governmental regulation throughout the world, including antitrust and tax requirements, anti-boycott regulations, import/export/customs regulations and other international trade regulations, the USA Patriot Act and the Foreign Corrupt Practices Act. Any new regulatory or trade initiatives could impact our operations in certain countries. Failure to comply with any such legal requirements could subject us to monetary liabilities and other sanctions, which could harm our business, results of operations and financial condition.

Increased commodity, energy and other costs could decrease our profit margins or cause us to limit or otherwise modify our menus, which could adversely affect our business.

The performance of our restaurants depends on our ability to anticipate and react to changes in the price and availability of food commodities, including among other things beef, chicken, seafood, butter, cheese and produce. Prices may be affected due to market changes, increased competition, the general risk of inflation, shortages or interruptions in supply due to weather, disease or other conditions beyond our control, or other reasons. Increased prices or shortages could affect the cost and quality of the items we buy or require us to limit our menu options. These events, combined with other more general economic and demographic conditions, could impact our pricing and negatively affect our profit margins.

The performance of our restaurants is also adversely affected by increases in the price of utilities, such as natural gas, whether as a result of inflation, shortages or interruptions in supply, or otherwise. We use derivative instruments to mitigate some of our overall exposure to material increases in natural gas prices. We do not apply hedge accounting to these instruments, and any changes in the fair value of the derivative instruments are marked-to-market through earnings in the period of change. To date, effects of these derivative instruments have been immaterial to our financial statements for all periods presented.

Our business also incurs significant costs for insurance, labor, marketing, taxes, real estate, borrowing and litigation, all of which could increase due to inflation, changes in laws, competition or other events beyond our control.

Our ability to respond to increased costs by increasing menu prices or by implementing alternative processes or products will depend on our ability to anticipate and react to such increases and other more general economic and demographic conditions, as well as the responses of our competitors and customers. All of these things may be difficult to predict and beyond our control. In this manner, increased costs could adversely affect our performance.

Infringement of our intellectual property could diminish the value of our restaurant concepts and harm our business.

We regard our service marks, including “Outback Steakhouse,” “Carrabba’s Italian Grill,” “Bonefish Grill” and “Fleming’s Prime Steakhouse and Wine Bar,” and our “Bloomin’ Onion” trademark as having significant value and as being important factors in the marketing of our restaurants. We have also obtained trademarks for several of our other menu items and for various advertising slogans. In addition, the overall layout, appearance and designs of our restaurants are valuable assets. We believe that these and other intellectual property are valuable assets that are critical to our success. We rely on a combination of protections provided by contracts, copyrights, patents, trademarks, and other common law rights, such as trade secret and unfair competition laws, to protect our restaurants and services from infringement. We have registered certain trademarks and service marks and have other registration applications pending in the United States and foreign jurisdictions. However, not all of the trademarks or service marks that we currently use have been registered in all of the countries in which we do business, and they may never be registered in all of these countries. There may not be adequate protection for certain intellectual property such as the overall appearance of our restaurants. We are aware of names and marks similar to our service marks being used by other persons in certain geographic areas in which we have restaurants. Although we believe such uses will not adversely affect us, further or currently unknown unauthorized uses or other misappropriation of our trademarks or service marks could diminish the value of our brands and restaurant concepts and may adversely affect our business. We may be unable to detect such unauthorized use of, or take appropriate steps to enforce, our intellectual property rights.

Effective intellectual property protection may not be available in every country in which we have or intend to open or franchise a restaurant. Failure to adequately protect our intellectual property rights could damage or even destroy our brands and impair our ability to compete effectively. Even where we have effectively secured statutory protection for intellectual property, our competitors may misappropriate our intellectual property and our employees, consultants and suppliers may breach their obligations not to reveal our confidential information, including trade secrets. Although we have taken appropriate measures to protect our intellectual property, there can be no assurance that these protections will be adequate or that our competitors will not independently develop products or concepts that are substantially similar to our restaurants and services. Despite our efforts, it may be possible for third-parties to reverse-engineer, otherwise obtain, copy, and use information that we regard as proprietary. Furthermore, defending or enforcing our trademark rights, branding practices and other intellectual property, and seeking injunctions against and/or compensation for misappropriation of confidential information, could result in the expenditure of significant resources.

Restaurant companies, including ours, have been the target of class action lawsuits and other proceedings alleging, among other things, violations of federal and state workplace and employment laws. Proceedings of this nature are costly, divert management attention and, if successful, could result in our payment of substantial damages or settlement costs.

Our business is subject to the risk of litigation by employees, consumers, suppliers, shareholders or others through private actions, class actions, administrative proceedings, regulatory actions or other litigation. The outcome of litigation, particularly class action and regulatory actions, is difficult to assess or quantify. In recent years, we and other restaurant companies have been subject to lawsuits, including class action lawsuits, alleging violations of federal and state laws regarding workplace and employment matters, discrimination and similar matters. A number of these lawsuits have resulted in the payment of substantial damages by the defendants. Similar lawsuits have been instituted from time to time alleging violations of various federal and state wage and hour laws regarding, among other things, employee meal deductions, the sharing of tips among certain employees, overtime eligibility of assistant managers and failure to pay for all hours worked. If we are required to pay substantial damages and expenses as a result of these or other types of lawsuits our business and results of operations would be adversely affected.

Occasionally, our customers file complaints or lawsuits against us alleging that we are responsible for some illness or injury they suffered at or after a visit to one of our restaurants, including actions seeking damages resulting from food borne illness and relating to notices with respect to chemicals contained in food products required under state law. We are also subject to a variety of other claims from third parties arising in the ordinary course of our business, including personal injury claims, contract claims and claims alleging violations of federal and state laws. In addition, our restaurants are subject to state “dram shop” or similar laws which generally allow a person to sue us if that person was injured by a legally intoxicated person who was wrongfully served alcoholic beverages at one of our restaurants. The restaurant industry has also been subject to a growing number of claims that the menus and actions of restaurant chains have led to the obesity of certain of their customers. We may also be subject to lawsuits from our employees, the U.S. Equal Employment Opportunity Commission or others alleging violations of federal and state laws regarding workplace and employment matters, discrimination and similar matters. For example, in December 2009, we entered into a Consent Decree in settlement of certain litigation brought by the U.S. Equal Employment Opportunity Commission, which required us to make a settlement payment of $19.0 million. In addition, during the four-year term of the Consent Decree, we are required to fulfill certain training, record-keeping and reporting requirements, maintain an open access system for restaurant employees to express interest in promotions, and employ a human resources executive. If we fail to comply with the terms of the Consent Decree, it could have adverse consequences on our business.

Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations. In addition, they may generate negative publicity, which could reduce customer traffic and sales. Although we maintain what we believe to be adequate levels of insurance, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to these or other matters. A judgment or other liability in excess of our insurance coverage for any claims or any adverse publicity resulting from claims could adversely affect our business and results of operations.

Our insurance policies may not provide adequate levels of coverage against all claims, and fluctuating insurance requirements and costs could negatively impact our profitability.

We are self-insured, or carry insurance programs with specific retention levels or deductibles, for a significant portion of our risks and associated liabilities with respect to workers' compensation, general liability, liquor liability, employment practices liability, property, health benefits and other insurable risks. However, there are types of losses we may incur that cannot be insured against or that we believe are not commercially reasonable to insure. These losses, if they occur, could have a material and adverse effect on our business and results of operations. Additionally, health insurance costs in general have risen significantly over the past few years and are expected to continue to increase. These increases could have a negative impact on our profitability, and there can be no assurance that we will be able to successfully offset the effect of such increases with plan modifications and cost control measures, additional operating efficiencies or the pass-through of such increased costs to our customers or employees.

Conflict or terrorism could negatively affect our business.

We cannot predict the effects of actual or threatened armed conflicts or terrorist attacks, efforts to combat terrorism, military action against any foreign state or group located in a foreign state or heightened security requirements on local, regional, national, or international economies or consumer confidence. Such events could negatively affect our business, including by reducing customer traffic or the availability of commodities.

If our advertising and marketing programs are unsuccessful in maintaining or driving increased customer traffic or are ineffective in comparison to those of our competitors, our results of operations could be adversely affected.

We conduct ongoing promotion-based brand awareness advertising campaigns and customer loyalty programs. If these programs are not successful or conflict with evolving customer preferences, we may not increase or maintain our customer traffic and will incur expenses without the benefit of higher revenues. In addition, if our competitors increase their spending on marketing and advertising programs, or develop more effective campaigns, this could have a negative effect on our brand relevance, customer traffic and results of operations.

Unfavorable publicity could harm our business by reducing demand for our concepts or specific menu offerings.

Our business could be negatively affected by publicity resulting from complaints or litigation, either against us or other restaurant companies, alleging poor food quality, food-borne illness, personal injury, adverse health effects (including obesity) or other concerns. Regardless of the validity of any such allegations, unfavorable publicity relating to any number of restaurants or even a single restaurant could adversely affect public perception of the entire brand.

Additionally, unfavorable publicity towards a food product generally could negatively impact our business. For example, publicity regarding health concerns or outbreaks of disease in a food product could reduce demand for our menu offerings. These factors could have a material adverse effect on our business.

Consumer reaction to public health issues, such as an outbreak of flu viruses or other diseases, could have an adverse effect on our business.

Our business could be harmed if the United States or other countries in which we operate experience an outbreak of flu viruses or other diseases. If a virus is transmitted by human contact, our employees or customers could become infected or could choose or be advised to avoid gathering in public places. This could adversely affect our restaurant traffic, our ability to adequately staff our restaurants, our ability to receive deliveries on a timely basis or our ability to perform functions at the corporate level. Our business could also be negatively affected if mandatory closures, voluntary closures or restrictions on operations are imposed in the jurisdictions in which we operate. Even if such measures are not implemented and a virus or other disease does not spread significantly, the perceived risk of infection or significant health risk may have a material adverse effect on our business.

Food safety and food-borne illness concerns throughout the supply chain may have an adverse effect on our business by reducing demand and increasing costs.

Food safety issues could be caused by food suppliers or distributors and, as a result, be out of our control. In addition, regardless of the source or cause, any report of food-borne illnesses and other food safety issues including food tampering or contamination at one of our restaurants could adversely affect the reputation of our brands and have a negative impact on our sales. Even instances of food-borne illness, food tampering or food contamination occurring solely at restaurants of our competitors could result in negative publicity about the food service industry generally and adversely impact our sales. The occurrence of food-borne illnesses or food safety issues could also adversely affect the price and availability of affected ingredients, resulting in higher costs and lower margins.

The food service industry is affected by consumer preferences and perceptions. Changes in these preferences and perceptions may lessen the demand for our products, which would reduce sales and harm our business.

Food service businesses are affected by changes in consumer tastes and demographic trends. For instance, if prevailing health or dietary preferences cause consumers to avoid steak and other products we offer in favor of foods that are perceived as more healthy, our business and operating results would be harmed.

We have a limited number of suppliers for our major products. If our suppliers are unable to fulfill their obligations under their contracts, we could encounter supply shortages and incur higher costs.

We have a limited number of suppliers for our major products, such as beef. In 2011, we purchased more than 90% of our beef raw materials from four beef suppliers who represent approximately 75% of the total beef marketplace in the U.S. Due to the nature of our industry, we expect to continue to purchase a substantial amount of our beef from a small number of suppliers. Although we have not experienced significant problems with our suppliers, if our suppliers are unable to fulfill their obligations under their contracts, we could encounter supply shortages and incur higher costs.

Shortages or interruptions in the supply or delivery of fresh food products could adversely affect our operating results.

We are dependent on frequent deliveries of fresh food products that meet our specifications. Shortages or interruptions in the supply of fresh food products caused by unanticipated demand, problems in production or distribution, inclement weather or other conditions could adversely affect the availability, quality and cost of ingredients, which would adversely affect our operating results.

We outsource certain accounting processes to a third-party vendor, which subjects us to many unforeseen risks that could disrupt our business, increase our costs and negatively impact our internal control processes.

In early 2011, we began to outsource certain accounting processes to a third-party vendor. The third-party vendor may not be able to handle the volume of activity or perform the quality of service that we have currently achieved at a cost-effective rate, which could adversely affect our business. The decision to outsource was made based on cost savings initiatives; however, we may not achieve these savings because of unidentified intangible costs and legal and regulatory matters, which could adversely affect our results of operations or financial condition. In addition, the transition of certain business processes to outsourcing could negatively impact our internal control processes.

We rely heavily on information technology in our operations and any material failure, weakness, interruption or breach of security could prevent us from effectively operating our business.

We rely heavily on information systems across our operations, including for point-of-sale processing in our restaurants, management of our supply chain, payment of obligations, collection of cash, data warehousing to support analytics and other various processes and procedures. Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these systems. The failure of these systems to operate effectively, maintenance problems, upgrading or transitioning to new platforms, or a breach in security of these systems could result delays in customer service and reduce efficiency in our operations. Remediation of such problems could result in significant unplanned capital investments.

Security breaches of confidential customer information in connection with our electronic processing of credit and debit card transactions may adversely affect our business.

The majority of our restaurant sales are by credit or debit cards. Other restaurants and retailers have experienced security breaches in which credit and debit card information of their customers has been stolen. We may in the future become subject to lawsuits or other proceedings for purportedly fraudulent transactions arising out of the actual or alleged theft of our customers' credit or debit card information. Any such claim or proceeding, or any adverse publicity resulting from these allegations, may have a material adverse effect on our business.

An impairment in the carrying value of our goodwill or other intangible assets could adversely affect our financial condition and results of operations.

We test goodwill for impairment in the second quarter of each fiscal year and whenever events or changes in circumstances indicate that impairment may have occurred. A significant amount of judgment is involved in determining if an indication of impairment exists. Factors may include, among others:

- a significant decline in our expected future cash flows;
- a significant adverse change in legal factors or in the business climate;
- unanticipated competition;
- the testing for recoverability of a significant asset group within a reporting unit; and
- slower growth rates.

Any adverse change in these factors would have a significant impact on the recoverability of these assets and negatively affect our financial condition and results of operations. We compare the carrying value of a reporting unit, including goodwill, to the fair value of the reporting unit. Carrying value is based on the assets and liabilities associated with the operations of that reporting unit. If the carrying value is less than the fair value, no impairment exists. If the carrying value is higher than the fair value, there is an indication of impairment and a second step is required to measure a goodwill impairment loss, if any. We are required to record a non-cash impairment charge if the testing performed indicates that goodwill has been impaired.

We evaluate our other intangible assets, primarily the Outback Steakhouse (domestic and international), Carrabba's Italian Grill, Bonefish Grill, Fleming's Prime Steakhouse and Wine Bar and Roy's trademarks or trade names, to determine if they are definite or indefinite-lived. Reaching a determination on useful life requires significant judgments and assumptions regarding the future effects of obsolescence, demand, competition, other economic factors (such as the stability of the industry, legislative action that results in an uncertain or changing regulatory environment, and expected changes in distribution channels), the level of required maintenance expenditures, and the expected lives of other related groups of assets.

As with goodwill, we test our indefinite-lived intangible assets for impairment in the second quarter of each fiscal year and whenever events or changes in circumstances indicate that their carrying value may not be recoverable. We estimate the fair value of these indefinite-lived intangible assets based on an income valuation model using the relief from royalty method, which requires assumptions related to projected revenues from our annual long-range plan, assumed royalty rates that could be payable if we did not own the assets and a discount rate.

During the years ended December 31, 2011 and 2010, we did not record any goodwill or material intangible asset impairment charges. During the year ended December 31, 2009, we recorded goodwill and intangible asset impairment charges of $58.1 million and $43.7 million, respectively. We cannot accurately predict the amount and timing of any impairment of assets. Should the value of goodwill or other intangible assets become further impaired, there could be an adverse effect on our financial condition and results of operations.

Changes to estimates related to our property, fixtures and equipment and definite-lived intangible assets or operating results that are lower than our current estimates at certain restaurant locations may cause us to incur impairment charges on certain long-lived assets, which may adversely affect our results of operations.

In accordance with accounting guidance as it relates to the impairment of long-lived assets, we make certain estimates and projections with regard to individual restaurant operations, as well as our overall performance, in connection with our impairment analyses for long-lived assets. When impairment triggers are deemed to exist for any location, the estimated undiscounted future cash flows are compared to its carrying value. If the carrying value exceeds the undiscounted cash flows, an impairment charge equal to the difference between the carrying value and the sum of the discounted cash flows is recorded. The projections of future cash flows used in these analyses require the use of judgment and a number of estimates and projections of future operating results. If actual results differ from our estimates, additional charges for asset impairments may be required in the future. If impairment charges are significant, our results of operations could be adversely affected.

The possibility of future misstatement exists due to inherent limitations in our control systems, which could adversely affect our business.

We cannot be certain that our internal control over financial reporting and disclosure controls and procedures will prevent all possible error and fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of error or fraud, if any, in our company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake, which could have an adverse impact on our business.

Our reported financial results may be adversely affected by changes in accounting principles applicable to us.

Generally accepted accounting principles in the U.S. are subject to interpretation by the Financial Accounting Standards Board, or FASB, the American Institute of Certified Public Accountants, the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results, and could affect the reporting of transactions completed before the announcement of a change, such as standards relating to leasing. In addition, the SEC has announced a multi-year plan that could ultimately lead to the use of International Financial Reporting Standards by U.S. issuers in their SEC filings. Any such change could have a significant effect on our reported financial results.

We are a holding company and rely on dividends, distributions and other payments, advances and transfers of funds from our subsidiaries to fund our operations, which could prevent us from meeting our obligations.

We have no direct operations and derive all of our cash flow from our subsidiaries. Because we conduct our operations through our subsidiaries, we depend on those entities for dividends and other payments or distributions to fund our operations. The deterioration of the earnings from, or other available assets of, our subsidiaries for any reason could limit or impair their ability to pay dividends or other distributions to us.

Risks Related to Our Indebtedness

Our substantial leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry and expose us to interest rate risk in connection with our variable-rate debt.

We are highly leveraged. As of December 31, 2011, our total indebtedness was approximately $2.1 billion. See "Description of Indebtedness." As of December 31, 2011, we also had approximately $82.4 million in available unused borrowing capacity under our working capital revolving credit facility (after giving effect to undrawn letters of credit of approximately $67.6 million) and $67.0 million in available unused borrowing capacity under our pre-funded revolving credit facility that provides financing for capital expenditures only.

Our high degree of leverage could have important consequences, including:

- making it more difficult for us to make payments on indebtedness;
- increasing our vulnerability to general economic, industry and competitive conditions;
- increasing our cost of borrowing;
- requiring a substantial portion of cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, thereby reducing our ability to use our cash flow to fund our operations, capital expenditures and future business opportunities;
- exposing us to the risk of increased interest rates because certain of our borrowings under our senior secured credit facilities and commercial mortgage-backed securities loans are at variable rates of interest;
- restricting us from making strategic acquisitions or causing us to make non-strategic divestitures;
- limiting our ability to obtain additional financing for working capital, capital expenditures, restaurant development, debt service requirements, acquisitions and general corporate or other purposes; and
- limiting our ability to adjust to changing market conditions and placing us at a competitive disadvantage compared to our competitors who may not be as highly leveraged.

We may incur substantial additional indebtedness in the future, subject to the restrictions contained in our senior secured credit facilities, the 2012 CMBS Loan and the indenture governing our Senior Notes. If new indebtedness is added to our current debt levels, the related risks that we now face could increase.

Approximately $1.0 billion of debt outstanding under our senior secured credit facilities and approximately $49.0 million of our 2012 CMBS Loan bears interest based on a floating rate index. An increase in these floating rates could cause a material increase in our interest expense.

Our debt agreements contain restrictions that limit our flexibility in operating our business.

We are a holding company and conduct our operations through our subsidiaries, certain of which have incurred their own indebtedness. Our subsidiaries' debt agreements contain various covenants that limit our ability to obtain funds from our subsidiaries through dividends, loans or advances. In addition, certain of our debt agreements limit our and our subsidiaries' ability to, among other things, incur or guarantee additional indebtedness, pay dividends on, redeem or repurchase our capital stock, make certain acquisitions or investments, incur or permit to exist certain liens, enter into transactions with affiliates or sell our assets to, merge or consolidate with or into, another company. Our debt agreements require us to satisfy certain financial tests and ratios and limit our ability to make capital expenditures. Our ability to satisfy such tests and ratios may be affected by events outside of our control.

Upon a breach of the covenants under our debt agreements, the lenders could elect to declare all amounts outstanding under the agreements to be immediately due and payable and terminate all commitments to extend further credit. If we are unable to repay those amounts, the lenders under the senior secured credit facilities and the 2012 CMBS Loan could proceed against the collateral granted to them to secure that indebtedness. We have pledged a significant portion of our assets as collateral under the senior secured credit facilities and the 2012 CMBS Loan. If the lenders under the senior secured credit facilities and the 2012 CMBS Loan accelerate the repayment of borrowings, we cannot be certain that we will have sufficient assets to repay them and our unsecured indebtedness.

We may not be able to generate sufficient cash to service all of our indebtedness and operating lease obligations, and we may be forced to take other actions to satisfy our obligations under our indebtedness and operating lease obligations, which may not be successful. If we fail to meet these obligations, we would be in default under our debt agreements and the lenders could elect to declare all amounts outstanding under them to be immediately due and payable and terminate all commitments to extend further credit.

Our ability to make scheduled payments on or to refinance our debt obligations and to satisfy our operating lease obligations depends on our financial condition and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. We cannot be certain that we will maintain a level of cash flow from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness, or to pay our operating lease obligations. If our cash flow and capital resources are insufficient to fund our debt service obligations and operating lease obligations, we may be forced to reduce or delay capital expenditures, sell assets, seek additional capital or restructure or refinance our indebtedness. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. In the absence of sufficient operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations or take other actions to meet our debt service and other obligations. Our debt agreements restrict our ability to dispose of assets and use the proceeds from the disposition. We may not be able to consummate those dispositions or to obtain the proceeds that we could otherwise realize from such dispositions and any such proceeds that are realized may not be adequate to meet any debt service obligations then due. The failure to meet our debt service obligations or the failure to remain in compliance with the financial covenants under our debt agreements would constitute an event of default under those agreements and the lenders could elect to declare all amounts outstanding under them to be immediately due and payable and terminate all commitments to extend further credit.

Risks Related to this Offering and Our Common Stock

We are a "controlled company" within the meaning of rules and, as a result, we will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to stockholders of companies that are subject to such requirements.

After completion of this offering our Sponsors will continue to control a majority of the voting power of our outstanding common stock. As a result, we qualify as a "controlled company" within the meaning of the corporate governance rules of the . Under these rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements, including:

- the requirement that a majority of the board of directors consist of independent directors;
- the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities, or otherwise have director nominees selected by vote of a majority of the independent directors;
- the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- the requirement for an annual performance evaluation of the nominating and corporate governance and compensation committees.

Following this offering, we intend to utilize these exemptions. As a result, we will not have a majority of independent directors, our compensation committee and nominating and corporate governance committee will not consist entirely of independent directors and the board committees will not be subject to annual performance evaluations. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to the corporate governance requirements.

Our Sponsors, however, are not subject to any contractual obligation to retain their controlling interest, except that they have agreed, subject to certain exceptions, not to sell or otherwise dispose of any shares of our common stock or other capital stock or other securities exercisable or convertible therefor for a period of at least 180 days after the date of this prospectus without the prior written consent of the underwriters for this offering. Except for this brief period, there can be no assurance as to the period of time during which any of our Sponsors will maintain their ownership of our common stock following the offering.

Our stock price could be extremely volatile and, as a result, you may not be able to resell your shares at or above the price you paid for them.

Volatility in the market price of our common stock may prevent you from being able to sell your shares at or above the price you paid for your shares. The stock market in general has been highly volatile. As a result, the market price of our common stock is likely to be similarly volatile. You may experience a decrease, which could be substantial, in the value of your stock, including decreases unrelated to our operating performance or prospects, and could lose part or all of your investment. The price of our common stock could be subject to wide fluctuations in response to a number of factors, including those described elsewhere in this prospectus and others such as:

- actual or anticipated fluctuations in our quarterly or annual operating results and the performance of our competitors;
- publication of research reports by securities analysts about us, our competitors or our industry;

- our failure or the failure of our competitors to meet analysts' projections or guidance that we or our competitors may give to the market;
- additions and departures of key personnel;
- sales, or anticipated sales, of large blocks of our stock or of shares held by our directors or executive officers;
- strategic decisions by us or our competitors, such as acquisitions, divestitures, spin-offs, joint ventures, strategic investments or changes in business strategy;
- the passage of legislation or other regulatory developments affecting us or our industry;
- speculation in the press or investment community, whether or not correct, involving us, our suppliers or our competitors;
- changes in accounting principles;
- litigation and governmental investigations;
- terrorist acts, acts of war or periods of widespread civil unrest;
- a food borne illness outbreak;
- natural disasters and other calamities; and
- changes in general market and economic conditions.

As we operate in a single industry, we are especially vulnerable to these factors to the extent that they affect our industry or our products. In the past, securities class action litigation has often been initiated against companies following periods of volatility in their stock price. This type of litigation could result in substantial costs and divert our management's attention and resources, and could also require us to make substantial payments to satisfy judgments or to settle litigation.

There is no existing market for our common stock, and we do not know if one will develop to provide you with adequate liquidity.

Prior to this offering, there has not been a public market for our common stock. An active market for our common stock may not develop following the completion of this offering, or if it does develop, may not be maintained. If an active trading market does not develop, you may have difficulty selling any of our common stock that you buy. The initial public offering price for the shares of our common stock will be determined by negotiations between us and the representatives of the underwriters and may not be indicative of prices that will prevail in the open market following this offering. Consequently, you may not be able to sell shares of our common stock at prices equal to or greater than the price you paid in this offering.

There may be sales of a substantial amount of our common stock after this offering by our current stockholders, and these sales could cause the price of our common stock to fall.

After this offering, there will be shares of common stock outstanding. Of our issued and outstanding shares, all the common stock sold in this offering will be freely transferable, except for any shares held by our "affiliates," as that term is defined in Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"). Following completion of this offering, approximately % of our outstanding common stock will be held by investment funds affiliated with our Sponsors and members of our management and employees.

Each of our directors and executive officers and substantially all of our stockholders have entered into a lock-up agreement with the representatives of the underwriters which regulates their sales of our common stock for a period of at least 180 days after the date of this prospectus, subject to certain exceptions and automatic extensions in certain circumstances. See "Related Party Transactions—Arrangements With Our Investors."

Sales of substantial amounts of our common stock in the public market after this offering, or the perception that such sales will occur, could adversely affect the market price of our common stock and make it difficult for us to raise funds through securities offerings in the future. Of the shares to be outstanding after the offering, the shares offered by this prospectus will be eligible for immediate sale in the public market without restriction by persons other than our affiliates. Our remaining outstanding shares will become available for resale in the public market as shown in the chart below, subject to the provisions of Rule 144 and Rule 701.

Number of Shares	Date Available for Resale
	On the date of this offering ( )
	180 days after this offering ( ), subject to certain exceptions and automatic extensions in certain circumstances.

Beginning 180 days after this offering, subject to certain exceptions and automatic extensions in certain circumstances, holders of shares of our common stock may require us to register their shares for resale under the federal securities laws, and holders of additional shares of our common stock would be entitled to have their shares included in any such registration statement, all subject to reduction upon the request of the underwriter of the offering, if any. See "Related Party Transactions—Arrangements With Our Investors." Registration of those shares would allow the holders to immediately resell their shares in the public market. Any such sales or anticipation thereof could cause the market price of our common stock to decline.

In addition, after this offering, we intend to register shares of common stock that are reserved for issuance under our stock incentive plans. See "Executive Compensation—Equity Incentive Plans."

Provisions in our certificate of incorporation and bylaws, our 2012 CMBS Loan documents and Delaware law may discourage, delay or prevent a change of control of our company or changes in our management and, therefore, may depress the trading price of our stock.

Our certificate of incorporation and bylaws include certain provisions that could have the effect of discouraging, delaying or preventing a change of control of our company or changes in our management, including, among other things:

- our board is classified into three classes of directors with only one class subject to election each year;
- restrictions on the ability of our stockholders to fill a vacancy on the board of directors;
- our ability to issue preferred stock with terms that the board of directors may determine, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- the inability of our stockholders to call a special meeting of stockholders;
- our directors may only be removed from the board of directors for cause by the affirmative vote of the holders of at least 75% of the voting power of outstanding shares of our capital stock entitled to vote generally in the election of directors;

- the absence of cumulative voting in the election of directors, which may limit the ability of minority stockholders to elect directors; and
- advance notice requirements for stockholder proposals and nominations, which may discourage or deter a potential acquirer from soliciting proxies to elect a particular slate of directors or otherwise attempting to obtain control of us.

In addition, the mortgage loan agreement for the 2012 CMBS Loan requires that, following this offering, our Sponsors, our Founders and our management stockholders or other permitted holders either own no less than 51% of our common stock or if they do not, that certain other conditions are satisfied. These provisions in our certificate of incorporation and bylaws and the 2012 CMBS Loan documents may discourage, delay or prevent a transaction involving a change in control of our company that is in the best interests of our minority stockholders. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if they are viewed as discouraging future takeover attempts.

Section 203 of the Delaware General Corporation Law may affect the ability of an "interested stockholder" to engage in certain business combinations, including mergers, consolidations or acquisitions of additional shares, for a period of three years following the time that the stockholder becomes an "interested stockholder." An "interested stockholder" is defined to include persons owning directly or indirectly 15% or more of the outstanding voting stock of a corporation. We have elected in our certificate of incorporation not to be subject to Section 203 of the Delaware General Corporation Law. However, our certificate of incorporation will contain provisions that have the same effect as Section 203, except that they provide that our Sponsors and their respective affiliates will not be deemed to be "interested stockholders," regardless of the percentage of our voting stock owned by them, and accordingly will not be subject to such restrictions.

If you purchase shares in this offering, you will suffer immediate and substantial dilution.

If you purchase shares of our common stock in this offering, you will incur immediate and substantial dilution in the book value of your stock of $ per share as of , 2012, because the price that you pay will be substantially greater than the net tangible book value per share of the shares you acquire. You will experience additional dilution upon the exercise of options and warrants to purchase our common stock, including those options currently outstanding and possibly those granted in the future, and the issuance of restricted stock or other equity awards under our stock incentive plans. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial additional dilution. See "Dilution."

If securities analysts or industry analysts downgrade our stock, publish negative research or reports, or do not publish reports about our business, our stock price and trading volume could decline.

We expect that the trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us, our business and our industry. If one or more analysts adversely change their recommendation regarding our stock or our competitors' stock, our stock price would likely decline. If one or more analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

Our Sponsors will continue to have significant influence over us after this offering, including control over decisions that require the approval of stockholders, which could limit your ability to influence the outcome of key transactions, including a change of control.

We are currently controlled, and after this offering is completed will continue to be controlled, by our Sponsors. Upon completion of this offering, investment funds affiliated with our Sponsors will beneficially own approximately % of our outstanding common stock. For as long as our Sponsors continue to beneficially own shares of common stock representing more than 50% of the voting power of our common stock, they will be able

to direct the election of all of the members of our board of directors and could exercise a controlling influence over our business and affairs, including any determinations with respect to mergers or other business combinations, the acquisition or disposition of assets, the incurrence of indebtedness, the issuance of any additional common stock or other equity securities, the repurchase or redemption of common stock and the payment of dividends. Similarly, these entities will have the power to determine matters submitted to a vote of our stockholders without the consent of our other stockholders, will have the power to prevent or approve a change in our control and could take other actions that might be favorable to them. Even if their ownership falls below 50%, our Sponsors will continue to be able to strongly influence or effectively control our decisions.

Additionally, certain of our directors are also officers or control persons of our Sponsors. Although these directors owe a fiduciary duty to manage us in a manner beneficial to us and our stockholders, these individuals also owe fiduciary duties to these other entities and their stockholders, members and limited partners. Because our Sponsors have such interests in other companies and engage in other business activities, certain of our directors may experience conflicts of interest in allocating their time and resources among our business and these other activities. Furthermore, these individuals could make substantial profits as a result of investment opportunities allocated to entities other than us. As a result, these individuals could pursue transactions that may not be in our best interest, which could have a material adverse effect on our operations and your investment.

Because we have no plans to pay cash dividends on our common stock for the foreseeable future, you may not receive any return on investment unless you sell your common stock for a price greater than that which you paid for it.

We may retain future earnings, if any, for future operations, expansion and debt repayment and have no current plans to pay any cash dividends for the foreseeable future. Any decision to declare and pay dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, our results of operations, financial condition, cash requirements, contractual restrictions and other factors that our board of directors may deem relevant. In addition, our ability to pay dividends may be limited by covenants of any existing and future outstanding indebtedness we or our subsidiaries incur, including our senior credit facility. As a result, you may not receive any return on an investment in our common stock unless you sell our common stock for a price greater than that which you paid for it. See “Dividend Policy.”

Our ability to raise capital in the future may be limited, which could make us unable to fund our capital requirements.

Our business and operations may consume resources faster than we anticipate. In the future, we may need to raise additional funds through the issuance of new equity securities, debt or a combination of both. Additional financing may not be available on favorable terms or at all. If adequate funds are not available on acceptable terms, we may be unable to fund our capital requirements. If we issue new debt securities, the debt holders would have rights senior to common stockholders to make claims on our assets, and the terms of any debt could restrict our operations, including our ability to pay dividends on our common stock. If we issue additional equity securities, existing stockholders may experience dilution, and the new equity securities could have rights senior to those of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, our stockholders bear the risk of our future securities offerings reducing the market price of our common stock and diluting their interest.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus includes statements that express our opinions, expectations, beliefs, plans, objectives, assumptions or projections regarding future events or future results and therefore are, or may be deemed to be, "forward-looking statements." These forward-looking statements can generally be identified by the use of forward-looking terminology, including the terms "believes," "estimates," "anticipates," "expects," "seeks," "projects," "intends," "plans," "may," "will" or "should" or, in each case, their negative or other variations or comparable terminology. They appear in a number of places throughout this prospectus and include statements regarding our intentions, beliefs or current expectations concerning, among other things, our results of operations, financial condition, liquidity, prospects, growth, strategies and the industry in which we operate.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We believe that these risks and uncertainties include, but are not limited to, those described in the "Risk Factors" section of this prospectus, which include, but are not limited to, the following:

- the restaurant industry is a highly competitive industry with many well-established competitors;
- challenging economic conditions may affect our liquidity by adversely impacting numerous items that include, but are not limited to: consumer confidence and discretionary spending; the availability of credit presently arranged from our revolving credit facilities; the future cost and availability of credit; interest rates; foreign currency exchange rates; and the liquidity or operations of our third-party vendors and other service providers;
- our ability to expand is dependent upon various factors such as the availability of attractive sites for new restaurants; ability to obtain appropriate real estate sites at acceptable prices; our ability to obtain all required governmental permits including zoning approvals and liquor licenses on a timely basis; the impact of government moratoriums or approval processes, which could result in significant delays; our ability to obtain all necessary contractors and subcontractors; union activities such as picketing and hand billing that could delay construction; our ability to generate or borrow funds; our ability to negotiate suitable lease terms; our ability to recruit and train skilled management and restaurant employees; and our ability to receive the premises from the landlord's developer without any delays;
- our results can be impacted by changes in consumer tastes and the level of consumer acceptance of our restaurant concepts (including consumer tolerance of our prices); local, regional, national and international economic and political conditions; the seasonality of our business; demographic trends; traffic patterns and our ability to effectively respond in a timely manner to changes in traffic patterns; changes in consumer dietary habits; employee availability; the cost of advertising and media; government actions and policies; inflation or deflation; unemployment rates; interest rates; exchange rates; and increases in various costs, including construction, real estate and health insurance costs;
- weather, natural disasters and disasters could result in construction delays and also adversely affect the results of one or more restaurants for an indeterminate amount of time;
- our results can be impacted by tax and other legislation and regulation in the jurisdictions in which we operate and by accounting standards or pronouncements;
- minimum wage increases and mandated employee benefits could cause a significant increase in our labor costs;

- commodities, including but not limited to such items as beef, chicken, shrimp, pork, seafood, dairy, potatoes, onions and energy supplies, are subject to fluctuation in price and availability and price could increase or decrease more than we expect;
- our results can be affected by consumer reaction to public health issues;
- our results can be affected by consumer perception of food safety;
- inability to protect customer credit and debit card data; and
- our substantial leverage and significant restrictive covenants in our various credit facilities could adversely affect our ability to raise additional capital to fund our operations, limit our ability to make capital expenditures to invest in new or renovate restaurants, limit our ability to react to changes in the economy or our industry, and expose us to interest rate risk in connection with our variable-rate debt.

Those factors should not be construed as exhaustive and should be read with the other cautionary statements in this prospectus.

Although we base these forward-looking statements on assumptions that we believe are reasonable when made, we caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and industry developments may differ materially from statements made in or suggested by the forward-looking statements contained in this prospectus. In addition, even if our results of operations, financial condition and liquidity, and industry developments are consistent with the forward-looking statements contained in this prospectus, those results or developments may not be indicative of results or developments in subsequent periods.

In light of these risks and uncertainties, we caution you not to place undue reliance on these forward-looking statements. Any forward-looking statement that we make in this prospectus speaks only as of the date of such statement, and we undertake no obligation to update any forward-looking statement or to publicly announce the results of any revision to any of those statements to reflect future events or developments. Comparisons of results for current and any prior periods are not intended to express any future trends or indications of future performance, unless specifically expressed as such, and should only be viewed as historical data.

USE OF PROCEEDS

We estimate that the net proceeds we will receive from the sale of shares of our common stock in this offering, after deducting underwriter discounts and commissions and estimated expenses payable by us, will be approximately $ million (or $ million, if the underwriters exercise their option to purchase additional shares in full). This estimate assumes an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus.

We intend to use the net proceeds from this offering to retire all of our outstanding Senior Notes and to use any remaining net proceeds for working capital and for general corporate purposes. The Senior Notes bear interest at 10% per annum and mature on June 15, 2015. There was outstanding approximately $248.1 million in aggregate principal amount of Senior Notes as of December 31, 2011. See “Description of Indebtedness—Senior Notes.”

DIVIDEND POLICY

We do not currently pay cash dividends on our common stock and do not anticipate paying any dividends on our common stock in the foreseeable future. Any future determinations relating to our dividend policies will be made at the discretion of our board of directors and will depend on conditions then existing, including our financial condition, results of operations, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant. In addition, our ability to obtain funds from our subsidiaries and therefore to declare and pay dividends is restricted by covenants in our debt agreements. For an explanation of these restrictions, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Credit Facilities and Other Indebtedness” and “Description of Indebtedness.”

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our consolidated capitalization as of December 31, 2011 on (i) an actual basis and (ii) an as adjusted basis to give effect to the issuance of common stock in this offering and the application of the net proceeds as described in "Use of Proceeds."

This table should be read in conjunction with "Use of Proceeds," "Selected Historical Consolidated Financial and Other Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes appearing elsewhere in this prospectus.

	As of December 31, 2011	
	Actual	As Adjusted
	($ in thousands)	
Cash and cash equivalents (1)	$ 482,084	$
Debt, including current portion:		
Senior secured term loan facility	$ 1,014,400	$
Senior secured working capital revolving credit facility (2)	—	
Senior secured pre-funded revolving credit facility	33,000	
CMBS Loan (3)	775,326	
Senior notes, interest rate of 10.00%	248,075	
Guaranteed debt, sale-leaseback and capital lease obligations and other notes payable (4)	38,489	
Total debt, including current portion	2,109,290	
Shareholders' equity:		
Preferred stock, $.01 par value; no shares authorized, issued and outstanding on an actual basis; 25,000,000 shares authorized and no shares issued and outstanding on an as adjusted basis	—	
Common stock $.01 par value; 120,000,000 shares authorized and 106,573,193 shares issued and outstanding on an actual basis; 475,000,000 shares authorized and shares issued and outstanding on an as adjusted basis	1,066	
Additional paid-in capital	874,753	
Accumulated deficit	(822,625)	
Accumulated other comprehensive income	(22,344)	
Total Bloomin' Brands, Inc. shareholders' equity	30,850	
Noncontrolling interests	9,447	
Total shareholders' equity	40,297	
Total capitalization	$2,149,587	$

(1) Excludes $24.3 million of restricted cash.

(2) There were no loans outstanding under the revolving credit facility at December 31, 2011; however, $67.6 million of the credit facility was not available for borrowing. See "Description of Indebtedness" and Note 11 of our Notes to Consolidated Financial Statements.

(3) On June 14, 2007, PRP entered into a CMBS Loan totaling $790.0 million, which had a maturity date of June 9, 2012. Effective March 27, 2012, New PRP entered into the 2012 CMBS Loan totaling $500.0 million and used the proceeds, together with the proceeds of the Sale-Leaseback Transaction and existing cash, to repay the CMBS Loan. The 2012 CMBS Loan is a five-year loan maturing on April 10, 2017. See "Description of Indebtedness" and Note 20 of our Notes to Consolidated Financial Statements.

(4) Effective March 14, 2012, we entered into the Sale-Leaseback Transaction. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Transactions" and Note 20 of our Notes to Consolidated Financial Statements.

DILUTION

If you invest in our common stock, your ownership interest will experience immediate book value dilution to the extent of the difference between the initial public offering price per share of our common stock and the net tangible book value per share of our common stock after this offering. Dilution results from the fact that the initial public offering price per share of the common stock is substantially in excess of the net tangible book value per share of common stock attributable to the existing stockholders for the presently outstanding shares of common stock. Net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by the number of shares of our common stock outstanding.

Our net tangible book value deficiency at was approximately $, or $ per share of our common stock before giving effect to this offering. Dilution in net tangible book value deficiency per share represents the difference between the amount per share that you pay in this offering and the net tangible book value deficiency per share immediately after this offering.

After giving effect to our sale of shares in this offering, assuming an initial public offering price of $ per share (the midpoint of the price range set forth on the cover of this prospectus), and the application of the estimated net proceeds as described under "Use of Proceeds," our as adjusted net tangible book value deficiency at would have been approximately $, or $ per share of common stock. This represents an immediate decrease in net tangible book value deficiency per share of $ to existing stockholders and an immediate increase in net tangible book value deficiency per share of $( ) to you. The following table illustrates this dilution per share.

Assumed initial public offering price per share of common stock	
Net tangible book value per share at December 31, 2011	
Increase per share attributable to new investors in this offering	
Pro forma net tangible book value per share of common stock after this offering	
Dilution per share to new investors	

If the underwriters were to fully exercise their option to purchase additional shares, the pro forma as adjusted net tangible book value deficiency per share of our common stock after giving effect to this offering would be $ per share of our common stock. This represents a decrease in pro forma as adjusted net tangible book value deficiency of $ per share of our common stock to existing stockholders and dilution in pro forma as adjusted net tangible book value deficiency of $ per share of our common stock to you.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share of our common stock would decrease (increase) our pro forma net tangible book value deficiency after giving effect to the offering by $ million, or by $ per share of our common stock, assuming no change to the number of shares of our common stock offered by us as set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and estimated expenses payable by us.

The following table sets forth, as of , 2012, the number of shares of common stock purchased from us, the total consideration paid to us and the average price per share paid by existing stockholders and to be paid by new investors purchasing shares of common stock in this offering, before deducting underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares Purchased		Total Consideration		
	Number	Percent	Amount	Percent	Average Price Per Share
Existing stockholders		%	$	%	$
New investors					$
Total		100%	$	100%	$

If the underwriters were to exercise in full their option to purchase additional shares of our common stock from us, the percentage of shares of our common stock held by existing stockholders would be %, and the percentage of shares of our common stock held by new investors would be %.

To the extent any outstanding options or other equity awards are exercised or become vested or any additional options or other equity awards are granted and exercised or become vested or other issuances of shares of our common stock are made, there may be further economic dilution to new investors.

SELECTED CONSOLIDATED FINANCIAL AND OTHER DATA

The following table sets forth our selected consolidated financial and other data as of the dates and for the periods indicated. The selected financial data as of December 31, 2010 and December 31, 2011 and for each of the three years in the period ended December 31, 2011 presented in this table have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The selected financial data as of December 31, 2007, December 31, 2008 and December 31, 2009 and for the periods from January 1 to June 14, 2007 and from June 15 to December 31, 2007 and for the year ended December 31, 2008 have been derived from our unaudited consolidated financial statements for such years and periods, which are not included in this prospectus. Historical results are not necessarily indicative of future results.

This selected consolidated financial and other data should be read in conjunction with the disclosure set forth under "Risk Factors," "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements and the related notes thereto appearing elsewhere in this prospectus.

	Predecessor (1)	Successor (1)				
	Period From January 1 to June 14,	Period From June 15 to December 31,	Years Ended December 31,			
(in thousands, except per share amounts)	2007	2007	2008	2009	2010	2011
	(unaudited)	(unaudited)	(unaudited)			
Statements of Operations Data:						
Revenues						
Restaurant sales	$ 1,916,689	$ 2,229,468	$ 3,937,894	$ 3,573,760	$ 3,594,681	$ 3,803,252
Other revenues	9,948	12,015	23,262	27,896	33,606	38,012
Total revenues	1,926,637	2,241,483	3,961,156	3,601,656	3,628,287	3,841,264
Costs and expenses						
Cost of sales	681,455	790,749	1,389,365	1,184,074	1,152,028	1,226,098
Labor and other related	540,281	623,158	1,094,907	1,024,063	1,034,393	1,094,117
Other restaurant operating	440,545	512,236	938,374	849,696	864,183	890,004
Depreciation and amortization	74,846	112,693	205,492	186,074	156,267	153,689
General and administrative (2)	158,147	141,246	264,021	252,298	252,793	291,124
Allowance (recovery) of note receivable from affiliated entity (3)	—	—	33,150	—	—	(33,150)
Loss on contingent debt guarantee	—	—	—	24,500	—	—
Goodwill impairment	—	—	726,486	58,149	—	—
Provision for impaired assets and restaurant closings (4)	8,530	23,023	117,699	134,285	5,204	14,039
Loss (income) from operations of unconsolidated affiliates	692	(1,260)	(2,343)	(2,196)	(5,492)	(8,109)
Total costs and expenses	1,904,496	2,201,845	4,767,151	3,710,943	3,459,376	3,627,812
Income (loss) from operations	22,141	39,638	(805,995)	(109,287)	168,911	213,452
Gain on extinguishment of debt (5)	—	—	48,409	158,061	—	—
Other (expense) income, net	—	—	(11,122)	(199)	2,993	830
Interest expense, net (5)	(4,651)	(132,339)	(197,041)	(115,880)	(91,428)	(83,387)
Income (loss) before provision (benefit) for income taxes	17,490	(92,701)	(965,749)	(67,305)	80,476	130,895
Provision (benefit) for income taxes	(1,656)	(49,427)	(99,416)	(2,462)	21,300	21,716
Net income (loss)	19,146	(43,274)	(866,333)	(64,843)	59,176	109,179
Less: net income (loss) attributable to noncontrolling interests	1,685	871	(3,041)	(380)	6,208	9,174
Net income (loss) attributable to Bloomin' Brands, Inc.	$ 17,461	$ (44,145)	$ (863,292)	$ (64,463)	$ 52,968	$ 100,005

(in thousands, except Share and per share amounts)	Predecessor(1) Period From January 1 to June 14, 2007	Successor(1) Period From June 15 to December 31, 2007	Years Ended December 31, 2008	2009	2010	2011
	(unaudited)	(unaudited)	(unaudited)			
Basic net income (loss) per share (6)		$ (0.43)	$ (8.43)	$ (0.62)	$ 0.50	$ 0.94
Diluted net income (loss) per share (6)		$ (0.43)	$ (8.43)	$ (0.62)	$ 0.50	$ 0.94
Weighted average shares outstanding						
Basic		101,896	102,383	104,442	105,968	106,224
Diluted		101,896	102,383	104,442	105,968	106,689

(in thousands)	Successor(1) December 31, 2007	2008	2009	2010	2011
	(unaudited)	(unaudited)	(unaudited)		
Balance Sheet Data:					
Cash and cash equivalents (7)	174,406	311,118	330,957	365,536	482,084
Net working capital (deficit) (8)	(197,870)	(171,095)	(187,648)	(120,135)	(248,145)
Total assets	4,672,969	3,695,696	3,340,708	3,243,411	3,353,936
Total debt (5)(9)	2,648,027	2,562,889	2,302,233	2,171,524	2,109,290
Total Bloomin' Brands, Inc. shareholders' equity (deficit)	807,957	(93,521)	(135,597)	(69,234)	30,850
Total shareholders' equity (deficit)	842,819	(66,814)	(116,625)	(55,911)	40,297

(1) On June 14, 2007, an investor group formed Bloomin' Brands, Inc., formerly known as Kangaroo Holdings, Inc., and acquired OSI by means of the Merger. Therefore, the selected historical consolidated financial data is presented for two periods: Predecessor and Successor, which relate to the period preceding the Merger and the period succeeding the Merger, respectively. As a result of the Merger, there are several factors that affect the comparability of the selected historical consolidated financial data for the two periods including, but not limited to: (i) depreciation and amortization are higher in the Successor periods through 2009 due to fair value assessments completed at the time of the Merger, (ii) annual interest expense increased substantially in the Successor period in connection with our financing agreements and (iii) certain professional service costs incurred in connection with the Merger and the management services provided by our management company are included in General and administrative expenses in our Consolidated Statements of Operations in the Successor period.

(2) Includes management fees and out-of-pocket and other reimbursable expenses paid to a management company owned by our Sponsors and Founders of $5.2 million, $9.9 million, $10.7 million, $11.6 million and $9.4 million for the period from June 15 to December 31, 2007 and the years ended December 31, 2008, 2009, 2010 and 2011, respectively, under a management agreement that will terminate upon the completion of this offering. See "Related Party Transactions—Arrangements With Our Investors."

(3) In November 2011, we received a settlement payment from T-Bird, a limited liability company affiliated with our California franchisees of Outback Steakhouse restaurants, in connection with a settlement agreement that satisfied all outstanding litigation with T-Bird. This litigation began in early 2009 and therefore, we had recorded an allowance for the note receivable for the year ended December 31, 2008.

(4) During 2008, our Provision for impaired assets and restaurant closings primarily included: (i) $49.0 million of impairment charges for the domestic and international Outback Steakhouse and Carrabba's Italian Grill trade names, (ii) $3.5 million of impairment charges for the Blue Coral Seafood and Spirits trademark and (iii) $63.9 million of impairment charges and restaurant closing expense for certain of our restaurants. During 2009, our Provision for impaired assets and restaurant closings primarily included: (i) $46.0 million of impairment charges to reduce the carrying value of the assets of Cheeseburger in Paradise to their estimated fair market value due to our sale of the concept in the third quarter of 2009, (ii) $47.6 million of impairment charges and restaurant closing expense for certain of our other restaurants and (iii) $36.0 million of impairment charges for the domestic Outback Steakhouse and Carrabba's Italian Grill trade names.

(5) In November 2008 and March 2009, we repurchased $61.8 million and $240.1 million, respectively, of our outstanding Senior Notes for $11.7 million and $73.0 million, respectively. These repurchases resulted in gains on extinguishment of debt, after the pro rata reduction of unamortized deferred financing fees and other related costs, of $48.4 million in 2008 and $158.1 million in 2009. Annualized interest expense savings from these debt extinguishments approximates $30.2 million per year.

(6) Basic and diluted net income (loss) per share are calculated on net income (loss) attributable to Bloomin' Brands, Inc. As a result of the Merger, our capital structures for periods before and after the Merger are not comparable, and therefore we are presenting our net income (loss) per share and weighted average share information only for periods subsequent to the Merger.

(7) Excludes restricted cash.

(8) As a result of our current liability for unearned revenue from the sale of gift cards, we have a working capital deficit.

(9) On June 14, 2007, PRP entered into the CMBS Loan totaling a $790.0 million, which had a maturity date of June 9, 2012. Effective March 27, 2012, New PRP entered into the 2012 CMBS Loan totaling $500.0 million and repaid the CMBS Loan. The 2012 CMBS Loan is a five-year loan maturing on April 10, 2017. See "Description of Indebtedness" and Note 20 of our Notes to Consolidated Financial Statements. As a result of the CMBS Refinancing, the net amount repaid along with scheduled maturities within one year, $281.3 million, was classified as current at December 31, 2011.

UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS

The following unaudited pro forma consolidated financial statements of Bloomin' Brands, Inc. as of and for the year ended December 31, 2011 are based on historical consolidated financial statements of Bloomin' Brands, Inc. included elsewhere in this prospectus and give effect to the following transactions (collectively, the "Transactions") as if they had occurred on January 1, 2011 or December 31, 2011, as indicated below.

- *Sale-Leaseback Transaction*. Effective March 14, 2012, we entered into the Sale-Leaseback Transaction with two third-party real estate institutional investors in which we sold 67 restaurant properties at fair market value for $194.9 million and then simultaneously leased these properties back under nine master leases. See "Management's Discussion and Analysis of Financial Condition and Results of Operations —Liquidity and Capital Resources—Transactions" and Note 20 of our Notes to Consolidated Financial Statements for a further description of the Sale-Leaseback Transaction.

- *2012 CMBS Loan*. Effective March 27, 2012, New PRP entered into the 2012 CMBS Loan, which totals $500.0 million and comprises a first mortgage loan in the amount of $324.8 million, collateralized by 261 of our properties, and two mezzanine loans totaling $175.2 million. The proceeds from the 2012 CMBS Loan, together with the proceeds from the Sale-Leaseback Transaction and excess cash, were used to repay our existing CMBS Loan. See "Description of Indebtedness" and Note 20 of our Notes to Consolidated Financial Statements for a further description of the 2012 CMBS Loan.

- *Initial Public Offering.* We expect to issue shares of common stock in this offering and receive net proceeds, after deducting estimated offering expenses and underwriting discounts and commissions of approximately $ million (assuming no exercise by the underwriters of their option to purchase additional shares), assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus. We intend to use these proceeds to retire all of our outstanding Senior Notes, of which an aggregate principal amount of $248.1 million was outstanding as of December 31, 2011, and the remainder for working capital and general corporate purposes.

- *Termination of Management Agreement.* Upon completion of the Merger, we entered into a management agreement with a management company, whose members are the Founders and entities affiliated with our Sponsors. The management company receives annual management fees and reimbursement for out-of-pocket and other reimbursable expenses incurred by it in connection with the provision of services pursuant to the agreement. The management agreement will terminate automatically upon the completion of this offering.

The unaudited pro forma consolidated balance sheet at December 31, 2011 gives effect to the Transactions, as if each had occurred on December 31, 2011.

The unaudited pro forma consolidated statement of operations for the year ended December 31, 2011 gives effect to the Transactions as if each had occurred on January 1, 2011. The unaudited consolidated statement of operations does not reflect the following charges that we will incur: (1) professional fees associated with the CMBS Refinancing; (2) estimated selling costs associated with the Sale-Leaseback Transaction; (3) loss on debt extinguishment related to the CMBS Refinancing and repayment of the Senior Notes; (4) the compensation expense with respect to the time vested portion of stock options containing a management call option resulting from the automatic termination of the call option upon completion of this offering; and (5) the expense associated with the incentive bonus payable to our Chief Executive Officer as a result of the completion of this offering. We expect these charges will be approximately $ million in the aggregate and will be recorded by us in the period in which these transactions are completed.

The unaudited pro forma consolidated financial statements are presented for informational purposes only and do not purport to represent what the actual financial condition or results of operations of Bloomin' Brands, Inc. would have been if the Transactions had been completed as of the date or for the period indicated above or that may be achieved as of any future date or for any future period. The unaudited pro forma consolidated financial statements should be read in conjunction with the accompanying notes, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our historical consolidated financial statements and accompanying notes included elsewhere in this prospectus.

Bloomin' Brands, Inc.
Unaudited Pro Forma Consolidated Balance Sheet
December 31, 2011

(in thousands)	Historical As Reported December 31, 2011	Pro Forma Adjustments: CMBS Refinancing/ Sale-Leaseback Transaction	Pro Forma Adjustments: Initial Public Offering	Pro Forma
Assets				
Current Assets				
Cash	$ 482,084	(a)	(l)	
Current portion of restricted cash	20,640			
Inventories	69,223			
Deferred income tax assets	31,959		(m)	
Other current assets, net	104,373			
Total current assets	708,279			
Restricted cash	3,641			
Property, fixtures and equipment, net	1,635,898	(b)		
Investments in and advances to unconsolidated affiliates, net	35,033			
Goodwill	268,772			
Intangible assets, net	566,148			
Other assets, net	136,165	(c)	(n)	
Total assets	$ 3,353,936			
Liabilities and Shareholders' Deficit				
Current Liabilities				
Accounts payable	$ 97,393	(d)		
Accrued and other current liabilities	211,486	(e)	(o)	
Current portion of accrued buyout liability	15,044			
Unearned revenue	299,596			
Current portion of long-term debt	332,905	(f)		
Total current liabilities	956,424			
Partner deposit and accrued buyout liability	98,681			
Deferred rent	70,135	(g)		
Deferred income tax liabilities	193,262	(h)	(p)	
Long-term debt	1,751,885	(i)	(q)	
Guaranteed debt	24,500			
Other long-term liabilities, net	218,752	(j)		
Total liabilities	3,313,639			
Commitments and contingencies				
Shareholders' Equity				
Bloomin' Brands, Inc. Shareholder's Equity				
Common units	1,066			
Additional paid-in capital	874,753		(r)	
Accumulated deficit	(822,625)	(k)	(s)	
Accumulated other comprehensive loss	(22,344)			
Total Bloomin' Brands, Inc. shareholder's equity	30,850			
Noncontrolling interests	9,447			
Total shareholders' equity	40,297			
Total liabilities and shareholders' equity	$ 3,353,936			

Adjustments Related to the CMBS Refinancing and the Sale-Leaseback Transaction

(a) To reflect adjustments made to cash for the following:

Proceeds from the 2012 CMBS Loan	$
Proceeds from the Sale-Leaseback Transaction	
Less: Repayment of the CMBS Loan	(775,617)
Less: Payment of accrued interest on the CMBS Loan as of December 31, 2011	(744)
Less: Estimated professional fees associated with the CMBS Refinancing, including $ million of deferred financing fees	
Less: Estimated fees associated with the Sale-Leaseback Transaction	
	$

(b) To reflect the net decrease in property, fixtures, and equipment of $ million as a result of the sale of 67 properties under the Sale-Leaseback Transaction.

(c) To reflect the net increase in deferred financing fees as a result of the 2012 CMBS Loan, offset by a decrease in deferred financing fees as a result of the repayment of the original CMBS Loan. The adjustments made to deferred financing fees are as follows:

Deferred financing fees associated with the 2012 CMBS Loan	$
Write-off of deferred financing fees associated with the repayment of the CMBS Loan	(2,003)
	$

(d) To reflect the payment of $1.5 million historical as reported accrued professional fees associated with the CMBS Refinancing and the Sale-Leaseback Transaction.

(e) To reflect the current portion of the deferred gain on sale of $ million resulting from the Sale-Leaseback Transaction, offset by payment of accrued interest of $0.7 million on the CMBS Loan.

(f) To reflect the net decrease in the current portion of long-term debt resulting from the CMBS Refinancing and the closing of the Sale-Leaseback Transaction on December 31, 2011. The historical as reported current portion of the CMBS Loan at December 31, 2011 is $281.3 million (net of debt discount of $0.3 million) and the current portion of the 2012 CMBS Loan assuming the borrowing was made on December 31, 2011 is $ million.

(g) To reflect the net decrease of $ million in deferred rent liabilities resulting from the deferral of lease related costs incurred in connection with the Sale-Leaseback Transaction.

(h) To adjust deferred income tax liabilities, net to reflect the income tax benefit of $ million related to the loss on debt extinguishment and fees that will be expensed in connection with the CMBS Refinancing and the Sale-Leaseback Transaction, as calculated in note (k) below, calculated at an estimated statutory rate of 38.7%.

(i) To reflect the net decrease in long-term debt resulting from the CMBS Refinancing and the closing of the Sale-Leaseback Transaction on December 31, 2011. The historical as reported long-term portion of the CMBS Loan at December 31, 2011 is $494.0 million and the long-term portion of the 2012 CMBS Loan assuming the borrowing was made on December 31, 2011 is $ million.

(j) To reflect the long-term portion of deferred gain on sale from those properties in the Sale-Leaseback Transaction for which proceeds exceed net book value. We will defer recognition of the gain upon sale over the initial 20-year lease term. The adjustment is calculated as follows:

Proceeds from properties sold at a gain	$
Net book value of properties sold at a gain	
Less: Current portion of deferred gain	
	$

(k) To reflect the after-tax loss on (1) loss on debt extinguishment to be recorded in connection with the repayment of the CMBS Loan, (2) the professional fees that will be expensed in connection with the 2012 CMBS Loan, and (3) the estimated selling cost associated with the Sale-Leaseback Transaction. The adjustments consist of the following:

Write-off of deferred financing fees of $2.0 million and remaining debt discount of $0.3 million related to the CMBS Loan	$(2,294)
Estimated non-capitalizable professional fees associated with the 2012 CMBS Loan	
Estimated selling costs associated with the Sale-Leaseback Transaction	
Loss on debt extinguishment, refinancing, and the Sale-Leaseback Transaction before income taxes	
Tax benefit at an estimated statutory tax rate of 38.7%	
Loss on debt extinguishment, refinancing and the Sale-Leaseback Transaction after income taxes	$

Adjustments Related to the Offering

(l) To reflect adjustments made to cash for the following:

Proceeds from this offering	$
Less: estimated fees and expenses related to this offering	
Less: repayment of Senior Notes	(248,075)
Less: redemption premium resulting from early repayment of the Senior Notes	
Less: payment of accrued interest on the Senior Notes	(1,103)
	$

(m) To adjust deferred income tax assets, net, at an estimated statutory rate of 38.7% to reflect income tax benefits of $ million and $ related to the share-based compensation expense, as calculated in note (s)(2) below, and bonus expense as calculated in note (s)(3) below, respectively.

(n) To reflect the write-off of deferred financing fees of $3.0 million associated with the repayment of the Senior Notes.

(o) To reflect adjustments made to accrued and other current liabilities for the following:

Vesting of chief executive officer incentive bonus (1)	$
Payment of accrued interest on Senior Notes (2)	
	$

(1) Our Chief Executive Officer is entitled to an incentive bonus divided into four tranches (A-D) of $3.8 million each. Tranche A vests 20% over 5 years and is payable at the earlier of a Qualifying Liquidity Event (“QLE”), as defined in her bonus agreement, or the tenth anniversary of her hire date. Tranches B-D also vest 20% over five years, but are generally only payable in the event of a QLE meeting

applicable performance targets for each tranche. This offering qualifies as a QLE, satisfying the requirements of all four tranches, and this adjustment represents the additional bonus due, giving effect to the offering as if it was completed on December 31, 2011, to reflect the vesting of the incentive bonuses.

(2) We may redeem our Senior Notes at specified redemption prices, plus accrued and unpaid interest thereon to the applicable redemption date.

(p) To adjust deferred income tax liabilities, net, at an estimated statutory rate of 38.7% to reflect an income tax benefit of $ million related to the loss on debt extinguishment as calculated in note (s)(1).

(q) To reflect the decrease in long-term debt resulting from the retirement of the Senior Notes in the amount of $248.1 million.

(r) Adjustments to additional paid-in capital are as follows:

Proceeds from this offering (1)	$
Less: estimated fees and expenses related to this offering	
Net proceeds from this offering	
Less: Par value of common stock issued in this offering (2)	
Additional paid-in capital on shares issued in this offering	
Incremental share-based compensation expense (3)	
Total adjustment to additional paid-in capital	$

(1) To reflect the issuance of shares of our common stock offered hereby at an assumed initial public offering price of $ per share (the midpoint of the range set forth on the cover of this prospectus).

(2) To reflect the reclassification to common stock of the par value of $.01 per share for the shares issued in the offering.

(3) To reflect the following:

(i) approximately $ million of share-based compensation expense expected to be recorded upon completion of this offering relating to the vested portion of approximately million employee stock options. Shares acquired upon the exercise of these stock options are subject to a management call option that allows us to repurchase all shares acquired through exercise of stock options upon termination of employment at any time prior to the earlier of an initial public offering or a change of control. As a result of certain transfer restrictions and the call option, we have not recorded compensation expense for stock options that vested from June 2007 to December 31, 2011 since an employee cannot realize monetary benefit from the options or any shares acquired upon the exercise of the options unless the employee is employed at the time of an initial public offering or change of control. The call option automatically terminates upon completion of this offering. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates—Stock-Based Compensation.” The weighted average grant date fair value of these stock options is approximately $ per share.

(ii) approximately $ million of share-based compensation expense expected to be recorded upon completion of this offering relating to stock options held by our Chief Executive Officer that vest over a five-year period and become exercisable (to the extent then vested) upon the completion of this offering. The weighted average grant date fair value of these stock options is approximately $ per share.

(s) To reflect a $ million after-tax loss on debt extinguishment, an $ million after-tax share-based compensation expense, and a $ million after-tax bonus expense as shown below:

(1) The $ million after-tax loss on debt extinguishment to be recorded in connection with the redemption of $248.1 million of Senior Notes consists of the following:

Write-off of deferred financing costs associated with the Senior Notes	$(2,983)
Redemption premium resulting from early repayment of the Senior Notes	
Loss on debt extinguishment before income taxes	
Income tax benefit at an estimated statutory tax rate of 38.7%	
Loss on debt extinguishment after income taxes	$

(2) The $ million after-tax share-based compensation expense consists of $ million pre-tax share-based compensation expense as discussed in note (r)(3), net of a deferred tax benefit of $ million calculated at an estimated statutory tax rate of 38.7%.

(3) The $ million after-tax bonus expense consists of $ million of pre-tax bonus expense as discussed in note (o)(1), net of a deferred tax benefit of $ million calculated at an estimated statutory tax rate of 38.7%.

Bloomin' Brands, Inc.
Unaudited Pro Forma Consolidated Statement of Operations
Year Ended December 31, 2011

(in thousands)	Historical As Reported December 31, 2011	Pro Forma Adjustments: CMBS Refinancing/ Sale-Leaseback Transaction	Pro Forma Adjustments: Initial Public Offering	Pro Forma
Revenues				
Restaurant sales	$ 3,803,252			
Other revenues	38,012			
Total revenues	3,841,264			
Costs and expenses				
Cost of sales	1,226,098			
Labor and other related	1,094,117			
Other restaurant operating	890,004	(a)	(e)	
Depreciation and amortization	153,689	(b)		
General and administrative	291,124		(f)	
Recovery of note receivable from affiliated entity	(33,150)			
Loss on contingent debt guarantee	—			
Goodwill impairment	—			
Provision for impaired assets and restaurant closings	14,039	(b)		
Allowance for note receivable for affiliated entity	—			
Income from operations of unconsolidated affiliates	(8,109)			
Total costs and expenses	3,627,812			
Income (loss) from operations	213,452			
Gain on extinguishment of debt	—			
Other income, net	830			
Interest expense, net	(83,387)	(c)	(g)	
Income (loss) before provision (benefit) for income taxes	130,895			
Provision (benefit) for income taxes	21,716	(d)	(h)	
Net income (loss)	109,179			
Less: net income attributable to noncontrolling interests	9,174			
Net income (loss) attributable to Bloomin' Brands, Inc.	$ 100,005			
Pro forma earnings per share:				
Basic				
Diluted				
Pro forma weighted average shares outstanding:				
Basic				
Diluted				

Adjustments Related to the CMBS Refinancing and the Sale-Leaseback Transaction

(a) To reflect (1) rent expense expected to be incurred on the 67 properties associated with the Sale-Leaseback Transaction, which includes $ million of deferred rent expense associated with the difference between rent expense and rent paid due to escalating rental amounts; (2) one year of annual amortization of deferred lease related costs and recognition of the deferred gain over the 20-year lease term for the properties associated with the Sale-Leaseback Transaction, all offset by; (3) the reversal of historical as reported professional expenses incurred with the CMBS Refinancing and the Sale-Leaseback Transaction. The adjustments consist of the following:

Rent expense on properties sold under the Sale-Leaseback Transaction, including deferred rent expense	$
Amortization of deferred lease related costs associated with the Sale-Leaseback Transaction	
Amortization of deferred gain associated with the Sale-Leaseback Transaction (1)	
Professional fees associated with the CMBS Refinancing and the Sale-Leaseback Transaction (2)	(2,208)
	$

(1) The recognition of the deferred gain on sale of properties associated with the Sale-Leaseback Transaction is determined as follows:

Proceeds from properties sold at a gain	$
Less: Net book value of properties sold at a gain	
Total deferred gain	
Divided by: Lease term (in years)	20
Annual gain recognition	$

(2) Professional fees associated with the CMBS Refinancing and the Sale-Leaseback Transaction that are included in the historical as reported year ended December 31, 2011 results that are not our ongoing expenses.

(b) To reflect a reduction of depreciation expense of $3.6 million and a reduction of impairment expense of $6.3 million associated with the 67 properties as if the Sale-Leaseback Transaction occurred on January 1, 2011. We recorded impairment expense in the historical as reported amounts for the properties that resulted in a loss upon sale based on expected sales proceeds as compared with remaining net book value at December 31, 2011.

(c) The adjustment to historical as reported interest expense consists of the following:

CMBS Loan (1)	$
Deferred financing fees (2)	
Debt discount (2)	
	$

(1) Elimination of historical as reported interest expense on the CMBS Loan that was incurred during the year ended December 31, 2011 in the amount of $15.6 million, offset by pro forma interest expense on the 2012 CMBS Loan in the amount of $ million, using an effective interest rate of %

(2) Elimination of historical as reported deferred financing fee amortization of $5.1 million and debt discount amortization on the CMBS Loan of $0.7 million that were incurred during the year ended December 31, 2011, offset by pro forma amortization of deferred financing fees on the 2012 CMBS Loan in the amount of $ million.

(d) To reflect the tax effect of the pro forma adjustments at an estimated statutory tax rate of 38.7%.

Adjustments Related to the Initial Public Offering

(e) To reflect the termination of the management agreement upon completion of this offering.

(f) To reflect ongoing share-based compensation expense in the aggregate amount of $ million resulting from employee stock options that (i) will continue to vest following removal of the management call option upon completion of this offering and (ii) in the case of our Chief Executive Officer, will become exercisable upon the completion of this offering.

(g) To reflect the elimination of historical as reported interest expense of $24.8 million and deferred financing fee amortization of $1.1 million incurred during the year ended December 31, 2011 on the Senior Notes. The pro forma adjustment reflects the use of proceeds of the offering to repay $248.1 million of Senior Notes as if the offering occurred on, and the Senior Notes were repaid, on January 1, 2011. The adjustment to interest expense is calculated at an annual rate of 10%.

(h) To reflect the tax effect of the pro forma adjustments at an estimated statutory tax rate of 38.7%.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with the "Selected Historical Consolidated Financial and Other Data" and the audited historical consolidated financial statements and related notes. This discussion contains forward-looking statements about our markets, the demand for our products and services and our future results and involves numerous risks and uncertainties. Forward-looking statements can be identified by the fact that they do not relate strictly to historical or current facts and generally contain words such as "believes," expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "estimates," or "anticipates" or similar expressions. Our forward-looking statements are subject to risks and uncertainties, which may cause actual results to differ materially from those projected or implied by the forward-looking statement. Forward-looking statements are based on current expectations and assumptions and currently available data and are neither predictions nor guarantees of future events or performance. You should not place undue reliance on forward-looking statements, which speak only as of the date hereof. See "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements" for a discussion of factors that could cause our actual results to differ from those expressed or implied by forward-looking statements.

Overview

We are one of the largest casual dining restaurant companies in the world with a portfolio of leading, differentiated restaurant concepts. We own and operate 1,248 restaurants and have 195 restaurants operating under a franchise or joint venture arrangement across 49 states and 21 countries and territories. We have five founder-inspired concepts: Outback Steakhouse, Carrabba's Italian Grill, Bonefish Grill, Fleming's Prime Steakhouse and Wine Bar and Roy's. Our concepts provide a compelling customer experience combining great food, highly attentive service and lively and contemporary ambience at attractive prices. Our restaurants attract customers across a variety of occasions, including everyday dining, celebrations and business entertainment. Each of our concepts maintains a unique, founder-inspired brand identity and entrepreneurial culture, while leveraging our scale and enhanced operating model. We consider Outback Steakhouse, Carrabba's, Bonefish Grill and Fleming's to be our core concepts.

The restaurant industry is a highly competitive and fragmented industry and is sensitive to changes in the economy, trends in lifestyles, seasonality (customer spending patterns at restaurants are generally highest in the first quarter of the year and lowest in the third quarter of the year) and fluctuating costs. Operating margins for restaurants can vary due to competitive pricing strategies and fluctuations in prices of commodities, including beef, chicken, seafood, butter, cheese, produce and other necessities to operate a restaurant, such as natural gas or other energy supplies. The pace of new unit growth has slowed in the casual dining category over the last few years. Given this dynamic, companies tend to be more focused on increasing market share and comparable restaurant sales growth. Competitive pressure for market share, inflation, foreign currency exchange rates and other market conditions have had and could continue to have an adverse impact our business.

Our industry is characterized by high initial capital investment, coupled with high labor costs, and chain restaurants have been increasingly taking share from independent restaurants over the past several years. We believe that this trend will continue due to increasing barriers that may prevent independent restaurants and/or start-up chains from building scale operations, including menu labeling, burdensome labor regulations and healthcare reforms that will be enforced once chains grow past a certain number of restaurants or number of employees. The combination of these factors underscores our initiative to drive increased sales at existing restaurants in order to raise margins and profits, because the incremental contribution to profits from every additional dollar of sales above the minimum costs required to open, staff and operate a restaurant is relatively high. Historically, we have not focused on growth in the number of restaurants just to generate additional sales. Our expansion and operating strategies have balanced investment and operating cost considerations in order to generate reasonable, sustainable margins and achieve acceptable returns on investment from our restaurant concepts.

In 2010, we launched a new strategic plan and operating model leveraging best practices from the consumer products and retail industries to complement our restaurant acumen and enhance our brand competitiveness. This new model keeps the customer at the center of our decision-making and focuses on continuous innovation and productivity to drive sustainable sales and profit growth. We have significantly strengthened our management team and implemented initiatives to accelerate innovation, improve analytics and increase productivity. As a result of these initiatives, we are recommitted to new unit development after curtailing expansion from 2009 to 2011. We believe that a substantial development opportunity remains for our concepts in the U.S. and internationally.

Key Performance Indicators

Key measures that we use in evaluating our restaurants and assessing our business include the following:

- *Average restaurant unit volumes*—average sales per restaurant to measure changes in customer traffic, pricing and development of the brand;
- *System-wide sales*—total restaurant sales volume for all company-owned, franchise and unconsolidated joint venture restaurants, regardless of ownership, to interpret the overall health of our brands;
- *Comparable restaurant sales*—year-over-year comparison of sales volumes for domestic, company-owned restaurants that are open 18 months or more in order to remove the impact of new restaurant openings in comparing the operations of existing restaurants;
- *Adjusted EBITDA*—calculated by adjusting EBITDA (earnings before interest, taxes, depreciation and amortization) to exclude certain stock-based compensation expenses, non-cash expenses and significant, unusual items; and
- *Customer satisfaction scores*—measurement of our customers' experiences in a variety of key attributes.

2011 Highlights

Our 2011 financial results include:

- An increase in consolidated revenues of 5.9% to $3.8 billion, driven primarily by 4.9% growth in combined comparable restaurant sales at existing domestic company-owned core restaurants;
- 15 system-wide restaurant openings across most brands, and 194 Outback Steakhouse renovations in 2011;
- Productivity and cost management initiatives that we estimate allowed us to save over $50 million in the aggregate in 2011; and
- Generation of income from operations of $213.5 million in 2011 compared to $168.9 million in 2010, primarily attributable to the increase in consolidated revenues described above and the T-Bird settlement described in "—Costs and Expenses—Recovery of Notes Receivable from Affiliated Entity."

In 2011, we continued to balance near-term growth in share gains with investments to achieve sustainable growth. Our key objectives for 2011 and some of the steps we took to achieve those objectives included:

Continuation of Share Growth by Enhancing Brand Competitiveness in a Challenging Environment . In order to drive share growth, we continued to develop unique promotions throughout our concepts that fit our brand positioning and focus on delivering a superior dining experience. We identified additional opportunities to increase innovation in our menu, service and operations across all of our concepts, such as broadening our Outback Steakhouse menu by adding more salads, seafood and side items and offering the choice between our traditional seared steak and one prepared on a wood-fired grill. In addition, Carrabba's introduced a Cucina Casuale section to its menu during the third quarter of 2011 to offer consumers a more casual dining experience with salads, sandwiches and other smaller or lighter offerings.

Acceleration of Brand Investment, Including Renovations and New Unit Development . Our brand investments have focused on accelerating our multi-year Outback Steakhouse renovation plan and increasing unit development in higher return, high growth concepts with a focus on Bonefish Grill. We renovated 194 Outback Steakhouse locations and opened six Bonefish Grill restaurants in 2011.

Improvement of Organizational Effectiveness and Infrastructure for Sustainable Growth . We focused on building our competencies in human resources, information technology and real estate, design and construction to support accelerated growth. This is a multi-year effort that includes the implementation of a human resource information system, expanded data warehousing capability, and increased resources and tools to accelerate renovations and new unit site selection. We also implemented a modified managing and chef partner compensation structure that seeks to drive sustainable growth by aligning field incentives and paying higher amounts for growth in restaurant sales and cash flow on an annual basis. See "—Liquidity and Capital Resources —Stock-Based and Deferred Compensation Plans."

Effective Cost Management by Mitigating Commodity Risk and Accelerating Continuous Productivity Improvement . We leveraged our scale and long-term supply agreements when they were attractive relative to market trends, accelerated productivity improvements and took modest pricing action to maintain value perceptions among consumers.

Our Growth Strategies and Outlook

For the remainder of 2012, our key growth strategies, which are enabled by continued improvements in infrastructure and organizational effectiveness, are:

- *Grow Comparable Restaurant Sales.* We plan to continue our efforts to remodel our Outback Steakhouse and Carrabba's restaurants, use limited-time offers and multimedia marketing campaigns to drive traffic, grow beyond our traditional weekend dinner traffic and introduce innovative menu items that match evolving consumer preferences.

- *Pursue New Domestic and International Development With Strong Unit Level Economics.* We believe that a substantial development opportunity remains for our concepts in the U.S. and internationally. We added significant resources in site selection, construction and design in 2010 and 2011 to support the opening of new restaurants. We expect to open 30 or more restaurants in 2012 and increase the pace thereafter.

- *Drive Margin Improvement.* We believe we have the opportunity to increase our margins through cost reductions in labor, food cost, supply chain and restaurant facilities.

Ownership Structures

Our restaurants are predominantly company-owned or controlled, including through joint ventures, and otherwise operated under franchise arrangements. We generate our revenues primarily from our company-owned or controlled restaurants and secondarily through ongoing royalties from our franchised restaurants and sales of franchise rights.

Company-owned or controlled restaurants include restaurants owned directly by us, by limited partnerships in which we are a general partner and by joint ventures in which we are a member. Our legal ownership interests in these partnerships and joint ventures generally range from 50% to 90%. In the future, we do not expect to use limited partnerships for domestic company-owned restaurants. Instead, new restaurants will be wholly-owned by us and we are transitioning our compensation structure so that the area operating, managing and chef partners will receive their distributions of restaurant cash flow as employee compensation rather than partnership distributions. Company-owned restaurants also include restaurants owned by our Roy's joint venture and our consolidated financial statements include the accounts and operations of our Roy's joint venture even though we have less than majority ownership. See Note 18 of our Notes to Consolidated Financial Statements for additional information.

Through a joint venture arrangement with PGS Participacoes Ltda., we hold a 50% ownership interest in PGS Consultoria e Serviços Ltda. (the "Brazilian Joint Venture"). The Brazilian Joint Venture was formed in 1998 for the purpose of operating Outback Steakhouse franchise restaurants in Brazil. We account for the Brazilian Joint Venture under the equity method of accounting. We are responsible for 50% of the costs of new restaurants operated by the Brazilian Joint Venture and our joint venture partner is responsible for the other 50% and has operating control. Income and loss derived from the Brazilian Joint Venture is presented in the line item "Income from operations of unconsolidated affiliates" in our Consolidated Statements of Operations. We do not consider restaurants owned by the Brazilian Joint Venture as "company-owned" restaurants.

We derive no direct income from operations of franchised restaurants other than initial and developmental franchise fees and ongoing royalties, which are included in "Other revenues" in our Consolidated Statements of Operations.

Factors Impacting Financial Results

As discussed in more detail below and in addition to the other factors discussed above, under "Risk Factors" and elsewhere in this prospectus, the following factors have impacted our 2011 results and will impact our future financial results.

Effective March 14, 2012, we entered into the Sale-Leaseback Transaction with two third-party real estate institutional investors in which we sold 67 restaurant properties at fair market value for $194.9 million and then simultaneously leased these properties back under nine master leases. We will defer the recognition of the $42.7 million gain on the sale of certain of the properties over the initial term of the lease. See "—Liquidity and Capital Resources —Transactions" and Note 20 of our Notes to Consolidated Financial Statements for a further description of the Sale-Leaseback Transaction.

Effective March 27, 2012, New PRP entered into the 2012 CMBS Loan, which totals $500.0 million and comprises a first mortgage loan in the amount of $324.8 million, collateralized by 261 of our properties, and two mezzanine loans totaling $175.2 million. The loans have a maturity date of April 10, 2017, and a weighted average interest rate as of the closing of 6.12%. The proceeds from the 2012 CMBS Loan, together with the proceeds from the Sale-Leaseback Transaction and excess cash, were used to repay the existing CMBS Loan. As a result of the CMBS Refinancing, the net amount repaid along with scheduled maturities within one year,

$281.3 million, was classified as current at December 31, 2011. During the first quarter of 2012, we recorded a $2.9 million Loss on extinguishment of debt. See "Description of Indebtedness" and Note 20 of our Notes to Consolidated Financial Statements for a further description of the 2012 CMBS Loan.

Upon completion of this offering, we expect to record approximately $ of non-cash compensation expense with respect to the time vested portion of stock options containing a management call option due to the automatic termination of the call option upon completion of the offering. See "—Critical Accounting Policies and Estimates—Stock-Based Compensation" for a further description of the call option. Additionally, this offering will trigger payment of $ of an incentive bonus due to our Chief Executive Officer.

As our net income increases, we expect our effective income tax rate to increase due to the benefit of U.S. income tax credits becoming a smaller percentage of net income and the fact that the substantial majority of our earnings are generated in the U.S., where we have higher statutory rates. We expect our effective income tax rate for 2012 to range between 20% and 30%. We expect to maintain a full valuation allowance on our net deferred income tax assets until we sustain an appropriate level of profitability that generates taxable income that would enable us to conclude that it is more likely than not that a portion of our deferred income tax assets will be realized. Such a decrease in the valuation allowance could result in a significant decrease in our effective income tax rate for the period in which it occurs.

Results of Operations

The following tables set forth, for the periods indicated, (1) percentages that items in our Consolidated Statements of Operations bear to total revenues or restaurant sales, as indicated, and (2) selected operating data:

	Years Ended December 31,		
	2009	2010	2011
Revenues			
Restaurant sales	99.2%	99.1%	99.0%
Other revenues	0.8	0.9	1.0
Total revenues	100.0	100.0	100.0
Costs and expenses			
Cost of sales (1)	33.1	32.0	32.2
Labor and other related (1)	28.7	28.8	28.8
Other restaurant operating (1)	23.8	24.0	23.4
Depreciation and amortization	5.2	4.3	4.0
General and administrative	7.0	7.0	7.6
Recovery of note receivable from affiliated entity	—	—	(0.9)
Loss on contingent debt guarantee	0.7	—	—
Goodwill impairment	1.6	—	—
Provision for impaired assets and restaurant closings	3.7	0.1	0.4
Income from operations of unconsolidated affiliates	(0.1)	(0.2)	(0.2)
Total costs and expenses	103.0	95.3	94.4
Income (loss) from operations	(3.0)	4.7	5.6
Gain on extinguishment of debt	4.4	—	—
Other (expense) income, net	(*)	0.1	*
Interest expense, net	(3.3)	(2.5)	(2.2)
Income (loss) before (benefit) provision for income taxes	(1.9)	2.3	3.4
(Benefit) provision for income taxes	(0.1)	0.6	0.6
Net income (loss)	(1.8)	1.7	2.8
Less: net income (loss) attributable to noncontrolling interests	(*)	0.2	0.2
Net income (loss) attributable to Bloomin' Brands, Inc.	(1.8)%	1.5%	2.6%

(1) As a percentage of restaurant sales.

* Less than 1/10th of one percent of total revenues.

The table below presents the number of our restaurants in operation at the end of the periods indicated:

	December 31,		
	2009	2010	2011
Number of restaurants (at end of the period):			
Outback Steakhouse			
Company-owned—domestic	680	670	669
Company-owned—international	119	120	111
Franchised—domestic	108	108	106
Franchised and joint venture—international	63	70	81
Total	970	968	967
Carrabba's Italian Grill			
Company-owned	232	232	231
Franchised	1	1	1
Total	233	233	232
Bonefish Grill			
Company-owned	145	145	151
Franchised	7	7	7
Total	152	152	158
Fleming's Prime Steakhouse and Wine Bar			
Company-owned	64	64	64
Other			
Company-owned (1)	58	22	22
System-wide total	1,477	1,439	1,443

(1) In September 2009, we sold our Cheeseburger in Paradise concept, which included 34 restaurants, to Paradise Restaurant Group, LLC ("PRG"). Based on the terms of the purchase and sale agreement, we consolidated PRG after the sale transaction. Upon adoption of new accounting guidance for variable interest entities, we deconsolidated PRG on January 1, 2010. As a result, in 2010 and 2011 this category includes only our Roy's concept.

We operate restaurants under brands that have similar economic characteristics, nature of products and services, class of customer and distribution methods, and as a result, aggregate our operating segments into a single reporting segment.

System-Wide Sales

System-wide sales increased 7.0% in 2011 and 2.2% in 2010. System-wide sales is a non-GAAP financial measure that includes sales of all restaurants operating under our brand names, whether we own them or not. System-wide sales comprises sales of company-owned restaurants and sales of franchised and unconsolidated joint venture restaurants. The table below presents the first component of system-wide sales, which is sales of company-owned restaurants:

	Years Ended December 31,		
	2009	2010	2011
Company-Owned Restaurant Sales (in millions):			
Outback Steakhouse			
Domestic	$1,954	$1,960	$2,027
International	260	281	336
Total	2,214	2,241	2,363
Carrabba's Italian Grill	633	653	682
Bonefish Grill	375	403	441
Fleming's Prime Steakhouse and Wine Bar	199	223	239
Other (1)	153	75	78
Total company-owned restaurant sales	$3,574	$3,595	$3,803

(1) In September 2009, we sold our Cheeseburger in Paradise concept, which included 34 restaurants, to PRG. Based on the terms of the purchase and sale agreement, we consolidated PRG after the sale transaction. Upon adoption of new accounting guidance for variable interest entities, we deconsolidated PRG on January 1, 2010. As a result, in 2010 and 2011 this category includes primarily our Roy's concept.

The following information presents the second component of system-wide sales, which is sales of franchised and unconsolidated joint venture restaurants. These are restaurants that are not consolidated and from which we only receive a franchise royalty or a portion of their total income. Management believes that franchise and unconsolidated joint venture sales information is useful in analyzing our revenues because franchisees and affiliates pay royalties and/or service fees that generally are based on a percentage of sales. Management also uses this information to make decisions about future plans for the development of additional restaurants and new concepts as well as evaluation of current operations.

The following do not represent our sales and are presented only as an indicator of changes in the restaurant system, which management believes is important information regarding the health of our restaurant concepts.

	Years Ended December 31,		
	2009	2010	2011
Franchise and Unconsolidated Joint Venture Sales (in millions) (1):			
Outback Steakhouse			
Domestic	$294	$296	$ 300
International	170	234	311
Total	464	530	611
Carrabba's Italian Grill	3	4	4
Bonefish Grill	16	16	18
Total franchise and unconsolidated joint venture sales (1)	$ 483	$ 550	$ 633
Income from franchise and unconsolidated joint ventures (2)	$ 26	$ 31	$ 36

(1) Franchise and unconsolidated joint venture sales are not included in revenues in the Consolidated Statements of Operations.

(2) Represents the franchise royalty and the portion of total income related to restaurant operations included in the Consolidated Statements of Operations in the line items "Other revenues" and "Income from operations of unconsolidated affiliates," respectively.

Revenues

Restaurant Sales

	Years Ended December 31,				Years Ended December 31,			
(dollars in millions):	2011	2010	$ Change	% Change	2010	2009	$ Change	% Change
Restaurant sales	$3,803.3	$3,594.7	$208.6	5.8%	$3,594.7	$3,573.8	$ 20.9	0.6%

The increase in restaurant sales in 2011 as compared to 2010 was primarily attributable to (i) a $195.7 million increase in comparable restaurant sales at our existing restaurants (including a 4.9% combined comparable restaurant sales increase in 2011 at our core domestic restaurants), which was primarily due to increases in customer traffic and general menu prices and (ii) a $15.9 million increase in sales from 17 restaurants not included in our comparable restaurant sales base. The increase in customer traffic was primarily a result of promotions throughout our concepts, innovations in our menu, service and operations and renovations at Outback Steakhouse. The increase in restaurant sales in 2011 as compared to 2010 was partially offset by a $2.0 million decrease from the closing of three restaurants during 2011 and a $1.0 million decrease from the sale (and franchise conversion) of nine of our company-owned Outback Steakhouse restaurants in Japan in October 2011.

The increase in restaurant sales in 2010 as compared to 2009 was primarily attributable to (i) a $90.0 million increase in comparable restaurant sales at our existing restaurants (2.7% combined comparable restaurant sales increase in 2010 at our core domestic restaurants) primarily due to an increase in customer traffic and partially offset by customer selection of lower-priced menu items and (ii) a $23.1 million increase in sales from 32 restaurants not included in our comparable restaurant sales base. The increase in customer traffic was primarily a result of promotions throughout our concepts, innovations in our menu, service and operations and an increase in the overall level of marketing spending. The increase in restaurant sales in 2010 as compared to 2009 was partially offset by a $75.5 million decrease from the sale and de-consolidation of 34 Cheeseburger in Paradise locations and a $16.7 million decrease from the closing of 16 restaurants during 2010.

The following table includes additional information about changes in restaurant sales at domestic company-owned restaurants for our core brands:

	Years Ended December 31,		
	2009	2010	2011
Average restaurant unit volumes (in thousands):			
Outback Steakhouse	$2,857	$2,906	$3,029
Carrabba's Italian Grill	$2,737	$2,816	$2,946
Bonefish Grill	$2,606	$2,781	$3,023
Fleming's Prime Steakhouse and Wine Bar	$3,148	$3,476	$3,730
Operating weeks:			
Outback Steakhouse	35,720	35,200	34,914
Carrabba's Italian Grill	12,065	12,097	12,077
Bonefish Grill	7,491	7,553	7,600
Fleming's Prime Steakhouse and Wine Bar	3,292	3,337	3,337
Year over year percentage change:			
Menu price increases (decreases):(1)			
Outback Steakhouse	1.3%	(0.1)%	1.5%
Carrabba's Italian Grill	1.6%	0.4%	1.5%
Bonefish Grill	1.5%	0.2%	1.9%
Fleming's Prime Steakhouse and Wine Bar	0.6%	0.5%	3.0%
Comparable restaurant sales (restaurants open 18 months or more):			
Outback Steakhouse	(8.8)%	1.5%	4.0%
Carrabba's Italian Grill	(6.1)%	2.9%	4.6%
Bonefish Grill	(5.9)%	6.5%	8.3%
Fleming's Prime Steakhouse and Wine Bar	(16.4)%	10.4%	7.4%
Combined (concepts above)	(8.6)%	2.7%	4.9%

(1) The stated menu price changes exclude the impact of product mix shifts to new menu offerings.

Costs and Expenses

Cost of Sales

	Years Ended December 31,			Years Ended December 31,		
(dollars in millions):	2011	2010	Change	2010	2009	Change
Cost of sales	$1,226.1	$1,152.0		$1,152.0	$1,184.1	
% of Restaurant sales	32.2%	32.0%	0.2%	32.0%	33.1%	(1.1)%

Cost of sales, consisting of food and beverage costs, increased as a percentage of restaurant sales in 2011 as compared to 2010. The increase as a percentage of restaurant sales was primarily 1.4% from increases in seafood, dairy, beef and other commodity costs. The increase was partially offset by decreases as a percentage of restaurant sales of 0.9% from the impact of certain cost savings initiatives and 0.4% from menu price increases.

The decrease as a percentage of restaurant sales in 2010 as compared to 2009 was primarily 1.1% from the impact of certain cost savings initiatives and 0.7% from decreases in beef costs. The decrease was partially offset by increases as a percentage of restaurant sales of the following: (i) 0.3% from increases in produce, dairy and other commodity costs, (ii) 0.2% due to changes in our product mix and (iii) 0.2% from changes in our limited-time offers and other promotions.

Labor and Other Related Expenses

(dollars in millions):	Years Ended December 31, 2011	2010	Change	Years Ended December 31, 2010	2009	Change
Labor and other related	$1,094.1	$1,034.4		$1,034.4	$1,024.1	
% of Restaurant sales	28.8%	28.8%	— %	28.8%	28.7%	0.1%

Labor and other related expenses include all direct and indirect labor costs incurred in operations, including distribution expense to managing partners, costs related to the Partner Equity Plan and the Partner Ownership Account Plan (see "Liquidity and Capital Resources—Stock-Based and Deferred Compensation Plans"), and other incentive compensation expenses. Labor and other related expenses were flat as a percentage of restaurant sales in 2011 as compared to 2010. Items that contributed to an increase as a percentage of restaurant sales included the following: (i) 0.4% from higher kitchen and service labor costs, (ii) 0.3% from higher field management labor, bonus and distribution expenses, (iii) 0.2% from a settlement of an Internal Revenue Service assessment of employment taxes and (iv) 0.1% from an increase in health insurance costs. These increases were offset by decreases as a percentage of restaurant sales of 0.7% from higher average unit volumes at our restaurants and 0.3% from the impact of certain cost savings initiatives.

Labor and other related expenses increased as a percentage of restaurant sales in 2010 as compared with 2009. The increase as a percentage of restaurant sales was primarily due to the following: (i) 0.4% from higher kitchen, service and field management labor costs, (ii) 0.2% from an increase in health insurance costs and (iii) 0.2% from higher distribution expense to managing partners. The increase was partially offset by decreases as a percentage of restaurant sales of 0.5% from the impact of certain cost savings initiatives and 0.2% from higher average unit volumes at our restaurants.

Other Restaurant Operating Expenses

(dollars in millions):	Years Ended December 31, 2011	2010	Change	Years Ended December 31, 2010	2009	Change
Other restaurant operating	$890.0	$864.2		$864.2	$849.7	
% of Restaurant sales	23.4%	24.0%	(0.6)%	24.0%	23.8%	0.2%

Other restaurant operating expenses include certain unit-level operating costs such as operating supplies, rent, repairs and maintenance, advertising expenses, utilities, pre-opening costs and other occupancy costs. A substantial portion of these expenses is fixed or indirectly variable. The decrease as a percentage of restaurant sales in 2011 as compared to 2010 was primarily 0.7% from higher average unit volumes at our restaurants and 0.4% from certain cost savings initiatives. The decrease was partially offset by increases as a percentage of restaurant sales of 0.2% in operating supplies expense and 0.2% in advertising costs.

The increase as a percentage of restaurant sales in 2010 as compared to 2009 was primarily due to the following: (i) 0.4% from increases in advertising costs, (ii) 0.2% from increases in the recognition of deferred gift card fees, (iii) 0.2% from increases in repairs and maintenance costs, occupancy costs and operating supplies expense and (iv) 0.2% from higher general liability insurance expense. The increase was partially offset by decreases as a percentage of restaurant sales of 0.5% from higher average unit volumes at our restaurants and 0.2% from certain cost savings initiatives.

Depreciation and Amortization

(dollars in millions):	Years Ended December 31, 2011	2010	Change	Years Ended December 31, 2010	2009	Change
Depreciation and amortization	$153.7	$156.3		$156.3	$186.1	
% of Total revenues	4.0%	4.3%	(0.3)%	4.3%	5.2%	(0.9)%

Depreciation and amortization expense decreased as a percentage of total revenues in 2011 as compared to 2010. This decrease as a percentage of total revenues was primarily 0.2% from certain assets being fully depreciated as of June 2010 as a result of purchase accounting adjustments recorded in conjunction with the Merger and 0.2% from higher average unit volumes at our restaurants. The decrease was partially offset by an increase as a percentage of restaurant sales of 0.1% from depreciation expense on property, fixtures and equipment additions during 2011 primarily due to our Outback Steakhouse renovations.

The decrease as a percentage of total revenues in 2010 as compared to 2009 was primarily 0.7% from certain assets being fully depreciated as of June 2009 and June 2010 as a result of purchase accounting adjustments recorded in conjunction with the Merger and 0.1% from higher average unit volumes at our restaurants.

General and Administrative

(in millions):	Years Ended December 31, 2011	2010	Change	Years Ended December 31, 2010	2009	Change
General and administrative	$291.1	$252.8	$38.3	$252.8	$252.3	$ 0.5

General and administrative costs increased in 2011 as compared to 2010 primarily due to the following: (i) $12.1 million of additional corporate compensation, bonus and relocation expenses primarily as a result of increasing our resources in consumer insights, research and development, productivity and human resources, (ii) $8.2 million of increased general and administrative costs associated with field support, managers-in-training and field compensation, bonus, distribution and buyout expense, (iii) a $6.2 million net decline in the cash surrender value of life insurance investments, (iv) $7.4 million of additional legal and other professional fees, (v) a $4.3 million loss from the sale of nine of our company-owned Outback Steakhouse restaurants in Japan in October 2011, (vi) $3.8 million of additional information technology expense, (vii) $1.7 million of increased corporate business travel and meeting-related expenses and (viii) $0.5 million of expenses incurred in 2011 in connection with the Sale-Leaseback Transaction. This increase was partially offset by $5.3 million of cost savings initiatives and a $2.0 million allowance for the PRG promissory note recorded in the first quarter of 2010.

The increase in 2010 as compared to 2009 was primarily attributable to the following: (i) $10.2 million of increased general and administrative costs associated with field support, managers-in-training and distribution expense, (ii) $10.0 million of additional consulting and legal fees primarily related to our productivity improvement and brand growth strategies, (iii) $4.4 million of additional corporate compensation expense as a result of increasing our resources in consumer insights, research and development, productivity and human resources and (iv) a $4.1 million net decline in the cash surrender value of life insurance investments. This increase was substantially offset by the following: (i) a $14.0 million decrease in restricted stock, deferred compensation and partner buyout expenses that was mostly attributable to accelerated vesting of restricted stock for certain executive officers in 2009, (ii) a $7.1 million reduction of bonus and severance expenses, (iii) a $3.8 million decrease from certain cost savings initiatives and (iv) a $1.3 million decrease in ongoing operating costs at closed locations.

Recovery of Note Receivable From Affiliated Entity

In November 2011, we received a settlement payment of $33.3 million from T-Bird in connection with a settlement agreement that satisfied all outstanding litigation with T-Bird.

Loss on Contingent Debt Guarantee

We are the guarantor of an uncollateralized line of credit that permits borrowing of up to $24.5 million for the company's joint venture partner, RY-8, in the development of Roy's restaurants (see "—Liquidity and Capital Resources—Debt Guarantees"). We recorded a $24.5 million loss associated with this guarantee in the year ended December 31, 2009.

Goodwill Impairment

We did not record a goodwill impairment charge during the years ended December 31, 2011 and 2010. We recorded a goodwill impairment charge of $58.1 million for the domestic Outback Steakhouse concept during the second quarter of 2009 in connection with our annual impairment test.

Our review of the recoverability of goodwill was based primarily upon an analysis of the discounted cash flows of the related reporting units as compared to their carrying values. These goodwill impairment charges occurred due to poor overall economic conditions, declining sales at our restaurants, reductions in our projected results for future periods and a challenging environment for the restaurant industry (see "—Critical Accounting Policies and Estimates").

Provision for Impaired Assets and Restaurant Closings

	Years Ended December 31,			Years Ended December 31,		
(in millions):	2011	2010	Change	2010	2009	Change
Provision for impaired assets and restaurant closings	$14.0	$5.2	$ 8.8	$5.2	$134.3	$(129.1)

During the years ended December 31, 2011 and 2010 and 2009, we recorded a provision for impaired assets and restaurant closings of $14.0 million, $5.2 million and $134.3 million, respectively, for certain of our restaurants, intangible assets and other assets (see "—Liquidity and Capital Resources—Fair Value Measurements").

During 2009, our provision for impaired assets and restaurant closings primarily included: (i) $46.0 million of impairment charges to reduce the carrying value of the assets of Cheeseburger in Paradise to their estimated fair market value due to our sale of the concept in the third quarter of 2009, (ii) $47.6 million of impairment charges and restaurant closing expense for certain of our other restaurants and (iii) $36.0 million of impairment charges for the domestic Outback Steakhouse and Carrabba's Italian Grill trade names.

We used the discounted cash flow method to determine the fair value of our intangible assets. The trade name impairment charges occurred due to poor overall economic conditions, declining sales at our restaurants, reductions in our projected results for future periods and a challenging environment for the restaurant industry. Restaurant impairment charges primarily resulted from the carrying value of a restaurant's assets exceeding its estimated fair market value, primarily due to anticipated closures or declining future cash flows from lower projected future sales at existing locations (see "—Critical Accounting Policies and Estimates").

Income (Loss) From Operations

(dollars in millions):	Years Ended December 31, 2011	2010	Change	Years Ended December 31, 2010	2009	Change
Income (loss) from operations	$213.5	$168.9		$168.9	$(109.3)	
% of Total revenues	5.6%	4.7%	0.9%	4.7%	(3.0)%	7.7%

Income (loss) from operations increased in 2011 as compared to 2010 and in 2010 as compared to 2009 primarily as a result of a 9.0% and 5.5% increase in operating margins, respectively, higher average unit volumes at our restaurants and certain other items as described above.

Gain on Extinguishment of Debt

During the first quarter of 2009, OSI purchased $240.1 million in aggregate principal amount of its Senior Notes in a cash tender offer. OSI paid $73.0 million for the Senior Notes purchased and $6.7 million of accrued interest. We recorded a gain from the extinguishment of debt of $158.1 million in 2009. The gain was reduced by $6.1 million for the pro rata portion of unamortized deferred financing fees that related to the extinguished Senior Notes and by $3.0 million for fees related to the tender offer.

Interest Expense, Net

(in millions):	Years Ended December 31, 2011	2010	Change	Years Ended December 31, 2010	2009	Change
Interest expense, net	$83.4	$91.4	$ (8.0)	$91.4	$115.9	$(24.5)

The decrease in net interest expense in 2011 as compared to 2010 was primarily due to a $4.6 million decline in interest expense for OSI's senior secured credit facilities, largely as a result of a decline in the total outstanding balance of those facilities, and to $1.4 million of interest expense on our interest rate collar for OSI's senior secured credit facilities during 2010 that was not incurred in 2011 (since the collar matured in 2010).

The decrease in net interest expense in 2010 as compared to 2009 was primarily due to a net $14.1 million decrease in interest expense mainly due to mark to market adjustments on our interest rate collar for OSI's senior secured credit facilities that matured effective September 30, 2010 and a reduction of approximately $5.2 million of interest expense as a result of the $240.1 million decrease in principal outstanding on OSI's senior notes from its completion of a cash tender offer during March of 2009.

Provision (Benefit) For Income Taxes

	Years Ended December 31, 2011	2010	Change	Years Ended December 31 2010	2009	Change
Effective income tax rate	16.6%	26.5%	(9.9)%	26.5%	3.7%	22.8%

The net decrease in the effective income tax rate in 2011 as compared to the previous year was primarily due to the increase in the domestic pretax book income in which the deferred income tax assets are subject to a valuation allowance and the state and foreign income tax provision being a lower percentage of consolidated pretax income as compared to the prior year. The net increase in the effective income tax rate in 2010 as compared to the previous year was primarily due to the effect of the change in the valuation allowance against deferred income tax assets.

The effective income tax rate for the year ended December 31, 2011 was lower than the combined federal and state statutory rate of 38.7% primarily due to the benefit of the tax credit for excess FICA tax on

employee-reported tips and loss on investments as a result of the sale of assets in Japan together being such a large percentage of pretax income. The effective income tax rate for the year ended December 31, 2010 was lower than the combined federal and state statutory rate of 38.9% primarily due to the benefit of the tax credit for excess FICA tax on employee-reported tips, which was partially offset by the valuation allowance and income taxes in states that only have limited deductions in computing the state current income tax provision. The effective income tax rate for the year ended December 31, 2009 was significantly lower than the combined federal and state statutory rate of 38.9% primarily due to an increase in the valuation allowance on deferred income tax assets, which was partially offset by the benefit of the tax credit for excess FICA tax on employee-reported tips being such a large percentage of pretax loss.

Liquidity and Capital Resources

Potential Impacts of Market Conditions on Capital Resources

During 2010 and 2011, we experienced a strengthening of trends in consumer traffic and increases in comparable restaurant sales and operating cash flows, and generated an increase in operating income. However, the restaurant industry continues to be challenged and uncertainty exists as to the sustainability of these favorable trends. We have continued to implement various cost savings initiatives, including food cost decreases through waste reduction and supply chain and labor efficiency initiatives. We developed new menu items to appeal to value-conscious consumers and used marketing campaigns to promote these items.

As of December 31, 2011, we had approximately $82.4 million in available unused borrowing capacity under our working capital revolving credit facility (after giving effect to undrawn letters of credit of approximately $67.6 million) and $67.0 million in available unused borrowing capacity under our pre-funded revolving credit facility that provides financing for capital expenditures only (see “Description of Indebtedness”).

We believe that expected cash flow from operations, planned borrowing capacity, short-term investments and restricted cash balances are adequate to fund debt service requirements, operating lease obligations, capital expenditures and working capital obligations for the next twelve months. At December 31, 2011, we were in compliance with our covenants. However, our ability to continue to meet these requirements and obligations will depend on, among other things, our ability to achieve anticipated levels of revenue and cash flow and our ability to manage costs and working capital successfully.

Summary of Cash Flows

We require capital primarily for principal and interest payments on our debt, prepayment requirements under our term loan facility (see “Description of Indebtedness”), obligations related to our deferred compensation plans, the development of new restaurants, remodeling older restaurants, investments in technology, and acquisitions of franchisees and joint venture partners.

The following table presents a summary of our cash flows provided by (used in) operating, investing and financing activities for the periods indicated (in thousands):

	Years Ended December 31,		
	2009	2010	2011
Net cash provided by operating activities	$195,537	$ 275,154	$ 322,450
Net cash used in investing activities	(39,171)	(71,721)	(113,142)
Net cash used in financing activities	(137,397)	(167,315)	(89,300)
Effect of exchange rate changes on cash and cash equivalents	870	(1,539)	(3,460)
Net increase in cash and cash equivalents	$ 19,839	$ 34,579	$116,548

Operating Activities

Net cash provided by operating activities increased in 2011 as compared to 2010 primarily as a result of the following: (i) an increase in cash generated from restaurant operations due to comparable restaurant sales increases, (ii) certain food, labor and other cost savings initiatives, (iii) an acceleration of certain accounts payable and other related payments prior to the end of 2010 and (iv) a decrease in cash paid for interest, which was $72.1 million for the year ended December 31, 2011 compared to $96.7 million in 2010. The increase in net cash provided by operating activities was partially offset by an increase in other current assets primarily due to an increase in third-party gift card receivables and an increase in cash paid for income taxes, net of refunds, which was $27.7 million for the year ended December 31, 2011 compared to $10.8 million in 2010.

Net cash provided by operating activities increased in 2010 as compared to 2009 primarily as a result of the following: (i) an increase in cash generated from restaurant operations due to comparable restaurant sales increases, (ii) certain food, labor and other cost savings initiatives, (iii) a delay in accounts payable and other related payments at December 31, 2008, (iv) a decrease in cash paid for interest, which was $96.7 million for the year ended December 31, 2010 compared to $109.0 million in 2009 and (v) a decrease in cash paid for income taxes, net of refunds, which was $10.8 million for the year ended December 31, 2010 compared to $21.3 million in 2009. The increase in net cash provided by operating activities was partially offset by (i) a significant decline in inventory during 2009 as a result of utilization of inventory on hand, (ii) a significant increase in bonuses paid during 2010 as compared to 2009 and (iii) an acceleration of certain accounts payable and other related payments prior to the end of 2010.

Investing Activities

Net cash used in investing activities during the year ended December 31, 2011 consisted primarily of capital expenditures of $120.9 million and a royalty termination fee of $8.5 million. This was partially offset by $10.1 million of proceeds from the sale of nine of our company-owned Outback Steakhouse restaurants in Japan. Net cash used in investing activities during the year ended December 31, 2010 consisted primarily of the following: (i) capital expenditures of $60.5 million, (ii) the $11.3 million net difference between restricted cash received and restricted cash used, which was primarily related to the use of restricted cash for deferred compensation plans and (iii) deconsolidated PRG cash of $4.4 million. This was partially offset by the $4.0 million net difference between the proceeds from the sale and purchases of company-owned life insurance. Net cash used in investing activities for the year ended December 31, 2009 was primarily attributable to capital expenditures of $57.5 million and was partially offset by the $10.3 million net difference between the proceeds from the sale and the purchases of company-owned life insurance.

We estimate that our capital expenditures will total between approximately $180.0 million and $210.0 million in 2012. The amount of actual capital expenditures may be affected by general economic, financial, competitive, legislative and regulatory factors, among other things, including restrictions imposed by our borrowing arrangements. We expect to continue to review the level of capital expenditures throughout 2012.

Financing Activities

Net cash used in financing activities during the year ended December 31, 2011 was primarily attributable to the following: (i) repayments of borrowings on long-term debt and OSI's revolving credit facilities of $103.3 million, (ii) the net difference between repayments and receipts of partner deposits and other contributions of $36.0 million and (iii) distributions to noncontrolling interests of $13.5 million. This was partially offset by the collection of the note receivable from T-Bird of $33.3 million and proceeds from borrowings on OSI's revolving credit facilities of $33.0 million. Net cash used in financing activities during the year ended December 31, 2010 was primarily attributable to the following: (i) repayments of borrowings on long-term debt and OSI's revolving credit facilities of $196.8 million, (ii) the net difference between repayment and receipt of partner deposit and accrued buyout contributions of $18.0 million and (iii) distributions to noncontrolling interests of $11.6 million. This was partially offset by proceeds from borrowings on OSI's

revolving credit facilities of $61.0 million. Net cash used in financing activities for the year ended December 31, 2009 was primarily attributable to: (i) $76.0 million of cash paid for the extinguishment of a portion of OSI's Senior Notes and related fees, (ii) repayments of borrowings on long-term debt and OSI's revolving credit facilities of $37.2 million, (iii) $33.3 million of cash paid for the purchase of the note related to OSI's guaranteed debt for T-Bird and (iv) distributions to noncontrolling interests of $9.1 million. Net cash used in financing activities in 2009 was partially offset by $23.7 million of proceeds from borrowings on OSI's revolving credit facilities.

Financial Condition

Current assets increased to $708.3 million at December 31, 2011 as compared with $530.9 million at December 31, 2010 primarily due to an increase in Cash and cash equivalents of $116.5 million. This increase in Cash and cash equivalents was driven by a reduction in net repayments of long-term debt and borrowings on OSI's revolving credit facilities during 2011 as compared to 2010 of $65.5 million, the receipt of a $33.3 million settlement payment from T-Bird in November 2011 and an increase in cash provided by our restaurant operations. This increase was partially offset by $60.4 million of additional capital expenditures during 2011 as compared to 2010. Other current assets also increased $32.6 million driven primarily by a $36.5 million increase in receivables as a result of third-party gift card and promotional sales.

Working capital (deficit) totaled ($248.1) million and ($120.1) million at December 31, 2011 and 2010, respectively, and included Unearned revenue from unredeemed gift cards of $299.6 million and $269.1 million at December 31, 2011 and 2010, respectively. Unearned revenue is a liability that does not require cash settlement.

Current liabilities increased to $956.4 million at December 31, 2011 as compared with $651.0 million at December 31, 2010 primarily due to an increase in the Current portion of long-term debt of $237.6 million as a result of the June 2012 maturity of PRP's CMBS Loan (see "Description of Indebtedness"). This increase was also due to an increase in unearned revenue of $30.5 million as a result of the increase in third-party gift card and promotional sales. Accounts payable also increased $19.1 million driven by an acceleration of certain accounts payable and other related payments prior to the end of 2010 as well as an increase in our construction in progress accrual in 2011 due to increased remodeling activity and new restaurant development.

Transactions

Effective March 14, 2012, we entered into the Sale-Leaseback Transaction with two third-party real estate institutional investors in which we sold 67 restaurant properties at fair market value for $194.9 million. We then simultaneously leased these properties back under nine master leases (collectively, the "REIT Master Leases"). The initial term of the REIT Master Leases are 20 years with four five-year renewal options. One renewal period is at a fixed rental amount and the last three renewal periods are generally based on then-current fair market values. The sale at fair market value and subsequent leaseback qualified for sale-leaseback accounting treatment, and the REIT Master Leases are classified as operating leases. We will defer the recognition of the $42.7 million gain on the sale of certain of the properties over the initial term of the lease. In accordance with the applicable accounting guidance, the 67 restaurant properties are not classified as held for sale at December 31, 2011 since we will be leasing back the properties.

Credit Facilities and Other Indebtedness

Bloomin' Brands is a holding company and conducts its operations through its subsidiaries, certain of which have incurred their own indebtedness as described below.

On June 14, 2007, OSI entered into senior secured credit facilities with a syndicate of institutional lenders and financial institutions. These senior secured credit facilities provide for senior secured financing of up

to $1.6 billion, consisting of a $1.3 billion term loan facility, a $150.0 million working capital revolving credit facility, including letter of credit and swing-line loan sub-facilities, and a $100.0 million pre-funded revolving credit facility that provides financing for capital expenditures only.

The senior secured term loan facility matures June 14, 2014. At each rate adjustment, OSI has the option to select a Base Rate plus 125 basis points or a Eurocurrency Rate plus 225 basis points for the borrowings under this facility. The Base Rate option is the higher of the prime rate of Deutsche Bank AG New York Branch and the federal funds effective rate plus 0.5 of 1% (3.25% at December 31, 2011 and 2010). The Eurocurrency Rate option is the 30, 60, 90 or 180-day Eurocurrency Rate (ranging from 0.38% to 0.88% and from 0.31% to 0.50% at December 31, 2011 and 2010, respectively). The Eurocurrency Rate may have a nine- or twelve-month interest period if agreed upon by the applicable lenders. With either the Base Rate or the Eurocurrency Rate, the interest rate is reduced by 25 basis points if the associated Moody's Applicable Corporate Rating then most recently published is B1 or higher (the rating was Caa1 at December 31, 2011 and 2010).

OSI is required to prepay outstanding term loans, subject to certain exceptions, with:

- 50% of its "annual excess cash flow" (with step-downs to 25% and 0% based upon its rent-adjusted leverage ratio), as defined in the credit agreement and subject to certain exceptions;
- 100% of its "annual minimum free cash flow," as defined in the credit agreement, not to exceed $75.0 million for each fiscal year, if its rent-adjusted leverage ratio exceeds a certain minimum threshold;
- 100% of the net proceeds of certain assets sales and insurance and condemnation events, subject to reinvestment rights and certain other exceptions; and
- 100% of the net proceeds of any debt incurred, excluding permitted debt issuances.

Additionally, OSI is required, on an annual basis, to first, repay outstanding loans under the pre-funded revolving credit facility and second, fund a capital expenditure account to the extent amounts on deposit are less than $100.0 million, in both cases with 100% of its "annual true cash flow," as defined in the credit agreement. In accordance with these requirements, in April 2012, OSI is required to repay its pre-funded revolving credit facility outstanding loan balance of $33.0 million and fund $37.6 million to its capital expenditure account using its "annual true cash flow." In April 2011, OSI repaid its pre-funded revolving credit facility outstanding loan balance of $78.1 million and funded $60.5 million to its capital expenditure account.

OSI's senior secured credit facilities require scheduled quarterly payments on the term loans equal to 0.25% of the original principal amount of the term loans for the first six years and three quarters following June 14, 2007. These payments are reduced by the application of any prepayments, and any remaining balance will be paid at maturity. The outstanding balance on the term loans was $1.0 billion at December 31, 2011 and 2010. OSI classified $13.1 million of its term loans as current at December 31, 2011 and 2010 due to its required quarterly payments and the results of its covenant calculations, which indicate the additional term loan prepayments, as described above, will not be required. In October 2011, we sold our nine company-owned Outback Steakhouse restaurants in Japan to a subsidiary of S Foods, Inc. and used the net cash proceeds from this sale to pay down $7.5 million of OSI's outstanding term loans in accordance with the terms of the OSI credit agreement amended in January 2010.

Proceeds of loans and letters of credit under OSI's $150.0 million working capital revolving credit facility provide financing for working capital and general corporate purposes and, subject to a rent-adjusted leverage condition, for capital expenditures for new restaurant growth. This revolving credit facility matures June 14, 2013 and bears interest at rates ranging from 100 to 150 basis points over the Base Rate or 200 to 250 basis points over the Eurocurrency Rate. There were no loans outstanding under the revolving credit facility at December 31, 2011 and 2010; however, $67.6 million and $70.3 million, respectively, of the credit facility was

committed for the issuance of letters of credit and not available for borrowing. OSI may have to extend additional letters of credit in the future. If the need for letters of credit exceeds the $75.0 million maximum permitted by OSI's working capital revolving credit facility, OSI may have to use cash to fulfill its collateral requirements. Fees for the letters of credit range from 2.00% to 2.25% and the commitment fees for unused working capital revolving credit commitments range from 0.38% to 0.50%.

Proceeds of loans under OSI's $100.0 million pre-funded revolving credit facility, which expires on June 14, 2013, are available to provide financing for capital expenditures, if the capital expenditure account described above has a zero balance. As of December 31, 2011 and 2010, OSI had $33.0 million and $78.1 million, respectively, outstanding on its pre-funded revolving credit facility. These borrowings were recorded in "Current portion of long-term debt" in our Consolidated Balance Sheets, as OSI is required to repay any outstanding borrowings in April following each fiscal year using its "annual true cash flow," as defined in the credit agreement. At each rate adjustment, OSI has the option to select the Base Rate plus 125 basis points or a Eurocurrency Rate plus 225 basis points for the borrowings under this facility. In either case, the interest rate is reduced by 25 basis points if the associated Moody's Applicable Corporate Rating then most recently published is B1 or higher. Fees for the unused portion of the pre-funded revolving credit facility are 2.43%.

At December 31, 2011 and 2010, OSI was in compliance with its debt covenants. See "Description of Indebtedness" for further information about OSI's debt covenants.

On June 14, 2007, Private Restaurant Properties LLC, or PRP, our indirect wholly owned subsidiary, entered into first mortgage and mezzanine loans (together, the commercial mortgage-backed securities loan, or the "CMBS Loan") totaling $790.0 million. As part of the CMBS Loan, the lenders had a security interest in PRP's properties and related improvements located throughout the United States and direct and indirect equity interests in PRP.

The CMBS Loan comprised a note payable and four mezzanine notes. The CMBS Loan had a maturity date of June 9, 2011, subject to one additional one-year extension by PRP to a maximum maturity date of June 9, 2012. During 2011, PRP exercised the one-year extension.

All notes bore interest at the one-month London Interbank Offered Rate ("LIBOR") which was 0.28% and 0.27% at December 31, 2011 and 2010, respectively, plus an applicable spread which ranges from 0.51% to 4.25%. Interest-only payments were made on the ninth calendar day of each month and interest accrued beginning on the fifteenth calendar day of the preceding month.

PRP's CMBS Loan required it to comply with certain financial covenants, including a lease coverage ratio and a loan to value ratio as defined in the CMBS Loan agreement. The CMBS Loan also contained customary representations, warranties, affirmative covenants and events of default. Upon disposal of any location that collateralizes the CMBS Loan, PRP was required to pay the portion of the CMBS Loan principal that related to each disposed location. During the years ended December 31, 2011 and 2010, PRP did not dispose of any locations and therefore did not pay any principal on the CMBS Loan for disposed locations. At December 31, 2011 and 2010, the outstanding balance on PRP's CMBS Loan was $775.3 million and $774.7 million, respectively.

Effective March 27, 2012, New Private Restaurant Properties, LLC and two of our other indirect wholly-owned subsidiaries entered into the 2012 CMBS Loan. The 2012 CMBS Loan totals $500.0 million and comprises a first mortgage loan in the amount of $324.8 million, collateralized by 261 of our properties, and two mezzanine loans totaling $175.2 million. The loans have a maturity date of April 10, 2017. The first mortgage loan has five fixed rate components and a floating rate component. The fixed rate components bear interest at a rate of 2.37% to 6.81% per annum. The floating rate component bears interest at a rate per annum equal to the 30-day LIBOR rate (with a floor of 1%) plus 2.37%. The first mezzanine loan bears interest at a rate of 9.0% per annum, and the second mezzanine loan bears interest at a rate of 11.25% per annum. The proceeds from the 2012 CMBS Loan, together with the proceeds from the Sale-Leaseback Transaction in March 2012 (see "—Liquidity

and Capital Resources—Transactions") and excess cash held in PRP, were used to repay the existing CMBS Loan. As a result of the 2012 CMBS Loan refinancing, the net amount repaid along with scheduled maturities within one year, $281.3 million, was classified as current at December 31, 2011. During the first quarter of 2012, we recorded a $2.9 million Loss on extinguishment of debt. See "Description of Indebtedness" for a further description of the 2012 CMBS Loan.

On June 14, 2007, OSI issued Senior Notes in an original aggregate principal amount of $550.0 million under an indenture among OSI, as issuer, OSI Co-Issuer, Inc., as co-issuer ("Co-Issuer"), a third-party trustee and the Guarantors. The Senior Notes mature on June 15, 2015. Interest is payable semiannually in arrears, at 10% per annum, in cash on each June 15 and December 15. Interest payments to the holders of record of the Senior Notes occur on the immediately preceding June 1 and December 1. Interest is computed on the basis of a 360-day year consisting of twelve 30-day months. The principal balance of Senior Notes outstanding at December 31, 2011 and 2010 was $248.1 million. See "Description of Indebtedness" for a further description of the Senior Notes.

We may from time to time seek to retire or purchase our outstanding debt through cash purchases in the open market, privately negotiated transactions or otherwise. Such repurchases or exchanges, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved may be material.

During the first quarter of 2009, OSI purchased $240.1 million in aggregate principal amount of its Senior Notes in a cash tender offer. OSI paid $73.0 million for the Senior Notes purchased and $6.7 million of accrued interest. We recorded a gain from the extinguishment of debt of $158.1 million in the line item "Gain on extinguishment of debt" in our Consolidated Statement of Operations for the year ended December 31, 2009. The gain was reduced by $6.1 million for the pro rata portion of unamortized deferred financing fees that related to the extinguished Senior Notes and by $3.0 million for fees related to the tender offer. The purpose of the tender offer was to reduce the principal amount of debt outstanding, reduce the related debt service obligations and improve OSI's financial covenant position under its senior secured credit facilities.

As of December 31, 2011 and 2010, OSI had approximately $9.1 million and $7.6 million, respectively, of notes payable at interest rates ranging from 0.76% to 7.00% and from 1.07% to 7.00%, respectively. These notes have been primarily issued for buyouts of managing and area operating partner interests in the cash flows of their restaurants and generally are payable over a period of two through five years.

Debt Guarantees

OSI is the guarantor of an uncollateralized line of credit that permits borrowing of up to $24.5 million for its joint venture partner, RY-8, in the development of Roy's restaurants. The line of credit originally expired in December 2004 and was amended for a fourth time on April 1, 2009 to a revised termination date of April 15, 2013. According to the terms of the credit agreement, RY-8 may borrow, repay, re-borrow or prepay advances at any time before the termination date of the agreement. On the termination date of the agreement, the entire outstanding principal amount of the loan then outstanding and any accrued interest is due. At December 31, 2011 and 2010, the outstanding balance on the line of credit was $24.5 million.

RY-8's obligations under the line of credit are unconditionally guaranteed by OSI and Roy's Holdings, Inc. ("RHI"). If an event of default occurs, as defined in the agreement, the total outstanding balance, including any accrued interest, is immediately due from the guarantors. At December 31, 2011 and 2010, $24.5 million of OSI's $150.0 million working capital revolving credit facility was committed for the issuance of a letter of credit for this guarantee.

OSI is not aware of any non-compliance with the underlying terms of the borrowing agreements for which it provides a guarantee that would result in it having to perform in accordance with the terms of the guarantee.

Goodwill and Indefinite-Lived Intangible Assets

During the second quarter of 2011, we performed our annual assessment for impairment of goodwill and other indefinite-lived intangible assets. Our review of the recoverability of goodwill was based primarily upon an analysis of the discounted cash flows of the related reporting units as compared to the carrying values. We also used the discounted cash flow method to determine the fair value of our indefinite-lived intangible assets. We did not record any goodwill or indefinite-lived intangible asset impairment charges as a result of this assessment and determined that none of our reporting units are at risk for material goodwill impairment.

Fair Value Measurements

Fair value is the price that would be received upon sale of an asset or paid upon transfer of a liability in an orderly transaction between market participants at the measurement date (exit price) and is a market-based measurement, not an entity-specific measurement. To measure fair value, we incorporate assumptions that market participants would use in pricing the asset or liability, and utilize market data to the maximum extent possible. Measurement of fair value incorporates nonperformance risk (i.e., the risk that an obligation will not be fulfilled). In measuring fair value, we reflect the impact of our own credit risk on our liabilities, as well as any collateral. We also consider the credit standing of our counterparties in measuring the fair value of our assets.

We are highly leveraged and are exposed to interest rate risk to the extent of our variable-rate debt. In September 2007, we entered into an interest rate collar with a notional amount of $1.0 billion as a method to limit the variability of OSI's senior secured credit facilities. The collar consisted of a LIBOR cap of 5.75% and a LIBOR floor of 2.99%. The collar's first variable-rate set date was December 31, 2007, and the option pairs expired at the end of each calendar quarter beginning March 31, 2008 and ending September 30, 2010. The quarterly expiration dates corresponded to the scheduled amortization payments of OSI's term loan. Our interest rate collar matured on September 30, 2010. We expensed $19.9 million and $21.4 million of interest for the years ended December 31, 2010 and 2009, respectively, as a result of the quarterly expiration of the collar's option pairs. We recorded mark-to-market changes in the fair value of the derivative instrument in earnings in the period of change. We included $18.5 million and $5.8 million of net interest income for the years ended December 31, 2010 and 2009, respectively, in the line item "Interest expense" in our Consolidated Statements of Operations for the mark-to-market effects of this derivative instrument.

We used an interest rate cap with a notional amount of $775.7 million as a method to limit the volatility of PRP's variable-rate CMBS Loan. Under this interest rate cap, interest rate payments had a ceiling of 6.31%. If the market rate exceeded the ceiling, the counterparty was required to pay us an amount sufficient to reduce the interest payment to 6.31%. The interest rate cap did not have any fair market value at December 31, 2011 and 2010. If necessary, we would record mark-to-market changes in the fair value of this derivative instrument in earnings in the period of change. The effects of this interest rate cap were immaterial to our consolidated financial statements for all periods presented.

We invested $37.7 million and $51.4 million of our excess cash in money market funds classified as Cash and cash equivalents or restricted cash on our Consolidated Balance Sheet at December 31, 2011 and 2010 at a net value of 1:1 for each dollar invested. The fair value of the investment in the money market funds is determined by using quoted prices for identical assets in an active market. As a result, we have determined that the inputs used to value this investment fall within Level 1 of the fair value hierarchy.

During the year ended December 31, 2011, we did not have any goodwill and other indefinite-lived intangible asset impairment charges, but we did incur impairment charges on long-lived assets held and used as a result of fair value measurements on a nonrecurring basis. We used a discounted cash flow model (Level 3) and quoted prices from brokers (Level 1) to estimate the fair value of the long-lived assets. Discount rate and growth rate assumptions are derived from current economic conditions, expectations of management and projected

trends of current operating results. We recorded $11.6 million of impairment charges as a result of the fair value measurement on a nonrecurring basis of our long-lived assets held and used during the year ended December 31, 2011. The impaired long-lived assets had $30.8 million of remaining fair value at December 31, 2011.

Sales declines at our restaurants, unplanned increases in health insurance, commodity or labor costs, deterioration in overall economic conditions and challenges in the restaurant industry may result in future impairment charges. It is possible that changes in circumstances or changes in our judgments, assumptions and estimates, could result in a future impairment charge of a portion or all of our goodwill, other intangible assets or long-lived assets held and used.

During the year ended December 31, 2010, we did not incur any goodwill and other indefinite-lived intangible asset impairment charges or any other material impairment charges as a result of fair value measurements on a nonrecurring basis.

We recorded $91.4 million of impairment charges as a result of the fair value measurement on a nonrecurring basis of our long-lived assets held and used during the year ended December 31, 2009. The impaired long-lived assets had $9.3 million of remaining fair value at December 31, 2009.

We performed a separate valuation for five of our closed restaurant sites that collateralize the CMBS Loan using quoted prices from brokers for similar properties. The restaurant sites were written down to fair value resulting in impairment charges of $7.3 million (included in the total above) during the year ended December 31, 2009. We determined that the majority of these inputs are observable inputs that fall within Level 2 of the fair value hierarchy.

Due to the third quarter of 2009 sale of our Cheeseburger in Paradise concept, we recorded a $46.0 million impairment charge (included in the total above) during the second quarter of 2009 to reduce the carrying value of this concept's long-lived assets to their estimated fair market value. We used a weighted-average probability analysis and estimates of expected future cash flows to determine the fair value of this concept. We have determined that the majority of the inputs used to value this concept are unobservable inputs that fall within Level 3 of the fair value hierarchy.

We used a discounted cash flow model to estimate the fair value of the remaining long-lived assets held and used in the total above. Discount rate and growth rate assumptions are derived from current economic conditions, expectations of management and projected trends of current operating results. We have determined that the majority of these inputs are unobservable inputs that fall within Level 3 of the fair value hierarchy. The long-lived assets were written down to fair value, resulting in impairment charges of $38.1 million (included in the total above) during the year ended December 31, 2009.

We recorded goodwill impairment charges of $58.1 million and indefinite-lived intangible asset impairment charges of $36.0 million during the year ended December 31, 2009 as a result of our annual impairment test. We test both our goodwill and our indefinite-lived intangible assets, which are trade names, for impairment by utilizing discounted cash flow models to estimate their fair values. These cash flow models

involve several assumptions. Changes in our assumptions could materially impact our fair value estimates. Assumptions critical to our fair value estimates are: (i) weighted-average cost of capital rates used to derive the present value factors used in determining the fair value of the reporting units and trade names; (ii) projected annual revenue growth rates used in the reporting unit and trade name models; and (iii) projected long-term growth rates used in the derivation of terminal year values. Other assumptions include estimates of projected capital expenditures and working capital requirements. These and other assumptions are impacted by economic conditions and expectations of management and will change in the future based on period-specific facts and circumstances. As a result, we have determined that the majority of the inputs used to value our goodwill and indefinite-lived intangible assets are unobservable inputs that fall within Level 3 of the fair value hierarchy.

The following table presents the range of assumptions we used to derive our fair value estimates among our reporting units, which vary between goodwill and trade names, during the annual impairment test conducted in the second quarter of 2009:

	Assumptions	
	Goodwill	Trade Names
Weighted-average cost of capital	12.5% -15.0%	13.0% -14.0%
Long-term growth rates	3.0%	3.0%
Annual revenue growth rates	(6.9)% -12.0%	(3.9)% - 5.0%

Stock-Based and Deferred Compensation Plans

Managing and Chef Partners

Historically, the managing partner of each company-owned domestic restaurant and the chef partner of each Fleming's and Roy's restaurant were required, as a condition of employment, to sign a five-year employment agreement and to purchase a non-transferable ownership interest in a partnership ("Management Partnership") that provided management and supervisory services to his or her restaurant. The purchase price for a managing partner's ownership interest was fixed at $25,000, and the purchase price for a chef partner's ownership interest ranged from $10,000 to $15,000. Managing and chef partners had the right to receive monthly distributions from the Management Partnership based on a percentage of their restaurant's monthly cash flows for the duration of the agreement, which varied by concept from 6% to 10% for managing partners and 2% to 5% for chef partners. Further, managing and chef partners were eligible to participate in the Partner Equity Plan ("PEP"), a deferred compensation program, upon completion of their five-year employment agreement.

In April 2011, we implemented modifications to our managing and chef partner compensation structure to provide greater incentives for sales and profit growth. Under the revised program, managing and chef partners continue to sign five-year employment agreements and receive monthly distributions of the same percentage of their restaurant's cash flow as under the prior program. However, under the revised program, in lieu of participation in the PEP, managing partners and chef partners are eligible to receive deferred compensation payments under a new Partner Ownership Account Plan (the "POA"). The POA places greater emphasis on year-over-year growth in cash flow than the PEP. Managing and chef partners will receive a greater value under the POA than they would have received under the PEP if certain levels of year-over-year cash flow growth are achieved and a lesser value than under the PEP if these levels are not achieved.

The POA requires managing and chef partners to make an initial deposit of up to $10,000 into their "Partner Investment Account," and we will make a bookkeeping contribution to each partner's "Company Contributions Account" no later than the end of February of each year following the completion of each year (or partial year where applicable) under the partner's employment agreement. The value of each of our contributions will be equal to a percentage of the partner's restaurant's positive distributable cash flow plus, if the restaurant has been open at least 18 calendar months, a percentage of the year-over-year increase in the restaurant's positive distributable cash flow in accordance with the terms described in the partner's employment agreement.

The revised program also provides an annual bonus known as the President's Club, paid in addition to the monthly distributions of cash flow, designed to reward increases in annual sales above the concept sales plan with a required flow-through percentage of the incremental sales to cash flow. Managing and chef partners whose restaurants achieve certain annual sales targets (and the required flow-through percentage) receive a bonus equal to a percentage of the incremental sales, such percentage determined by the sales target achieved.

Amounts credited to each partner's account under the POA may be allocated by the partner among benchmark funds offered under the POA, and the account balances of the partner will increase or decrease based on the performance of the benchmark funds. Upon termination of employment, all remaining balances in the Company Contributions Account in the POA are forfeited unless the partner has been with us for twenty years or more. Unless previously forfeited under the terms of the POA, 50% of the partner's total account balances generally will be distributed in the March following the completion of the initial five-year contract term with subsequent distributions varying based on the length of continued employment as a partner. The deferred compensation obligations under the POA are our unsecured obligations.

All managing and chef partners who execute new employment agreements after May 1, 2011 are required to participate in the new partner program, including the POA. Managing and chef partners with a current employment agreement scheduled to expire December 1, 2011 or later had the opportunity (from April 27, 2011 through July 27, 2011) to amend their employment agreements to convert their existing partner program to participation in the new partner program, including the POA, effective June 1, 2011. As a result of this conversion, $2.7 million of our total partner deposit liability was accelerated for the return of partners' capital that was required under the old program. As of December 31, 2011, our POA liability was $8.0 million which was recorded in the line item "Partner deposits and accrued partner obligations" in our Consolidated Balance Sheet.

Upon the closing of the Merger, certain stock options that had been granted to managing and chef partners under a pre-merger managing partner stock plan (the "MP Stock Plan") upon completion of a previous employment contract were converted into the right to receive cash in the form of a "Supplemental PEP" contribution. Additionally, all outstanding, unvested partner employment grants of restricted stock under the MP Stock Plan were converted into the right to receive cash on a deferred basis. Additionally, certain members of management were given the option to either convert some or all of their restricted stock granted under the pre-merger stock plan in the same manner as managing partners or convert some or all of it into restricted stock of Kangaroo Holdings, now known as Bloomin' Brands. Grants of restricted stock under the pre-merger stock plan that converted into the right to receive cash are referred to as "Restricted Stock Contributions."

As of December 31, 2011, our total vested liability with respect to obligations primarily under the PEP, Supplemental PEP and Restricted Stock Contributions was approximately $107.8 million, of which $11.8 million and $96.0 million was included in the line items "Accrued and other current liabilities" and "Other long-term liabilities," respectively, in our Consolidated Balance Sheet. As of December 31, 2010, our total vested liability with respect to obligations primarily under the PEP, Supplemental PEP and Restricted Stock Contributions was approximately $101.4 million, of which $14.0 million and $87.5 million was included in the line items "Accrued and other current liabilities" and "Other long-term liabilities," respectively, in our Consolidated Balance Sheet. Partners and management may allocate the contributions into benchmark investment funds, and these amounts due to participants will fluctuate according to the performance of their allocated investments and may differ materially from the initial contribution and current obligation.

Prior to the Merger, certain partners participating in the PEP were to receive common stock ("Partner Shares") upon completion of their employment contract. Upon closing of the Merger, these partners were entitled to receive a deferred payment of cash instead of common stock upon completion of their current employment term. Partners will not receive the deferred cash payment if they resign or are terminated for cause prior to completing their current employment terms. There will not be any future earnings or losses on these amounts prior to payment to the partners. The amount accrued for the Partner Shares obligation was approximately $0.7

million as of December 31, 2011 and was included in the line item "Accrued and other current liabilities" in our Consolidated Balance Sheet. The amount accrued for the Partner Shares obligation was approximately $6.6 million as of December 31, 2010, of which $6.5 million and $0.1 million was included in the line items "Accrued and other current liabilities" and "Other long-term liabilities," respectively, in our Consolidated Balance Sheet.

As of December 31, 2011 and 2010, we had approximately $56.9 million and $58.0 million, respectively, in various corporate owned life insurance policies and another $0.3 million and $1.0 million, respectively, of restricted cash, both of which are held within an irrevocable grantor or "rabbi" trust account for settlement of our obligations under the PEP, Supplemental PEP, Restricted Stock Contributions and POA. We are the sole owner of any assets within the rabbi trust and participants are considered our general creditors with respect to assets within the rabbi trust.

As of December 31, 2011 and 2010, there were $55.6 million and $49.0 million, respectively, of unfunded obligations related to the PEP, Supplemental PEP, Restricted Stock Contributions, Partner Shares liabilities and POA, excluding amounts not yet contributed to the partners' investment funds, which may require the use of cash resources in the future.

We require the use of capital to fund the PEP and the POA as each managing and chef partner earns a contribution, and currently estimate funding requirements ranging from $21.0 million to $23.0 million for PEP and from $4.0 million to $6.0 million for POA in each of the two years through December 31, 2013. Actual funding of the current PEP and POA obligations and future funding requirements may vary significantly depending on timing of partner contracts, forfeiture rates and numbers of partner participants and may differ materially from estimates.

Area Operating Partners

Area operating partners are required, as a condition of employment and within 30 days of the opening of his or her first restaurant, to make an initial investment of $50,000 in the Management Partnership that provides supervisory services to the restaurants that the area operating partner oversees. This interest gives the area operating partner the right to distributions from the Management Partnership based on a percentage of his or her restaurants' monthly cash flows for the duration of the agreement, typically ranging from 4% to 9%. We have the option to purchase an area operating partner's interest in the Management Partnership after the restaurant has been open for a five-year period on the terms specified in the agreement.

For restaurants opened on or after January 1, 2007, the area operating partner's percentage of cash distributions and buyout percentage is calculated based on the associated restaurant's return on investment compared to our targeted return on investment and may range from 3.0% to 12.0%. This percentage is determined after the first five full calendar quarters from the date of the associated restaurant's opening and is adjusted each quarter thereafter based on a trailing 12-month restaurant return on investment. The buy-out percentage is the area operating partner's average distribution percentage for the 24 months immediately preceding the buy-out. Buyouts are paid in cash within 90 days or paid over a two-year period.

In 2011, we also began a version of the President's Club annual bonus described above under "—Managing and Chef Partners" for area operating partners to provide additional rewards for achieving sales targets with a required flow-through of the incremental sales to cash flow.

Highly Compensated Employees

We provide a deferred compensation plan for our highly compensated employees who are not eligible to participate in the OSI Restaurant Partners, LLC Salaried Employees 401(k) Plan and Trust. The deferred compensation plan allows these employees to contribute from 5% to 90% of their base salary and up to 100% of their cash bonus on a pre-tax basis to an investment account consisting of various investment fund options. We

do not currently intend to provide any matching or profit-sharing contributions, and participants are fully vested in their deferrals and their related returns. Participants are considered unsecured general creditors in the event of our bankruptcy or insolvency.

Income Taxes

As of December 31, 2011, we had $482.1 million in cash and cash equivalents (excluding restricted cash of $24.3 million), of which approximately $82.2 million was held by foreign affiliates, a portion of which would be subject to additional taxes if repatriated to the United States. Based on domestic cash and working capital projections, we believe we will generate sufficient cash flows from our United States operations to meet our future debt repayment requirements, anticipated working capital needs and planned capital expenditures in the United States, as well as all of our other domestic business needs.

A provision for income taxes has not been recorded for any United States or additional foreign taxes on undistributed earnings related to our foreign affiliates as these earnings were and are expected to continue to be permanently reinvested. If we identify an exception to our general reinvestment policy of undistributed earnings, additional taxes will be posted. It is not practical to determine the amount of unrecognized deferred income tax liabilities on the undistributed earnings. The international jurisdictions in which we operate do not have any known restrictions that would prohibit the repatriation of cash and cash equivalents.

Dividends

Payment of dividends by OSI to Bloomin' Brands is prohibited under OSI's credit agreements, except for certain limited circumstances.

Our board of directors does not intend to pay regular dividends on our common stock after the offering. However, we expect to reevaluate our dividend policy on a regular basis following the offering and may, subject to compliance with the covenants contained in our senior credit facility and other considerations, determine to pay dividends in the future.

Other Material Commitments

Our contractual obligations, debt obligations, commitments and debt guarantees as of December 31, 2011 are summarized in the table below (in thousands):

	Payments Due By Period				
	Total	Less Than 1 Year	1-3 Years	3-5 Years	More Than 5 Years
Contractual Obligations					
Long-term debt (including current portion) (1)	$ 2,084,790	$ 332,905	$1,025,357	$270,746	$455,782
Interest (2)	309,580	82,169	148,525	71,667	7,219
Operating leases (3)	503,379	106,258	179,945	110,046	107,130
Purchase obligations (4)	430,069	365,680	51,809	12,580	—
Partner deposits and accrued partner obligations (5)	113,725	15,044	52,659	12,669	33,353
Other long-term liabilities (6)	153,840	—	49,202	54,615	50,023
Other current liabilities (7)	41,383	41,383	—	—	—
Total contractual obligations	$3,636,766	$ 943,439	$1,507,497	$ 532,323	$653,507
Debt Guarantees					
Maximum availability of debt guarantees	$ 25,957	$ —	$ 24,500	$ —	$ 1,457
Amount outstanding under debt guarantees	25,957	—	24,500	—	1,457
Carrying amount of liabilities	24,500	—	24,500	—	—

(1) Timing of long-term debt payments assume that OSI's rent-adjusted leverage ratio is greater than or equal to 5.25 to 1.00. Long-term debt excludes our potential obligations under debt guarantees (shown separately above). Amounts include the CMBS Loan totaling $790.0 million, which had a maturity date of June 9, 2012. Effective March 27, 2012, New PRP entered into the 2012 CMBS Loan totaling $500.0 million. The 2012 CMBS Loan is a five-year loan maturing on April 10, 2017. As a result of the 2012 CMBS Loan refinancing, the net amount repaid along with scheduled maturities within one year, $281.3 million, was classified as current at December 31, 2011 (see "Description of Indebtedness").

(2) Includes interest on OSI's Senior Notes with an outstanding balance of $248.1 million and interest estimated on OSI's senior secured term loan facility, OSI's senior secured pre-funded revolving credit facility and the CMBS Loan with outstanding balances of $1.0 billion, $33.0 million and $775.3 million, respectively, at December 31, 2011. Projected future interest payments for OSI's variable-rate senior secured credit facilities are based on interest rates in effect at December 31, 2011, and projected future interest payments for the CMBS Loan are based on interest rates in effect during the first quarter of 2012 as well as the interest rate that will apply to the 2012 CMBS Loan. Interest obligations also include letter of credit and commitment fees for the used and unused portions of OSI's senior secured working capital revolving credit facility, commitment fees for the used and unused portions of OSI's pre-funded revolving credit facility and interest related to OSI's capital lease obligations. Interest on OSI's notes payable issued for the return of capital to managing and area operating partners and the buyouts of area operating partner interests has been excluded from the table. In addition, interest expense associated with deferred financing fees was excluded from the table as the expense is non-cash in nature.

(3) Total minimum lease payments have not been reduced by minimum sublease rentals of $3.0 million due in future periods under non-cancelable subleases. On March 14, 2012, we entered into the Sale-Leaseback Transaction with two third-party real estate institutional investors in which we sold 67 restaurant properties and then simultaneously leased these properties back under nine master leases with initial terms of 20 years each. As a result, we will have an additional $362.6 million of operating lease payments over the initial terms of these lease agreements.

(4) We have minimum purchase commitments with various vendors through June 2016. Outstanding minimum purchase commitments consist primarily of beef, cheese, potatoes and other food and beverage products, as well as, commitments for advertising, marketing, sports sponsorships, printing and technology.

(5) Timing of payments of partner deposits and accrued partner obligations are estimates only and may vary significantly in amounts and timing of settlement based on employee turnover, return of deposits to us in accordance with employee agreements and changes to buyout values of employee partners.

(6) Other long-term liabilities include but are not limited to: long-term insurance accruals, long-term incentive plan compensation for certain officers, long-term portion of amounts owed to managing and chef partners and certain members of management for various compensation programs, long-term portion of operating leases for closed restaurants, long-term severance expenses and long-term split dollar arrangements on life insurance policies. The long-term portion of the liability for unrecognized tax benefits and the related accrued interest and penalties were $1.5 million and $1.2 million, respectively, at December 31, 2011. These amounts were excluded from the table since it is not possible to estimate when these future payments will occur. In addition, net unfavorable leases and other miscellaneous items of approximately $62.3 million at December 31, 2011 were excluded from the table as payments are not associated with these liabilities.

(7) Other current liabilities include the current portion of the liability for unrecognized tax benefits and the accrued interest and penalties related to uncertain tax positions, the current portion of insurance accruals, the current portion of operating leases for closed restaurants, the current portion of severance expenses and the current portion of amounts owed to managing and chef partners and certain members of management for various compensation programs.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these accompanying consolidated financial

statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities during the reporting period. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We consider an accounting estimate to be critical if it requires assumptions to be made and changes in these assumptions could have a material impact on our consolidated financial condition or results of operations.

Property, Fixtures and Equipment

Property, fixtures and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed on the straight-line method over the estimated useful lives of the assets. Improvements to leased properties are depreciated over the shorter of their useful life or the lease term, which includes renewal periods that are reasonably assured. The useful lives of the assets are based upon our expectations for the period of time that the asset will be used to generate revenues. We periodically review the assets for changes in circumstances, which may impact their useful lives.

Buildings and building improvements	20 to 30 years
Furniture and fixtures	5 to 7 years
Equipment	2 to 7 years
Leasehold improvements	5 to 20 years
Capitalized software	3 to 5 years

Our accounting policies regarding property, fixtures and equipment include certain management judgments and projections regarding the estimated useful lives of these assets, the residual values to which the assets are depreciated or amortized, the determination of expected lease terms and the determination of what constitutes increasing the value and useful life of existing assets. These estimates, judgments and projections may produce materially different amounts of depreciation and amortization expense than would be reported if different assumptions were used.

Operating Leases

Rent expense for our operating leases, which generally have escalating rentals over the term of the lease and may include potential rent holidays, is recorded on a straight-line basis over the initial lease term and those renewal periods that are reasonably assured. The initial lease term includes the “build-out” period of our leases, which is typically before rent payments are due under the terms of the lease. The difference between rent expense and rent paid is recorded as deferred rent and is included in the Consolidated Balance Sheets. Payments received from landlords as incentives for leasehold improvements are recorded as deferred rent and are amortized on a straight-line basis over the term of the lease as a reduction of rent expense. Lease termination fees, if any, and future obligated lease payments for closed locations are recorded as an expense in the period they are incurred. Exit-related lease obligations of $0.8 million and $1.1 million are recorded in “Accrued and other current liabilities” and $0.4 million and $0.4 million are recorded in “Other long-term liabilities” in our Consolidated Balance Sheets as of December 31, 2011 and 2010, respectively. Assets and liabilities resulting from the Merger relating to favorable and unfavorable lease amounts are amortized on a straight-line basis to rent expense over the remaining lease term.

Impairment or Disposal of Long-Lived Assets

We assess the potential impairment of definite lived intangibles, including trademarks, franchise agreements and net favorable leases, and other long-lived assets whenever events or changes in circumstances indicate that the carrying value may not be recoverable. In evaluating long-lived restaurant assets for impairment, we consider a number of factors relevant to the assets’ current market value and future ability to generate cash flows.

If these factors indicate that we should review the carrying value of the restaurant's long-lived assets, we perform a two-step impairment analysis. Each of our restaurants is evaluated individually for impairment since that is the lowest level at which identifiable cash flows can be measured independently from cash flows of other asset groups. If the total future undiscounted cash flows expected to be generated by the assets are less than the carrying amount, as prescribed by step one testing, recoverability is measured in step two by comparing fair value of the asset to its carrying amount. Should the carrying amount exceed the asset's estimated fair value, an impairment loss is charged to earnings. Restaurant fair value is determined based on estimates of discounted future cash flows; and impairment charges primarily occur as a result of the carrying value of a restaurant's assets exceeding its estimated fair market value, primarily due to anticipated closures or declining future cash flows from lower projected future sales at existing locations.

The company incurred total long-lived asset impairment charges and restaurant closing expense of $14.0 million, $5.2 million and $95.4 million for the years ended December 31, 2011, 2010 and 2009, respectively (see "—Results of Operations—Costs and Expenses—Provision for Impaired Assets and Restaurant Closings"). All impairment charges are recorded in the line item "Provision for impaired assets and restaurant closings" in our Consolidated Statements of Operations.

Our judgments and estimates related to the expected useful lives of long-lived assets are affected by factors such as changes in economic conditions, operating performance and expected use. As we assess the ongoing expected cash flows and carrying amounts of our long-lived assets, these factors could cause us to realize a material impairment charge.

Restaurant sites and certain other assets to be sold are included in assets held for sale when certain criteria are met, including the requirement that the likelihood of selling the assets within one year is probable. For assets that meet the held for sale criteria, we separately evaluate whether the assets also meet the requirements to be reported as discontinued operations. If we no longer had any significant continuing involvement with respect to the operations of the assets and cash flows were discontinued, we would classify the assets and related results of operations as discontinued. Assets whose sale is not probable within one year remain in property, fixtures and equipment until their sale is probable within one year. We had $1.3 million of assets held for sale as of December 31, 2011 and did not have any assets classified as held for sale as of December 31, 2010.

Generally, restaurant closure costs are expensed as incurred. When it is probable that we will cease using the property rights under a non-cancelable operating lease, we record a liability for the net present value of any remaining lease obligations net of estimated sublease income that can reasonably be obtained for the property. The associated expense is recorded in "Provision for impaired assets and restaurant closings." Any subsequent adjustments to the liability from changes in estimates are recorded in the period incurred.

Goodwill and Indefinite-Lived Intangible Assets

Our indefinite-lived intangible assets consist only of goodwill and our trade names. Goodwill represents the residual after allocation of the purchase price to the individual fair values and carryover basis of assets acquired. On an annual basis (during the second quarter of the fiscal year) or whenever events or changes in circumstances indicate that the carrying amounts may not be recoverable, we review the recoverability of goodwill and indefinite-lived intangible assets. The impairment test for goodwill involves comparing the fair value of the reporting units to their carrying amounts. If the carrying amount of a reporting unit exceeds its fair value, a second step is required to measure a goodwill impairment loss, if any. This step revalues all assets and liabilities of the reporting unit to their current fair values and then compares the implied fair value of the reporting unit's goodwill to the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds the implied fair value of the goodwill, an impairment loss is recognized in an amount equal to the excess. The impairment test for trade names involves comparing fair value of the trade name, as determined through a discounted cash flow approach, to its carrying value.

We test both our goodwill and our trade names for impairment primarily by utilizing discounted cash flow models to estimate their fair values. These cash flow models involve several assumptions. Changes in our assumptions could materially impact our fair value estimates. Assumptions critical to our fair value estimates are: (i) weighted-average cost of capital rates used to derive the present value factors used in determining the fair value of the reporting units and trade names; (ii) projected annual revenue growth rates used in the reporting unit and trade name models; and (iii) projected long-term growth rates used in the derivation of terminal year values. Other assumptions include estimates of projected capital expenditures and working capital requirements. These and other assumptions are impacted by economic conditions and expectations of management and will change in the future based on period-specific facts and circumstances.

We performed our annual impairment test in the second quarter of 2011 and determined at that time that none of our four reporting units with remaining goodwill were at risk for material goodwill impairment since the fair value of each reporting unit was substantially in excess of its carrying amount. We did not record any goodwill or indefinite-lived intangible asset impairment charges during the years ended December 31, 2011 and 2010. As a result of our annual impairment test in the second quarter of 2009, we recorded goodwill and indefinite-lived intangible asset impairment charges of $58.1 million and $36.0 million, respectively.

Sales declines at our restaurants, unplanned increases in health insurance, commodity or labor costs, deterioration in overall economic conditions and challenges in the restaurant industry may result in future impairment charges. It is possible that changes in circumstances or changes in our judgments, assumptions and estimates could result in an impairment charge of a portion or all of our goodwill or other intangible assets.

Insurance Reserves

We self-insure or maintain a deductible for a significant portion of expected losses under our workers' compensation, general liability, health and property insurance programs. We purchase insurance for individual claims that exceed the amounts listed in the following table:

	2011	2012
Workers' Compensation	$ 1,500,000	$ 1,500,000
General Liability	1,500,000	1,500,000
Health (1)	400,000	400,000
Property Coverage (2)	2,500,000 / 500,000	2,500,000 / 500,000
Employment Practices Liability	2,000,000	2,000,000
Directors' and Officers' Liability	250,000	250,000
Fiduciary Liability	25,000	25,000

(1) We are self-insured for all aggregate health benefits claims, limited to $0.4 million per covered individual per year. In 2011 and 2012, we retained the first $0.3 million of payable losses under the plan as an additional deductible.

(2) We have a $0.5 million deductible per occurrence for those properties that collateralize the 2012 CMBS Loan and a $2.5 million deductible per occurrence for all other locations. Property limits are $60.0 million each occurrence, and we do not quota share in any loss above either deductible level.

We record a liability for all unresolved claims and for an estimate of incurred but not reported claims at the anticipated cost to us. In establishing our reserves, we consider certain actuarial assumptions and judgments regarding economic conditions, the frequency and severity of claims and claim development history and settlement practices. Unanticipated changes in these factors or future adjustments to these estimates may produce materially different amounts of expense that would be reported under these programs. Reserves recorded for worker's compensation and general liability claims are discounted using the average of the 1-year and 5-year risk free rate of monetary assets that have comparable maturities. When recovery for an insurance policy is considered probable, a receivable is recorded.

Revenue Recognition

We record food and beverage revenues upon sale. Initial and developmental franchise fees are recognized as income once we have substantially performed all of our material obligations under the franchise agreement, which is generally upon the opening of the franchised restaurant. Continuing royalties, which are a percentage of net sales of the franchisee, are recognized as income when earned. Franchise-related revenues are included in the line "Other revenues" in our Consolidated Statements of Operations.

We defer revenue for gift cards, which do not have expiration dates, until redemption by the customer. We also recognize gift card "breakage" revenue for gift cards when the likelihood of redemption by the customer is remote, which we determined are those gift cards issued on or before three years prior to the balance sheet date. We recorded breakage revenue of $11.1 million, $11.0 million and $9.3 million for the years ended December 31, 2011, 2010 and 2009, respectively. Breakage revenue is recorded as a component of "Restaurant sales" in our Consolidated Statements of Operations.

Gift cards sold at a discount are recorded as revenue upon redemption of the associated gift cards at an amount net of the related discount. Gift card sales commissions paid to third-party providers are initially capitalized and subsequently recognized as "Other restaurant operating" expenses upon redemption of the associated gift card. Deferred expenses are $9.7 million and $8.1 million as of December 31, 2011 and 2010, respectively, and are reflected in "Other current assets" in our Consolidated Balance Sheets. Gift card sales that are accompanied by a bonus gift card to be used by the customer at a future visit result in a separate deferral of a portion of the original gift card sale. Revenue is recorded when the bonus card is redeemed at a value based on the estimated fair market value of the bonus card.

We collect and remit sales, food and beverage, alcoholic beverage and hospitality taxes on transactions with customers and report such amounts under the net method in our Consolidated Statements of Operations. Accordingly, these taxes are not included in gross revenue.

Employee Partner Payments and Buyouts

The managing partner of each company-owned domestic restaurant and the chef partner of each Fleming's and Roy's company-owned domestic restaurant, as well as area operating partners, generally receive distributions or payments for providing management and supervisory services to their restaurants based on a percentage of their associated restaurants' monthly cash flows. The expense associated with the monthly payments for managing and chef partners is included in "Labor and other related" expenses, and the expense associated with the monthly payments for area operating partners is included in "General and administrative" expenses in our Consolidated Statements of Operations.

We estimate future purchases of area operating partners' interests, as well as deferred compensation obligations to managing and chef partners, using current and historical information on restaurant performance and record the partner obligations in the line item "Partner deposits and accrued partner obligations" in our Consolidated Balance Sheets. In the period we purchase the area operating partner's interests, an adjustment is recorded to recognize any remaining expense associated with the purchase and reduce the related accrued buyout liability. Deferred compensation expenses for managing and chef partners are included in "Labor and other related" expenses and buyout expenses for area operating partners are included in "General and administrative" expenses in our Consolidated Statements of Operations.

Stock-Based Compensation

Our 2007 Equity Incentive Plan (the "Equity Plan") permits the grant of stock options and restricted stock to our management and other key employees. We account for our stock-based employee compensation using a fair value based method of accounting.

Generally, stock options vest and become nominally exercisable in 20% increments over a period of five years contingent on continued employee service. Shares acquired upon the exercise of stock options under the Equity Plan are generally subject to a stockholder's agreement that contains a management call option that allows us to repurchase all shares purchased through exercise of stock options upon termination of employment at any time prior to the earlier of an initial public offering or a change of control. If an employee's termination of employment is a result of death or disability, by us other than for cause or by the employee for good reason, we may repurchase exercised stock under this call option at fair market value. If an employee's termination of employment is by us for cause or by the employee without good reason, we may repurchase the stock under this call provision for the lesser of the exercise price or fair market value. Additionally, the holder of shares acquired upon the exercise of stock options is prohibited from transferring the shares to any person, subject to narrow exceptions, and should a permitted transfer occur, the transferred shares remain subject to the management call option. As a result of the transfer restrictions and call option, we do not record compensation expense for these stock options upon vesting since employees cannot realize monetary benefit from the options or any shares acquired upon the exercise of the options unless the employee is employed at the time of an initial public offering or change of control. There have not been any exercises of stock options by any employee to date, and all stock options of terminated employees with a call provision have been forfeited.

We use the Black-Scholes option pricing model to estimate the weighted-average grant date fair value of stock options granted. Expected volatilities are based on historical volatilities of the stock of comparable companies. The expected term of options granted represents the period of time that options granted are expected to be outstanding. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. Results may vary depending on the assumptions applied within the model. The benefits of tax deductions in excess of recognized compensation cost, if any, are reported as a financing cash flow.

We recorded compensation expense of $2.2 million for the year ended December 31, 2011 for vested stock options not subject to the call option described above. As of December 31, 2011, there is $5.7 million of total unrecognized compensation expense related to non-vested stock options not subject to the call option described above, which is expected to be recognized over a weighted-average period of approximately 3.7 years.

Compensation expense related to restricted stock awards for the year ended December 31, 2011 is $1.7 million and unrecognized pre-tax compensation expense related to non-vested restricted stock awards is approximately $0.8 million at December 31, 2011 and will be recognized over a weighted-average period of 0.5 years.

Income Taxes

In determining net income for financial statement purposes, we make certain estimates and judgments in the calculation of tax expense and the resulting tax liabilities as well as in the recoverability of deferred tax assets that arise from temporary differences between the tax and financial statement recognition of revenue and expense.

Deferred income tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred income tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in the tax rate is recognized in income in the period that includes the enactment date of the rate change. We recorded a valuation allowance to reduce our deferred income tax assets to the amount that is more likely than not to be realized. We have considered future taxable income and ongoing feasible tax planning strategies in assessing the need for the valuation allowance.

Judgments made regarding future taxable income may change due to changes in market conditions, changes in tax laws or other factors. If the assumptions and estimates change in the future, the valuation allowance established may be increased or decreased, resulting in a respective increase or decrease in income tax expense.

We use an estimate of our annual effective tax rate at each interim period based on the facts and circumstances available at that time while the actual effective tax rate is calculated at year-end.

Recently Issued Financial Accounting Standards

In May 2011, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") No. 2011-04, "Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs," ("ASU No. 2011-04") that establishes a number of new requirements for fair value measurements. These include: (i) a prohibition on grouping financial instruments for purposes of determining fair value, except when an entity manages market and credit risks on the basis of the entity's net exposure to the group; (ii) an extension of the prohibition against the use of a blockage factor to all fair value measurements (that prohibition currently applies only to financial instruments with quoted prices in active markets); and (iii) a requirement that for recurring Level 3 fair value measurements, entities disclose quantitative information about unobservable inputs, a description of the valuation process used and qualitative details about the sensitivity of the measurements. Additionally, for items not carried at fair value but for which fair value is disclosed, entities will be required to disclose the level within the fair value hierarchy that applies to the fair value measurement disclosed. ASU No. 2011-04 is effective for interim and annual periods beginning after December 15, 2011. While the provisions of ASU No. 2011-04 will increase our fair value disclosures, this guidance will not have an impact on our financial position, results of operations or cash flows.

In June 2011, the FASB issued ASU No. 2011-05, "Presentation of Comprehensive Income" ("ASU No. 2011-05"), which eliminates the option to report other comprehensive income and its components in the statement of changes in equity. Instead, the new guidance requires us to present the components of net income and other comprehensive income in one continuous statement, referred to as the statement of comprehensive income, or in two separate, but consecutive statements. While the new guidance changes the presentation of comprehensive income, there are no changes to the components that are recognized in net income or other comprehensive income under current accounting guidance. ASU No. 2011-05 must be applied retrospectively and is effective for public companies during the interim and annual periods beginning after December 15, 2011, with early adoption permitted. Additionally, in December 2011, the FASB issued ASU No. 2011-12, "Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05" ("ASU No. 2011-12"), which indefinitely defers the requirement in ASU No. 2011-05 to present reclassification adjustments out of accumulated other comprehensive income by component in both the statement in which net income is presented and the statement in which other comprehensive income is presented. The deferral of the presentation requirements does not impact the effective date of the other requirements in ASU 2011-05. During the deferral period, the existing requirements in generally accepted accounting principles in the United States ("U.S. GAAP") for the presentation of reclassification adjustments must continue to be followed. ASU No. 2011-12 is effective for public companies during the interim and annual periods beginning after December 15, 2011. ASU No. 2011-05 and ASU No. 2011-12 will not have an impact on our financial position, results of operations or cash flows as the guidance only requires a presentation change to comprehensive income.

In September 2011, the FASB issued ASU No. 2011-08, "Intangibles—Goodwill and Other (Topic 350)—Testing Goodwill for Impairment" ("ASU No. 2011-08"), which permits an entity to make a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying value before applying the two-step quantitative goodwill impairment test. If it is determined through the qualitative assessment that a reporting unit's fair value is more likely than not greater than its carrying value, the

remaining impairment steps would be unnecessary. The qualitative assessment is optional, allowing entities to go directly to the quantitative assessment. ASU No. 2011-08 is effective for annual and interim goodwill impairment tests performed in fiscal years beginning after December 15, 2011, with early adoption permitted. This guidance will not have a material impact on our financial position, results of operations or cash flows.

In December 2011, the FASB issued ASU No. 2011-10, "Property, Plant, and Equipment (Topic 360): Derecognition of in Substance Real Estate —a Scope Clarification" ("ASU No. 2011-10"), which applies to a parent company that ceases to have a controlling financial interest in a subsidiary, that is in substance real estate, as a result of a default on the subsidiary's nonrecourse debt. The new guidance emphasizes that the parent should only deconsolidate the real estate subsidiary when legal title to the real estate is transferred to the lender and the related nonrecourse debt has been extinguished. If the reporting entity ceases to have a controlling financial interest under subtopic 810-10, the reporting entity would continue to include the real estate, debt, and the results of the subsidiary's operations in its consolidated financial statements until legal title to the real estate is transferred to legally satisfy the debt. This standard takes effect for public companies during the annual and interim periods beginning on or after June 15, 2012. The adoption of this guidance is not expected to have a material impact on our financial statements.

In December 2011, the FASB issued ASU No. 2011-11, "Balance Sheet (Topic 210) -Disclosures about Offsetting Assets and Liabilities" ("ASU 2011-11"), which enhances current disclosures about financial instruments and derivative instruments that are either offset on the statement of financial position or subject to an enforceable master netting arrangement or similar agreement, irrespective of whether they are offset on the statement of financial position. The guidance requires us to provide both net and gross information for these assets and liabilities. ASU No. 2011-11 is effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods with retrospective application required. This guidance will not have an impact on our financial position, results of operations or cash flows as it only requires a presentation change to offsetting (netting) assets and liabilities.

Impact of Inflation

In the last three years, we have not operated in a period of high general inflation; however, we have experienced material increases in specific commodity costs. Our restaurant operations are subject to federal and state minimum wage laws governing such matters as working conditions, overtime and tip credits. Significant numbers of our food service and preparation personnel are paid at rates related to the federal and/or state minimum wage and, accordingly, increases in the minimum wage have increased our labor costs in the last three years. To the extent permitted by competition and the economy, we have mitigated increased costs by increasing menu prices and may continue to do so if deemed necessary in future years.

Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risk from changes in interest rates on debt, changes in foreign currency exchange rates and changes in commodity prices.

Interest Rate Risk

At December 31, 2011 and 2010, our total debt, excluding consolidated guaranteed debt, was approximately $2.1 billion. For fixed-rate debt, interest rate changes affect the fair value of debt. However, for variable-rate debt, interest rate changes generally impact our earnings and cash flows, assuming other factors are held constant. Our exposure to interest rate fluctuations includes OSI's borrowings under its senior secured credit facilities and PRP's commercial mortgage-backed securities loan that bear interest at floating rates based on the Eurocurrency Rate or the Base Rate and the one-month LIBOR, respectively, plus an applicable borrowing margin. We manage our interest rate risk by offsetting some of our variable-rate debt with fixed-rate debt, through normal operating and financing activities and, when deemed appropriate, through the use of derivative financial instruments.

We use an interest rate cap, which renews annually, to limit the volatility of PRP's variable-rate CMBS Loan. From September 2007 to September 2010, we used an interest rate collar as part of our interest rate risk management strategy to manage our exposure to interest rate movements related to OSI's senior secured credit facilities. Given the interest rate environment, we did not enter into another derivative financial instrument upon the maturity of this interest rate collar on September 30, 2010. We do not enter into financial instruments for trading or speculative purposes.

At December 31, 2011 and 2010, we had $248.1 million of fixed-rate debt outstanding through OSI's Senior Notes and $1.8 billion and $1.9 billion, respectively, of variable-rate debt outstanding on OSI's senior secured credit facilities and PRP's CMBS Loan. We also had $82.4 million and $79.7 million, respectively, in available unused borrowing capacity under OSI's working capital revolving credit facility (after giving effect to undrawn letters of credit of approximately $67.6 million and $70.3 million, respectively), and $67.0 million and $21.9 million, respectively, in available unused borrowing capacity under OSI's pre-funded revolving credit facility that provides financing for capital expenditures only. Based on $1.8 billion of outstanding variable-rate debt at December 31, 2011, an increase of one percentage point on January 1, 2012, would cause an increase to cash interest expense of approximately $18.2 million per year.

If a one percentage point increase in interest rates were to occur over the next four quarters, such an increase would result in the following additional interest expense, assuming the current borrowing level remains constant:

	Principal Outstanding at December 31,	Additional Interest Expense			
Variable-Rate Debt	2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012
Senior secured term loan facility, interest rate of 2.63% at December 31, 2011	$ 1,014,400,000	$ 2,536,000	$ 2,536,000	$ 2,536,000	$ 2,536,000
Senior secured pre-funded revolving credit facility, interest rate of 2.63% at December 31, 2011	33,000,000	82,500	82,500	82,500	82,500
Note payable, weighted average interest rate of 0.98% at December 31, 2011 (1)	466,319,000	1,165,798	1,165,798	1,165,798	1,165,798
First mezzanine note, interest rate of 3.28% at December 31, 2011 (1)	88,900,000	222,250	222,250	222,250	222,250
Second mezzanine note, interest rate of 3.53% at December 31, 2011 (1)	123,190,000	307,975	307,975	307,975	307,975
Third mezzanine note, interest rate of 3.54% at December 31, 2011 (1)	49,095,000	122,738	122,738	122,738	122,738
Fourth mezzanine note, interest rate of 4.53% at December 31, 2011 (1)	48,113,000	120,283	120,283	120,283	120,283
Total	$1,823,017,000	$ 4,557,544	$ 4,557,544	$ 4,557,544	$ 4,557,544

(1) Represents the CMBS Loan, which was repaid on March 27, 2012. Effective March 27, 2012, New PRP entered into the 2012 CMBS Loan totaling $500.0 million. The 2012 CMBS Loan is a five-year loan maturing on April 10, 2017. See "Description of Indebtedness" and Note 20 of our Notes to Consolidated Financial Statements.

A change in interest rates generally does not have an impact upon our future earnings and cash flow for fixed-rate debt instruments. As fixed-rate debt matures, however, and if additional debt is acquired to fund the debt repayment, future earnings and cash flow may be affected by changes in interest rates. This effect would be realized in the periods subsequent to the periods when the debt matures.

Foreign Currency Exchange Rate Risk

Our foreign currency exchange risk has not changed materially from 2010 to 2011. If foreign currency exchange rates depreciate in certain of the countries in which we operate, we may experience declines in our international operating results but such exposure would not be material to the consolidated financial statements. We currently do not use financial instruments to hedge foreign currency exchange rate changes.

Commodity Pricing Risk

Many of the ingredients used in the products sold in our restaurants are commodities that are subject to unpredictable price volatility. Although we attempt to minimize the effect of price volatility by negotiating fixed price contracts for the supply of key ingredients, there are no established fixed price markets for certain commodities such as produce and wild fish, and we are subject to prevailing market conditions when purchasing those types of commodities. Other commodities are purchased based upon negotiated price ranges established with vendors with reference to the fluctuating market prices. The related agreements may contain contractual features that limit the price paid by establishing certain price floors and caps. Extreme changes in commodity prices or long-term changes could affect our financial results adversely. We expect that in most cases increased commodity prices could be passed through to our consumers through increases in menu prices. However, if there is a time lag between the increasing commodity prices and our ability to increase menu prices, or if we believe the commodity price increase to be short in duration and we choose not to pass on the cost increases, our short-term financial results could be negatively affected. Additionally, from time to time, competitive circumstances could limit menu price flexibility, and in those cases margins would be negatively impacted by increased commodity prices.

Our restaurants are dependent upon energy to operate and are impacted by changes in energy prices, including natural gas. We utilize derivative instruments to mitigate some of our overall exposure to material increases in natural gas prices. We record mark-to-market changes in the fair value of derivative instruments in earnings in the period of change. The effects of these derivative instruments were immaterial to our financial statements for all periods presented.

In addition to the market risks identified above and to the risks discussed elsewhere in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” we are subject to business risk as our beef supply is highly dependent upon a limited number of vendors. In 2011, we purchased more than 90% of our beef raw materials from four beef suppliers who represent approximately 75% of the total beef marketplace in the U.S. Due to the nature of our industry, we expect to continue to purchase a substantial amount of our beef from a small number of suppliers. If these vendors were unable to fulfill their obligations under their contracts, we could encounter supply shortages and incur higher costs to secure adequate supplies.

This market risk discussion contains forward-looking statements. Actual results may differ materially from the discussion based upon general market conditions and changes in domestic and global financial markets.

BUSINESS

Our Company

We are one of the largest casual dining restaurant companies in the world, with a portfolio of leading, differentiated restaurant concepts. We own and operate 1,248 restaurants and have 195 restaurants operating under franchise or joint venture arrangements across 49 states and 21 countries and territories. We have five founder-inspired concepts: Outback Steakhouse, Carrabba's Italian Grill, Bonefish Grill, Fleming's Prime Steakhouse and Wine Bar and Roy's. Outback Steakhouse holds the #1 U.S. market position, and Carrabba's and Bonefish Grill hold the #2 U.S. market position, in their respective full-service restaurant categories. Fleming's is the fourth largest fine dining steakhouse brand in the U.S. In 2010, we launched a new strategic plan and operating model leveraging best practices from the consumer products and retail industries to complement our restaurant acumen and enhance our brand competitiveness. This new model keeps the customer at the center of our decision-making and focuses on continuous innovation and productivity to drive sustainable sales and profit growth. We have significantly strengthened our management team and implemented initiatives to accelerate innovation, improve analytics and increase productivity. We have made these changes while preserving our entrepreneurial culture at the operating level. Our restaurant managing partners are a key element of this culture, each of whom shares in the cash flows of his or her restaurant after making a required initial cash investment.

We believe our new strategic plan and operating model have driven our recent market share gains and improved margins while providing a solid foundation for continuing sales and profit growth. In 2011, we had $3.8 billion of revenue, $100.0 million of net income and $361.5 million of Adjusted EBITDA. In the U.S., each of our four core concepts generated positive comparable restaurant sales over the last seven consecutive quarters, and in 2010 and 2011, our combined comparable restaurant sales at our core concepts grew 2.7% and 4.9%, respectively. Additionally, over the last two years, Outback Steakhouse, Carrabba's and Bonefish Grill have significantly outperformed the Knapp-Track Casual Dining Index on traffic growth by 8.5%, 11.2% and 20.2%, respectively. Over the three years ended December 31, 2011, our net income increased from a net loss of $64.5 million to net income of $100.0 million, and Adjusted EBITDA increased from $319.9 million to $361.5 million. Over the same period, our Adjusted EBITDA margins grew from 8.9% to 9.4%.

Our concepts provide a compelling customer experience combining great food, highly attentive service and lively and contemporary ambience at attractive prices. Our restaurants attract customers across a variety of occasions, including everyday dining, celebrations and business entertainment. Each of our concepts maintains its unique, founder-inspired brand identity and entrepreneurial culture, while leveraging our scale and enhanced operating model. Below is an overview of our four core concepts:

Outback Steakhouse – A casual dining steakhouse featuring high quality, freshly prepared food, attentive service and Australian décor at a compelling value. As of December 31, 2011, we owned and operated 669 restaurants and franchised 106 restaurants across 49 states, and we owned and operated 111 restaurants, franchised 47 restaurants and operated 34 restaurants through a joint venture across 21 countries and territories. Outback Steakhouse holds the #1 market position in the U.S. in the full-service steak restaurant category based on 2011 sales. In 2010, Outback Steakhouse also held the #1 position in Brazil in the full-service sector and in South Korea among western full-service restaurant concepts. The menu offers several cuts of uniquely seasoned and seared or wood-fire grilled steaks, chops, chicken, seafood, pasta, salads and seasonal specials. The menu also includes several specialty appetizers, including our signature "Bloomin' Onion®," and desserts, together with full bar service featuring Australian wine and beer. The average check per person at our domestic Outback Steakhouse restaurants was approximately $20 in 2011.

Carrabba's Italian Grill – An authentic Italian casual dining restaurant featuring high quality handcrafted dishes, an exhibition kitchen and warm Italian hospitality. As of December 31, 2011, we owned and operated 231 restaurants and had one franchised restaurant across 32 states. Carrabba's holds the #2 market position in the full-service Italian restaurant category based on 2011 sales in the U.S. The menu includes several uniquely prepared Italian dishes, including pastas, chicken, seafood and wood-fired pizza. The menu also includes specialty appetizers, desserts and coffees, together with full bar service featuring Italian wines and specialty drinks. The average check per person at Carrabba's was approximately $21 in 2011.

Bonefish Grill – A polished casual seafood restaurant featuring market fresh grilled fish, high-end yet approachable service and a lively bar. As of December 31, 2011, we owned and operated 151 restaurants and franchised seven restaurants across 28 states. Bonefish Grill holds the #2 market position in the U.S. full-service seafood restaurant category based on 2011 sales. Bonefish Grill ranked "Top Overall" across all full-service restaurant chains according to Zagat's in 2010 and 2011 and was ranked #1 for all casual dining chains according to Nation's Restaurant News in 2011. The menu is anchored by fresh grilled fish with freshly prepared sauces and regularly rotating seafood specials. In addition, Bonefish Grill offers non-seafood entrees, several specialty appetizers, including our signature "Bang Bang Shrimp ®," and desserts. Bonefish Grill's bar provides an energetic setting for drinks, dining and socializing with a popular bar menu featuring a large variety of specialty cocktails, wine and beer selections. Alcoholic beverages account for approximately 25% of Bonefish Grill's restaurant sales. The average check per person at Bonefish Grill was approximately $23 in 2011.

Fleming's Prime Steakhouse and Wine Bar – An upscale, contemporary prime steakhouse for food and wine lovers seeking a stylish, lively and memorable dining experience. As of December 31, 2011, we owned and operated 64 restaurants across 28 states. Fleming's is the fourth largest fine dining steakhouse brand in the U.S based on 2011 sales. The menu features prime cuts of beef, fresh seafood, as well as pork, veal and chicken entrees accompanied by an extensive assortment of freshly prepared salads and side dishes available a la carte, plus several specialty appetizers and desserts. Among national high-end steak concepts, Fleming's offers the largest selection of wines by the glass, with 100 quality wines available, as well as specialty cocktails. Alcoholic beverages account for approximately 30% of Fleming's restaurant sales. The average check per person at Fleming's was approximately $68 in 2011.

History and Evolution of Our Business

Our predecessor was incorporated in August 1987, and we opened our first Outback Steakhouse restaurant in 1988. We changed our name to Outback Steakhouse, Inc. in 1990 and became a Delaware corporation in 1991 as part of a corporate reorganization completed in connection with our initial public offering. Between 1994 and 2004, we grew from approximately 200 restaurants to approximately 1,175 restaurants system-wide and acquired Carrabba's, Fleming's, Roy's and Bonefish Grill. We began expanding the Outback Steakhouse concept internationally in 1996, and as of December 31, 2011, we had 192 restaurants across 21 countries and territories, including 111 restaurants that we owned and operated, 47 restaurants that we franchised and 34 restaurants that are operated by a joint venture. In June 2007, we were acquired by investment funds advised by our Sponsors, our Founders and certain members of management.

In November 2009, we hired Elizabeth A. Smith as Chief Executive Officer. Ms. Smith brought close to 20 years of consumer products experience, including five years as a senior executive at Avon Products, Inc. and 14 years at Kraft Foods Inc. Under Ms. Smith's leadership, we launched our new strategic plan and operating model. The key initiatives we implemented as part of this plan and model, many of which are ongoing, are summarized below:

- *Enhanced Our Brand / Concept Competitiveness.* Based on extensive consumer research, we have undertaken the following initiatives to enhance our brand relevance and competitiveness:
  - Evolved our menus by supplementing our classic items with greater variety and lighter dishes to broaden appeal. We also added lower priced items, small plates and handhelds and enhanced bar and happy hour offerings to improve our value perception and affordability and increase traffic.
  - Shifted our marketing strategy away from principally using brand awareness messages to traffic generating messages focused on quality, value and limited-time offers. We also enhanced the quality of our marketing and altered our media mix to improve returns on investment.
  - Initiated a remodel program focused on Outback Steakhouse and Carrabba's to refresh the restaurant base. During 2010 and 2011, we remodeled 256 Outback Steakhouse restaurants to implement a more contemporary design, and we are testing remodel designs at Carrabba's.
  - Refocused our service to improve execution on aspects of the dining experience that matter most to our customers as indicated through ongoing customer surveys. For example, the percentage of surveyed customers that rated their overall customer satisfaction at Outback Steakhouse as "excellent" or "very good" increased by 20% from April 2009 to December 2011, and is now above the average for casual dining restaurants included in the Service Management Group (SMG) customer satisfaction measurement program as of December 2011.
- *Strengthened Management Team and Organizational Capabilities.* We added senior executives with experience from leading consumer products and retail companies and added resources in key functional support areas, such as R&D, human resources, consumer research and analytics, real estate development, technology, supply chain management and productivity. We built an organization that maintains deep restaurant industry expertise at the operating level, coupled with a functional corporate support team that drives innovation, productivity and scale efficiencies. We also redesigned our field management compensation structure to better reward growth in sales and profits and to attract and retain top talent.
- *Accelerated Innovation.* We strengthened our innovation capability by increasing our resources and by focusing on a collaborative process to develop, test and roll out new menu, service and marketing initiatives. This has increased our new product pipeline capacity, and we are able to introduce these new initiatives faster than we have in the past.
- *Improved Analytics and Information Flow.* To supplement the deep industry expertise of our restaurant operators, we instituted an enterprise-wide, analytical approach to guide our decision-making that relies on extensive consumer research and feedback, product testing and data analysis. We believe this provides our management team with much improved visibility regarding consumer trends and a better basis for making product, pricing and marketing decisions. Additionally, we have standardized and improved the performance metrics provided to our managing and area operating partners to support management at the restaurant level.

- *Increased Productivity and Generated Significant Cost Savings.* In 2008, we began to focus on increased productivity and cost savings by leveraging our scale and corporate support infrastructure. From 2008 through 2011, we implemented productivity and cost management initiatives that we estimate allowed us to save over $200 million in the aggregate, while improving our customer ratings on quality and service as measured by SMG.

- *Invested in Information Technology Infrastructure.* In 2010, we launched a multi-year upgrade of our technology infrastructure to support our analytical focus and growth opportunities. Our investments included the completion of standardized point of sale (POS) systems across our concepts, a data warehouse to improve data accessibility, real estate site selection tools and a new human resources information system (HRIS).

Competitive Strengths

We believe the following competitive strengths, when combined with our strategic plan and operating model, provide a platform to deliver sustainable sales and profit growth:

- strong market position with highly recognizable brands;
- compelling 360-degree customer experience;
- diversified portfolio with global presence;
- business model focused on continuous innovation and productivity; and
- experienced executive and field management teams.

Strong Market Position With Highly Recognizable Brands

We have market leadership positions in each of our core concepts domestically, as well as in our core international markets. Based on 2011 sales in the U.S., Outback Steakhouse ranked #1 in the full-service steak category, Carrabba's ranked #2 in the full-service Italian category and Bonefish Grill ranked #2 in the full-service seafood category. Fleming's is the fourth largest fine dining steakhouse brand in the United States. Bonefish Grill, Carrabba's and Outback Steakhouse held three of the top seven positions for top casual dining chains in the 2011 Nation's Restaurant News Annual Consumer Picks survey. In 2010, Outback Steakhouse ranked #1 in market share in Brazil among full-service restaurants and in South Korea among western full-service restaurant concepts. We believe our market leadership positions and scale will allow us to continue to gain market share in the fragmented restaurant industry.

Compelling 360-Degree Customer Experience

We offer a compelling 360-degree customer experience with superior value by providing great food, highly attentive service and lively ambience at attractive prices. Our strategic plan and operating model keep the customer at the center of our decision-making and use customer research and analytics to continually improve each concept's dining experience. We believe our customer experience and value perception are differentiating factors that drive strong customer loyalty.

- *Great Food.* We deliver consistently executed, freshly prepared meals using high quality ingredients. Consumers have validated our food quality through numerous casual dining awards, including ranking Outback Steakhouse first in the "Best Steak" category and ranking Bonefish Grill and Carrabba's first and third, respectively, for all full-service restaurant chains in the "Top Food" category in the 2011 Zagat's customer survey. We also expanded our menus during 2010 and 2011 to extend beyond our core focus at each concept to attract a broader mix of customers.

- *Highly Attentive Service.* We seek to deliver superior service to each customer at every opportunity. We offer customers prompt, friendly and efficient service, keep wait staff-to-table ratios high and staff each restaurant with experienced managing partners to ensure consistent and attentive customer service. For example, in Zagat's customer survey in 2011, Bonefish Grill and Carrabba's were ranked first and third, respectively, for all full-service restaurant chains in the "Top Service" category.

- *Lively and Contemporary Ambience.* Each of our restaurant concepts offers a distinct, energetic atmosphere. We are committed to maintaining a contemporary look and feel at each of our concepts that is consistent with its individual brand positioning.

- *Attractive Prices*. Since 2009, we have enhanced the value we offer our customers through menu and promotional innovation, rather than aggressive discounting. At each of our concepts, we have increased the mix of lower priced items to broaden appeal and increase traffic. For example, we introduced Cucina Casuale at Carrabba's which features entrees starting at $10. We have also expanded our limited-time offers of specials not contained on our regular menu in order to offer price points that deliver superior value to customers while maintaining attractive margins, such as Outback Steakhouse's $14.99 steak and lobster promotion, which has been very popular with our customers.

Diversified Portfolio With Global Presence

Our diversified portfolio of distinct concepts and global presence provide us with a broad growth platform to capture additional market share domestically and internationally. We are diversified by concept, category and geography as follows:

- *By Concept and Category*. We believe our concepts are differentiated relative to each other by category and to their respective key competitors. Our core concepts target three separate large and highly fragmented menu categories of the full-service restaurant sector: steak ($13.6 billion in 2010 sales), Italian ($14.8 billion in 2010 sales) and seafood ($8.3 billion in 2010 sales). Outback Steakhouse, Carrabba's and Bonefish Grill target the casual dining price category, and Fleming's targets the fine dining category. Each concept's percentage of our company-owned sales for 2011 was as follows: Outback Steakhouse 62%, Carrabba's 18%, Bonefish Grill 12%, Fleming's 6% and Roy's 2%.

- *By Geography*. The system-wide sales of our international Outback Steakhouse restaurants represent 15% of our total system-wide sales. A majority of our international restaurants are company-owned or operated through a joint venture, and we believe this differentiates us relative to our casual dining peers, which primarily operate through franchises internationally. Our restaurants are located across 49 states and 21 countries and territories around the world. Our two largest international markets are South Korea, where we ranked #1 among western full-service restaurant concepts in 2010 with 103 company-owned restaurants, and Brazil where we ranked #1 in the full-service sector in 2010 with 34 restaurants operated through a joint venture. We also own and operate seven restaurants in Hong Kong. Our 47 franchised international restaurants are primarily located in Asia, Latin America, the Middle East and Canada.

Business Model Focused on Continuous Innovation and Productivity

Our business model leverages best practices from the consumer products and retail industries to keep the customer at the center of our decision-making and focuses on innovation and productivity to drive sustainable sales and profit growth. We utilize extensive market and product research and customer feedback to develop new

ideas and to mitigate the risks of implementation. We reinvest a portion of productivity savings in innovation to enable us to respond to continuously evolving consumer trends.

- *Innovation.* We have established an enterprise-wide innovation process to enhance every dimension of the customer experience. Cross-functional innovation teams collaborate across R&D, purchasing, operations, marketing, finance and market intelligence to manage a pipeline of new menu, service and marketing ideas. For example, we have added over 60 new menu items across our concepts since 2010, including many items under 600 calories, which has broadened the appeal of our menus.

- *Productivity.* Without compromising the customer experience, we continuously explore opportunities to increase productivity and reduce costs across every aspect of our business. Our cost-savings allow us to reinvest in innovation initiatives, enhance our strong value proposition and increase margins. We have a dedicated team that coordinates all productivity initiatives and actively manages a pipeline of ideas from testing through implementation.

Experienced Executive and Field Management Teams

Our organization maintains deep restaurant experience at the operating level coupled with a functional corporate support team that drives innovation, productivity and scale efficiencies. Our management team is led by our Chairman and Chief Executive Officer, Elizabeth A. Smith, former President of Avon Products, Inc., who joined us in November 2009. Ms. Smith has nearly 20 years of experience in the consumer products industry with a strong track record of growth and operating discipline. Our senior leadership team also includes executives from best-in-class consumer and retail companies such as Starbucks, YUM Brands, Mars, Kraft, Best Buy and Home Depot. We have expanded our capabilities by adding resources in R&D, human resources, consumer research and analytics, real estate development, technology, supply chain management and productivity. Strong brand management and innovation expertise has been driven by our team's focus on analytics and customer testing.

Our field operating and management teams are made up of individuals with deep experience operating our restaurants and in the restaurant industry. Our core concept presidents have been with us for an average of 20 years and have an average of 30 years of industry experience. Our regional field management team has an average of over 13 years of experience working with us at the managing partner level or above. Our operators are highly motivated to drive growth in sales and profits through our improved compensation structure. This structure requires an initial investment from our managing partners and allows them to share in a portion of the restaurants' monthly cash flow and an annual bonus tied to increases in their restaurant's sales above the concept's sales plan and long-term compensation tied to growth in their restaurants' cash flow. We believe this structure supports our entrepreneurial culture and differentiates us from our peers.

Our Growth Strategy

We believe there are significant opportunities to continue to drive sustainable sales and profit growth through the following three strategies:

Grow Comparable Restaurant Sales

Building on the strong momentum of the business, we believe we have the following opportunities to continue to grow comparable restaurant sales:

- *Remodel Our Restaurants.* In the near term, we are focused on remodeling our Outback Steakhouse and Carrabba's restaurants. For Outback Steakhouse, we plan to complete 160 remodels in 2012 and a cumulative total of approximately 450 remodels by the end of 2013. Traffic at our remodeled restaurants has increased approximately 3% from 2010 to 2011 compared to non-remodeled

restaurants, which we believe primarily resulted from our remodel program. We plan to apply our success from Outback Steakhouse as we implement a remodel program at Carrabba's when testing of the design alternatives is complete.

- *Continue to Improve Promotional Marketing to Drive Traffic.* We plan to continue to improve our limited-time offers and multimedia marketing campaigns. By promoting continuously evolving, high quality and affordable menu items, we seek to drive traffic and maintain brand relevance without sacrificing margins. With our new analytical and innovation capabilities, we are able to develop promotions to achieve targeted margins and measure and improve the effectiveness of our marketing campaigns.

- *Expand Share of Occasions and Increase Frequency.* We believe we have a strong market share of weekend dinner occasions and a significant opportunity to grow our share of other dining occasions across all concepts. With our broader menu variety and improved affordability – specifically, through our small plates, handhelds and bar menu options – we are better positioned to expand our weekday and non-dinner occasions. We realized meaningful traffic gains in 2011 through our Sunday lunch expansion at Outback Steakhouse and the introduction of happy hour menus at Bonefish Grill and Fleming's. We are open for Saturday lunch at most of our Carrabba's locations. In 2012, we are planning to roll out Saturday lunch at most of our Outback Steakhouse locations. We are also evaluating the selective expansion of weekday lunch in markets where demographics support doing so.

- *Continue Innovating New Menu Items and Categories.* Our menu strategy will continue to focus on broadening appeal while maintaining classic items. Our R&D team will continue to introduce innovative items that match evolving consumer preferences.

Pursue New Domestic and International Development With Strong Unit Level Economics

We are recommitted to new unit development after curtailing expansion from 2009 to 2011. We believe that a substantial development opportunity remains for our concepts in the U.S. and internationally, particularly given our revitalized concepts, improved margins, expanded affordability and broadened customer appeal. Resources in site selection, construction and design were added in 2010 and 2011 in order to increase the pace of new unit openings. We expect to open 30 company-owned and five joint venture units in 2012 and increase the pace of development thereafter. We are targeting a minimum of a 15% average pre-tax return on initial investment on our new domestic restaurants. We expect that the mix of new units will be initially weighted approximately 75% to domestic opportunities, but will shift to a greater weight of international units as we continue to implement our international expansion plans.

- *Pursue Domestic Development Focused on Bonefish Grill and Carrabba's* . We believe we have the potential to double the Bonefish Grill concept over time from an existing base of 158 units as of December 31, 2011. Currently, the majority of Bonefish Grill restaurants are located in the southern and eastern U.S., with significant geographic expansion potential in the top 100 U.S. markets. Bonefish Grill unit growth will be our top domestic development priority in 2012, with 20 or more new restaurants planned. Over the last five years, Bonefish Grill restaurants open for more than a year have averaged a pre-tax return on initial investment of greater than 20%.

  We see significant opportunities to expand Carrabba's from an existing base of 232 units as of December 31, 2011. Currently, the majority of Carrabba's restaurants are also located in the southern and eastern U.S., with significant geographic expansion potential in the top 100 U.S. markets. We are developing an updated restaurant design for Carrabba's, and we plan to test this model in ten to 15 units over the next two years. Based on the results of this test, we plan to accelerate new unit development.

- *Accelerate International Growth Focused on Outback Steakhouse Brand.* We believe we are well-positioned to expand internationally beyond our 192 restaurants located across 21 countries and territories. In 2012, we plan to open six or more company-owned or joint venture units in existing markets. We will continue to leverage our market position by offering our top-ranked Outback Steakhouse concept in a format adapted to local cultural preferences. In 2011, the system-wide sales of our international Outback Steakhouse restaurants represented 15% of our total system-wide sales. We believe the international business represents a significant growth opportunity. We have enhanced our organization structure to better position us for international growth by adding a new President of Outback Steakhouse International and integrating our international team into our corporate headquarters to leverage our enterprise-wide capabilities. Over the last five years, our international units have produced attractive returns with an average pre-tax return on initial investment above 30%. We will approach growth in a disciplined manner, focusing on growing in existing markets such as South Korea, Brazil and Hong Kong, while expanding in strategically selected emerging and high growth, developed markets. In the near term, we plan to focus our new market growth in China, Mexico and South America. We will utilize the ownership structure and market entry strategy that best fits the need for a particular market, including company-owned restaurants, joint ventures and franchises. In markets with the most potential for unit growth, we expect to focus on company-owned and joint venture arrangements rather than franchises.

Drive Margin Improvement

We believe that we have the opportunity to increase our margins through continued productivity and increased fixed-cost leverage as we grow comparable restaurant sales. We plan to continue to focus additional resources on productivity improvement as needed to ensure continuous progress, including the recent creation of a Chief Value Chain Officer role that will have responsibility for global supply chain management, productivity and information technology. We have developed a multi-year productivity plan that is expected to yield productivity and cost savings of approximately $50 million in 2012 and additional savings in future years and focuses on high value initiatives across the following four categories:

- *Labor Optimization.* We are implementing a plan to optimize our staff scheduling and improve efficiencies in service. In addition, we have identified and are testing new front of house service models that improve both service and efficiency.

- *Food Cost Reductions*. We are implementing new systems and tools to minimize waste and will continue to work with our supply chain partners to reduce our overall food costs without affecting quality.

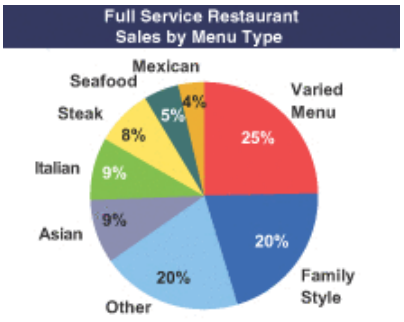
- *Supply Chain Efficiencies*. We are improving inbound and outbound freight logistics and implementing electronic invoicing, improved distribution management and better demand forecasting processes and tools to decrease costs. We will also continue to expand the application of purchasing disciplines to a larger percentage of goods and services purchased.

- *Sustainable, Cost-Effective Restaurant Facilities.* We are implementing enterprise-level policies and service contracts that reduce rates on repairs and maintenance at our restaurants and are also reducing energy usage.

Industry Overview

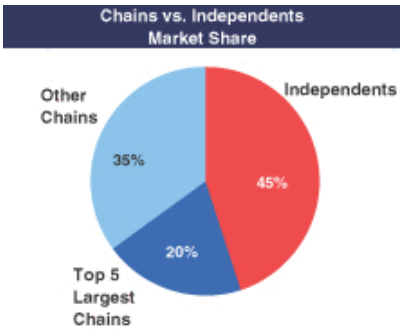
According to the National Restaurant Association, U.S. restaurant industry sales were $610.4 billion in 2011. We compete primarily in the $85 billion casual dining price category of the full-service restaurant sector. This sector is expected to grow 2.9% in 2012.

Casual dining restaurants within the full-service sector are also categorized by menu type, each of which is defined by a few large players and is otherwise highly fragmented. Our concepts primarily compete in the steak, Italian and seafood menu categories. While we have primarily focused on serving dinner, which represents 67% ($56.3 billion) of the casual dining category's total 2011 sales, we believe we have an opportunity to further expand into the lunch market, which represents 29% ($24.4 billion) of the casual dining category's total sales.



Source: Technomic, Inc. 2011 Report

While independent restaurants still represent 45.4% of the total sales of all casual dining restaurants, chains have been increasingly taking share from independents over the past several years. We believe that this trend will continue as barriers increase preventing independent restaurants and start-up chains from building scale operations, including menu labeling, burdensome labor regulations and healthcare reforms that will be enforced once chains grow past a certain number of restaurants or employees.



Source: CREST Data for 2011

Our Concepts

Each of our concepts maintains its unique, founder-inspired brand identity and provides a compelling customer experience combining great food, highly attentive service and lively and contemporary ambience at attractive prices.

Outback Steakhouse

Outback Steakhouse is a casual dining steakhouse featuring high quality, freshly prepared food, attentive service and Australian décor at a compelling value. As of December 31, 2011, we owned and operated 669 restaurants and 106 were franchised across 49 states. Outback Steakhouse holds the #1 market position in the U.S. in the full-service steak restaurant category based on 2011 sales. In the 2011 Zagat's full-service chain customer survey, Outback Steakhouse was ranked #1 in the "Best Steak" category.

The Outback Steakhouse menu offers several cuts of uniquely seasoned and seared or wood-fire grilled steaks, chops, chicken, seafood, pasta, salads and seasonal specials. The menu also includes several specialty appetizers, including our signature "Bloomin' Onion ®," and desserts, together with full bar service featuring Australian wine and beer. Alcoholic beverages account for approximately 12% of domestic Outback

Steakhouse's restaurant sales. The average check per person, which varies for all of our concepts based on limited-time offers, special menu items and promotions, was approximately $20 during 2011. Outback Steakhouse also offers a low-priced children's menu.

The décor includes a contemporary, casual atmosphere with blond woods, large booths and tables and Australian artwork. Outback Steakhouse restaurants serve dinner every day of the week and most locations are open for lunch on Sunday. Some locations are also open for lunch on Saturday.

Carrabba's Italian Grill

Carrabba's Italian Grill is an authentic Italian casual dining restaurant featuring high quality handcrafted dishes, an exhibition kitchen and warm Italian hospitality. As of December 31, 2011, we owned and operated 231 restaurants and had one franchised restaurant across 32 states. Carrabba's holds the #2 market position in the U.S. in the full-service Italian restaurant category based on 2011 sales. In the 2011 Zagat's full-service chain customer survey, Carrabba's was ranked third in the "Top Food" and "Top Service" categories.

The Carrabba's menu includes a variety of uniquely prepared Italian dishes, including pastas, chicken, seafood, and wood-fired pizza. Our use of a wood-fired grill, combined with our signature grill seasoning, produces Italian dishes with flavors we believe are unique to the category. The menu also includes specialty appetizers, desserts and coffees, together with full bar service featuring Italian wines and specialty drinks. Alcoholic beverages account for approximately 17% of Carrabba's restaurant sales. The average check per person was approximately $21 during 2011.

The décor includes dark woods, large booths and tables and Italian memorabilia featuring Carrabba family photos and authentic Italian pottery. Its traditional Italian exhibition kitchen allows customers to watch hand-made dishes being prepared. The majority of Carrabba's restaurants serve dinner every day of the week and are open for lunch on Saturday and Sundays.

Bonefish Grill

Bonefish Grill is a polished casual seafood restaurant featuring market fresh grilled fish, high-end yet approachable service and a lively bar. As of December 31, 2011, we owned and operated 151 and franchised seven restaurants across 28 states. Bonefish Grill holds the #2 market position in the U.S. in the full-service seafood restaurant category based on 2011 sales. Bonefish Grill ranked "Top Overall" in 2010 and 2011 across all full-service dining chains according to Zagat's and in 2011 was ranked #1 for all casual dining chains according to Nation's Restaurant News. In the 2011 Zagat's customer survey of all full-service chains, Bonefish Grill also received "Top Food" and "Top Service" rankings.

The Bonefish Grill menu is anchored by market fresh grilled fish with freshly prepared sauces and regularly rotating seafood specials. In addition, Bonefish Grill offers beef, pork and chicken entrees, several specialty appetizers, including our signature "Bang Bang Shrimp ®," and desserts. Bonefish Grill's bar provides an energetic setting for drinks, dining and socializing, with a popular bar menu featuring a large variety of specialty cocktails, including a specialty martini list, wine and beer selections. Alcoholic beverages account for approximately 25% of Bonefish Grill's restaurant sales. The average check per person was approximately $23 in 2011.

The décor is warm and inviting, with hardwood floors, large booths and tables and distinctive artwork inspired by regional coastal settings. Bonefish Grill restaurants typically serve dinner only.

Fleming's Prime Steakhouse and Wine Bar

Fleming's Prime Steakhouse and Wine Bar is an upscale, contemporary prime steakhouse for food and wine lovers seeking a stylish, lively and memorable dining experience. As of December 31, 2011, we owned and operated 64 Fleming's restaurants across 28 states. Fleming's is the fourth largest fine dining steakhouse brand in the U.S. based on 2011 sales. Fleming's has been recognized with numerous awards for its beverage offerings, including best chain wine program in Cheers Magazine's 2012 Beverage Excellence Awards, a 2012 VIBE Award for "innovative spirits," and a Wine Spectator award at each of our 64 restaurants.

The Fleming's menu features prime cuts of beef, fresh seafood, and pork, veal and chicken entrees accompanied by an extensive assortment of freshly prepared salads and side dishes available a la carte, plus several specialty appetizers and desserts. Among national high-end steak concepts, Fleming's offers the largest selection of wines by the glass, with 100 quality wines available, as well as specialty cocktails. Alcoholic beverages account for approximately 30% of Fleming's restaurant sales. The average check per person was approximately $68 in 2011.

The décor features an open dining room built around an exhibition kitchen and expansive bar, with lighter woods and colors with rich cherry wood accents and high ceilings. Private dining rooms are available for private gatherings or corporate functions. Fleming's restaurants serve dinner only.

Roy's

Roy's is an upscale dining experience that combines contemporary cooking techniques, Asian cuisine and Hawaiian hospitality. As of December 31, 2011, we owned a 50% interest in a joint venture that owned and operated 22 Roy's restaurants located across seven states.

The Roy's menu offers Chef Roy Yamaguchi's "Hawaiian Fusion" cuisine, a blend of flavorful sauces and Asian spices and features a variety of fish and seafood, beef, short ribs, pork, lamb and chicken. The menu also includes several specialty appetizers and desserts. In addition to full bar service, Roy's offers a large selection of quality wines. Alcoholic beverages account for approximately 27% of Roy's restaurant sales. The average check per person was approximately $57 during 2011.

The décor features spacious dining rooms, an expansive lounge area, an outdoor dining patio in certain locations and Roy's signature exhibition kitchen. Private dining rooms are available for private gatherings or corporate functions. The majority of Roy's restaurants serve dinner only.

International

Outback Steakhouse International is our business unit for developing and operating Outback Steakhouse restaurants outside of the U.S. In 2011, we enhanced our international organizational structure by adding a new unit president and recruiting internal and external talent from market-leading companies with the experience we believe is needed to drive international growth. This team is integrating into our corporate headquarters to leverage enterprise-wide capabilities, including marketing, finance, consumer research and analytics, real estate development, information technology, legal, supply chain management and productivity, to support both company-owned and franchised locations. In addition, our company-owned and joint venture operations in South Korea, Hong Kong and Brazil have cross-functional, local management staffs in place to grow and support restaurants in those locations.

Our international Outback Steakhouse restaurants held the #1 position in both South Korea and Brazil among casual dining restaurants in the full-service sector as of 2010 based on sales in such countries. Our other concepts currently do not operate outside of the U.S. As of December 31, 2011, we owned and operated 111 international Outback Steakhouse restaurants, 34 were owned and operated through a joint venture and 47 were operated under franchise arrangements across 21 countries and territories as follows:

Country/Territory	Ownership Type	Total
South Korea	Company-owned	103
Hong Kong	Company-owned	7
Puerto Rico	Company-owned	1
Brazil	Joint venture	34
Japan	Franchise	9
Australia	Franchise	6
Mexico	Franchise	5
Taiwan	Franchise	5
Canada	Franchise	4
Philippines	Franchise	3
Saudi Arabia	Franchise	3
Indonesia	Franchise	2
United Arab Emirates	Franchise	2
Costa Rica	Franchise	1
Dominican Republic	Franchise	1
Egypt	Franchise	1
Guam	Franchise	1
Malaysia	Franchise	1
Singapore	Franchise	1
Thailand	Franchise	1
Venezuela	Franchise	1
Total		**192**

International Outback Steakhouse restaurants have substantially the same core menu items as domestic Outback Steakhouse locations, although certain side items and other menu items are local in nature. The prices that we charge in individual locations are reflective of local demographics and related local costs involved in procuring product. Most of our international locations serve lunch and dinner.

We utilize a global core menu policy to ensure consistency and quality in our menu offerings. We allow local tailoring of the menu to best address the preference of local customers in a market. Prior to the addition of an item to the core menu, we conduct extensive customer research and it is reviewed and approved by our R&D team. In South Korea, for example, we serve “lunch box sets,” offering affordable options to busy customers seeking a quick lunch at Outback Steakhouse. Similarly, in Brazil, we offer “set pricing” lunch options that provide various price point options for our lunchtime diners.

Our international Outback Steakhouse locations are similar in the look and feel of our domestic locations, although there is more diversity in certain restaurant locations, layouts and sizes.

Financial information about geographic areas is included in this prospectus in Note 19 of our Notes to Consolidated Financial Statements.

Restaurant Development and Design

Site Design

We generally construct freestanding buildings on leased properties, although our leased sites are also located in strip shopping centers. Construction of a new restaurant takes approximately 90 to 180 days from the date the location is leased or under contract and fully permitted. In the future, we intend to either convert existing third-party leased retail space or construct new restaurants through leases in the majority of circumstances. We typically design the interior of our restaurants in-house, utilizing outside architects when necessary.

A typical Outback Steakhouse is approximately 6,200 square feet and features a dining room and a full-service liquor bar. The dining area of a typical Outback Steakhouse consists of 45 to 48 tables and seats approximately 220 people. The bar area consists of approximately ten tables and has seating capacity for approximately 54 people. Appetizers and complete dinners are served in the bar area.

Outback Steakhouse international restaurants range in size from 3,500 to 10,000 square feet and may be basement or second floor locations.

A typical Carrabba's is approximately 6,500 square feet and features a dining room, pasta bar seating that overlooks the exhibition kitchen and a full-service liquor bar. The dining area of a typical Carrabba's consists of 40 to 45 tables and seats approximately 230 people. The liquor bar area typically includes six tables and seating capacity for approximately 60 people, and the pasta bar has seating capacity for approximately ten people. Appetizers and complete dinners are served in both the pasta bar and liquor bar areas.

A typical Bonefish Grill is approximately 5,500 square feet and features a dining room and full-service liquor bar. The dining area of a typical Bonefish Grill consists of approximately 38 tables and seats approximately 145 people. The bar area is generally in the front of the restaurant and offers community-style seating with approximately ten tables and bar seating with a capacity for approximately 72 people. Appetizers and complete dinners are served in the bar area.

A typical Fleming's is approximately 7,100 square feet and features a dining room, a private dining area, an exhibition kitchen and full-service liquor bar. The main dining area of a typical Fleming's consists of approximately 35 tables and seats approximately 170 people, while the private dining area seats approximately 30 additional people. The bar area includes approximately six tables and bar seating with a capacity for approximately 35 people. Appetizers and complete dinners are served in the bar area.

A typical Roy's is approximately 7,100 square feet and features a dining room, a private dining area, an exhibition kitchen and full-service liquor bar. The main dining area of a typical Roy's consists of approximately 41 tables and seats approximately 155 people, while the private dining area seats an additional 50 people. The bar area includes tables and bar seating with a capacity for approximately 35 people. Appetizers and complete dinners are served in the bar area.

Remodel / Renovation Plan

We are committed to the strategy of continuing to maintain relevance with our décor by implementing an ongoing renovation program across all concepts.

In 2009, we began a remodeling program at Outback Steakhouse to refresh our restaurants base and modernize the look and feel of the dining experience. The Outback Steakhouse décor now features larger, more comfortable waiting areas, a brighter more upscale bar and a natural, contemporary dining area. To date, we have remodeled 256 restaurants, including 194 in 2011. We plan to complete 160 remodels in 2012 and a cumulative total of approximately 450 remodels by the end of 2013. Our average remodel cost has been approximately $250,000, and in 2010 and 2011 the program has lifted our traffic growth by approximately 3%, relative to comparable non-remodeled locations.

Carrabba's is currently implementing a similar renovation program, which includes the creation of a more contemporary Italian-themed décor that maintains warmth and matches the high quality of our food. We are currently testing new design alternatives, and once testing is complete, the design will be rolled out to additional locations.

Site Selection Process

We consider the location of a restaurant to be critical to its long-term success and as such, we devote significant effort to the investigation and evaluation of potential sites. We have a central team serving all of our concepts comprised of real estate development, property/lease management and design and construction personnel. We have significantly increased the resources dedicated to this team since 2009, enabling the acceleration of remodels and unit additions. Our site selection team utilizes a combination of existing field operations managers, internal development personnel and outside real estate brokers to identify and qualify potential sites. We have developed a robust analytical infrastructure, aided by site selection software we have recently acquired and customized to assist our site selection team in implementing our new restaurant growth plan. By leveraging expanded data regarding potential sites, developing success criteria and using predictive models, we are improving site selection.

We follow a phased approach to new site selection and approval, with all proposed sites reviewed and approved by the appropriate concept president, Chief Development Officer, Chief Financial Officer and Chief Executive Officer.

Restaurant Development

We are recommitted to new unit development after curtailing expansion from 2009 to 2011. We believe that a substantial development opportunity remains for our concepts in the U.S. and internationally. We expect to open 30 company-owned and five joint venture units in 2012 and increase the pace thereafter. We expect that the mix of new units will be initially weighted approximately 75% to domestic opportunities, but will shift to a higher weight of international units as we continue to implement our international expansion plans.

Domestic Development

We believe we are well equipped to reaccelerate new unit development with a disciplined approach focusing on achieving unit returns at target levels across each of our concepts. In 2012, we plan to open 30 or more locations, with a primary domestic focus on opening new Bonefish Grill units.

We believe we have the potential to double the Bonefish Grill concept over time from an existing base of 158 units as of December 31, 2011. Currently, the majority of Bonefish Grill restaurants are located in the southern and eastern U.S., with significant geographic expansion potential in the top 100 U.S. markets. Bonefish Grill unit growth will be our top domestic development priority in 2012, with 20 or more new restaurants planned. Over the last five years, Bonefish Grill restaurants open for more than a year have averaged a pre-tax return on initial investment of greater than 20%.

We also see significant opportunities to expand Carrabba's from an existing base of 232 units as of December 31, 2011. Currently, the majority of Carrabba's restaurants are also located in the southern and eastern U.S., with significant geographic expansion potential in the top 100 U.S. markets. We are developing an updated restaurant design for Carrabba's, and we plan to test this model in ten to 15 units over the next two years. Based on the results of this test, we plan to accelerate new unit development.

In addition, we believe that Fleming's has existing geography fill-in and market expansion opportunities based on its current location mix.

International Development

We believe we are well-positioned to expand internationally and plan to approach such growth in a disciplined, prioritized manner, leveraging existing markets in South Korea, Brazil

and Hong Kong, while expanding in strategically selected new emerging and high growth developed markets. For 2011, the system-wide sales of our international Outback Steakhouse restaurants represent 15% of our total system-wide sales. We believe the international business represents a significant growth opportunity. We will continue to leverage our market position by offering our top-ranked Outback Steakhouse concept in a format adapted to local cultural preferences. For example, we believe that we can leverage existing infrastructure and expertise in the Asia-Pacific region and Latin America to grow in those areas and accelerate entry into nearby countries.

As a part of the restructuring of our international business unit, we developed a prioritized growth agenda. In the near term, we plan to focus our existing market growth in South Korea, Brazil and Hong Kong and our new market growth in China, Mexico and South America. Our company-owned operations in Hong Kong and Korea, where we have over 100 restaurants, provide operational expertise in running multi-unit operations, but also cultural insights and available talent to deploy into new Asian markets. In addition, our Outback Steakhouse International leadership team has significant experience in opening retail outlets in China that we can further leverage into our expansion efforts. We will utilize the ownership structure and market entry strategy that best fits the need for a particular market, including company-owned units, joint ventures and franchises. In markets where there is potential for a significant number of restaurants, we expect to focus on company-owned and joint venture arrangements rather than franchises.

Research & Development / Innovation

In 2010, we added a company-wide head of R&D to our senior management team and increased the size of that team to approximately 20 people. We have since strengthened our innovation capability by establishing a focused, collaborative process and enhancing our R&D capabilities, and expanded the scope of innovation to focus on new product development, product efficiency and core menu quality. As a result, we are now better able to continuously evolve our product offerings based on consumer trends and feedback and improve productivity. We have a 12-month pipeline of new menu and promotional items and are able to introduce items faster than we have in the past.

Our cross-functional innovation processes leverage the best practices of the consumer products industry to continuously research and enhance every dimension of the customer experience. Our innovation teams collaborate across R&D, purchasing, operations, marketing, finance and market intelligence. Our goal is continuous innovation of our new menu, service and marketing initiatives to improve brand relevance, productivity and competitiveness based on evolving consumer trends and direct customer feedback on our products. For example, as the direct result of extensive market and consumer research, we have added over 60 new menu items across our concepts since 2010, including many items under 600 calories, which has broadened the appeal of our menus. By incorporating analytics, testing and customer feedback, we are able to refine and reduce the potential risks associated with these introductions or changes. For new menu items and significant product changes, we have a meaningful testing process that includes internal testing, testing at one restaurant and testing at a group of restaurants before the roll-out is staged across a concept based on the type of product change. Throughout this process, our customers provide direct feedback on the product as well as pricing.

We also utilize our cross-functional process to develop limited-time offers with a compelling price point and attractive margins. This requires more occasion-based testing and research to validate that the special offer was valued by customers based on the occasion. For example, Outback Steakhouse has offered a recurring $14.99 steak and lobster promotion that has not only been very popular with our customers, but also meets our profitability, food quality and execution efficiency objectives.

Strategy and Market Intelligence

Our strategy and market intelligence (SMI) function was created in 2010 to identify opportunities for profitable growth based on customer research, and to help improve returns on the investments we make in capital and operations, through the targeted application of analytics. The following summarizes a few of our analytics initiatives used across our corporation functions and concepts:

- *Advanced Analytics*. We believe we have realized significant benefits from studies regarding customer sensitivity to price changes. Our customer feedback and testing process enables rapid assessment of how new ideas and productivity initiatives perform with customers, allowing us to make improvements before they are launched nationally. Our marketing mix models guide reallocation of our marketing investments to more efficient and effective programs and have prompted increased marketing investments in Bonefish Grill and Carrabba's.

- *Development Analytics*. We have developed a robust analytical infrastructure to drive our increased new restaurant growth plan. By leveraging expanded data regarding potential sites, developing success criteria and using predictive models, we are improving the site selection process, leading to consistent improvements in our rate of return.

- *Consumer Intelligence*. Our customer research techniques provide a greater perspective into customer behavior. We deploy a variety of qualitative approaches ranging from basic focus groups to techniques designed to capture deeper consumer insights based on emotional responses. On the quantitative side, we develop, execute and analyze all consumer research related to menu items, restaurant design, consumer communication, brand positioning and casual dining segment health.

- *Data and Metrics*. We have automated business performance reports for field management that were manually created in the past, freeing up time and providing better and more timely information.

Management Information Systems

In late 2010, we hired a new Chief Information Officer and developed a multi-year information technology strategy to further transform information technology into a growth enabling function by focusing on building infrastructure, increasing technical staff, creating a technology platform to support sales growth and enabling productivity improvements.

Beginning in 2010, we added significant resources that focused on building our competencies in human resources, information technology and real estate, design and construction, including the completion of standardized POS systems across our core concepts, the implementation of a HRIS system, uniform and comprehensive training programs, expanded data warehousing capability, and increased resources and tools to accelerate renovations and new unit site selection.

Restaurant level financial and accounting controls are handled through a point-of-sale computer system and network in each restaurant that communicates with our corporate headquarters. The POS system is also used to authorize and transmit credit card sales transactions and to manage the business and control costs, such as labor. Our company-owned restaurants are connected through data centers and a portal to provide our corporate employees and regional partners with access to business information and tools that allow them to collaborate, communicate, train and share information between restaurants and the corporate office. During 2012, we expect to upgrade our wireless access points in all of our restaurants. This will provide enhanced capability to pilot and roll out new mobile technology devices within our restaurants to enhance our operational capability.

Advertising and Marketing

Our marketing strategy is designed to drive comparable restaurant sales growth by increasing the frequency of and occasions for visits by our current customers as well as attracting new customers.

To maintain customer interest and relevance, each concept leverages limited-time offers featuring seasonal specials, ingredients and flavors that are consistent with the concept's offerings, but provide something new to discover on the menu. We have increased the frequency of these promotions so that Outback Steakhouse, Carrabba's and Bonefish Grill generally have five to seven promotion periods each year. The nature of the message regarding these promotions has also changed to encourage prompt action, rather than just promote brand awareness, resulting in more immediate increases in traffic. For example, for the past few years, Outback Steakhouse has created the Thanks for Giving promotion that featured a special menu and donated a portion of the proceeds to Operation Homefront, a charity that supports members of the U.S. military and their families. We promoted the initiative through extensive television, radio, social media, public relations, in-restaurant materials and celebrity support, which resulted in significant traffic and a donation of approximately $2 million for the charity.

We promote our Outback Steakhouse and Carrabba's restaurants through national and spot television and/or radio media and our Bonefish Grill restaurants through radio advertising. We advertise on television in selected markets when our brands achieve sufficient penetration to make a meaningful broadcast schedule affordable. Each of our concepts has an active public relations program and relies on word-of-mouth customer experience, site visibility, grassroots marketing in local venues, direct mail, on-line/digital advertising and billboards. We also create point-of-sale materials to communicate and promote key brand initiatives to our guests while they are dining in our restaurants. We have local marketing personnel who customize these programs to optimize them for their target market.

We also use the openings of new restaurants as an opportunity to employ a comprehensive marketing strategy. We reach out to various media outlets as well as the local community to obtain appearances on radio and television, establish relationships with local charities and gain coverage in local newspapers and magazines. The managing partner in each restaurant is the visible face of the concept and, with local involvement, reinforces our role as a concerned, active member of the community.

We have increased our use of e-marketing tools, which enable us to reach a significant number of people in a timely and targeted fashion at a fraction of the cost of traditional media. We believe that our customers are frequent internet users and will explore e-applications to make dining decisions or to share dining experiences. We have set up pages and advertise on various social media and other websites.

These methods of advertising promote and maintain brand image and generate consumer awareness of new menu offerings, such as new items added to appeal to value-conscious consumers. We also strive to increase sales through excellence in execution. Our marketing strategy of enticing customers to visit frequently and also recommending our restaurants to others complements our goal of providing a compelling dining experience. Additionally, we engage in a variety of promotional activities, such as contributing goods, time and money to charitable, civic and cultural programs, in order to give back to the communities we serve and increase public awareness of our restaurants.

Restaurant Operations

The success of our restaurants depends on our service-oriented employees and consistent execution of our menu items in a well-managed restaurant.

Management and Employees

The management staff of a typical Outback Steakhouse, Carrabba's or Bonefish Grill consists of one managing partner, one assistant manager and one kitchen manager. The management staff of a typical Fleming's or Roy's consists of one managing partner, a chef partner and two assistant managers. Each restaurant also employs approximately 55 to 75 hourly employees, many of whom work part-time. The managing partner of each restaurant has primary responsibility for the day-to-day operation of his or her restaurant and is required to abide by company-established operating standards. Area operating partners are responsible for overseeing the operations of typically eight to 15 restaurants and managing partners in a specific region.

Area Operating, Managing and Chef Partner Programs

We have established a compensation structure for our area operating, managing and chef partners that we believe encourages high quality restaurant operations, fosters long-term employee commitment and generally results in profitable restaurants.

Historically, the managing partner of each company-owned domestic restaurant and the chef partner of each Fleming's and Roy's restaurant was required, as a condition of employment, to sign a five-year employment agreement and to purchase a non-transferable ownership interest in a partnership ("Management Partnership") that provided management and supervisory services to his or her restaurant. The purchase price for a managing partner's ownership interest was fixed at $25,000, and the purchase price for a chef partner's ownership interest ranged from $10,000 to $15,000. Managing and chef partners had the right to receive monthly distributions from the Management Partnership based on a percentage of their restaurant's monthly cash flows for the duration of the agreement, which varied by concept from 6% to 10% for managing partners and 2% to 5% for chef partners. Further, managing and chef partners were eligible to participate in the PEP, a deferred compensation program, upon completion of their five-year employment agreement.

In April 2011, we implemented modifications to our managing and chef partner compensation structure to provide greater incentives for sales and profit growth. Under the revised program, managing and chef partners continue to sign five-year employment agreements and receive monthly distributions of the same percentage of their restaurant's cash flow as under the prior program. However, under the revised program, in lieu of participation in the PEP, managing partners and chef partners are eligible to receive deferred compensation payments under the new POA. The POA places greater emphasis on year-over-year growth in cash flow than the PEP. Managing and chef partners will receive a greater value under the POA than they would have received under the PEP if certain levels of year-over-year cash flow growth are achieved and a lesser value than under the PEP if these levels are not achieved.

The POA requires managing and chef partners to make an initial deposit of up to $10,000 into their "Partner Investment Account," and we will make a bookkeeping contribution to each partner's "Company Contributions Account" no later than the end of February of each year following the completion of each year (or partial year where applicable) under the partner's employment agreement. The value of each of our contributions will be equal to a percentage of the partner's restaurant's positive distributable cash flow plus, if the restaurant has been open at least 18 calendar months, a percentage of the year-over-year increase in the restaurant's positive distributable cash flow in accordance with the terms described in the partner's employment agreement.

The revised program also provides an annual bonus known as the President's Club, paid in addition to the monthly distributions of cash flow, designed to reward increases in their restaurant's annual sales above the concept sales plan with a required flow-through percentage of the incremental sales to cash flow. Managing and

chef partners whose restaurants achieve certain annual sales targets above the concept's sales plan (and the required flow-through percentage) receive a bonus equal to a percentage of the incremental sales, such percentage determined by the sales target achieved.

All managing and chef partners who execute new employment agreements after May 1, 2011 are required to participate in the new partner program, including the POA. Managing and chef partners with an employment agreement scheduled to expire December 1, 2011 or later had the opportunity (from April 27, 2011 through July 27, 2011) to amend their employment agreements to convert their existing partner program to participation in the new partner program, including the POA, effective June 1, 2011. See "Management's Discussion and Analysis of Financial Condition and Results of Operations —Liquidity and Capital Resources—Stock-Based and Deferred Compensation Plans." As of December 3, 2011, approximately 52% of our managing and chef partners were participating in the POA.

Many of Outback Steakhouse international restaurant managing partners enter into employment agreements and purchase participation interests in the cash distributions from the restaurants they manage. The amount and terms vary by country. This interest gives the managing partner the right to receive a percentage of his or her restaurant's annual cash flows for the duration of the agreement. Additionally, each new unaffiliated franchisee is required to provide the same opportunity to the managing partner of each new restaurant opened by that franchisee.

Area operating partners are currently required, as a condition of employment and within 30 days of the opening of his or her first restaurant, to make an initial investment of $50,000 in a Management Partnership within 30 days of the opening of his or her first restaurant. This interest gives the area operating partner the right to distributions from the Management Partnership based on a percentage of his or her restaurants' monthly cash flows for the duration of the agreement, typically ranging from 4% to 9%. We have the option to purchase an area operating partner's interest in the Management Partnership after the restaurant has been open for a five-year period on the terms specified in the agreement. For restaurants opened on or after January 1, 2007, the area operating partner's percentage of cash distributions and buyout percentage is calculated based on the associated restaurant's return on investment compared to our targeted return on investment and may range from 3.0% to 12.0% depending on the concept.

In 2011, we also began a version of the President's Club annual bonus described above for area operating partners to provide additional rewards for achieving sales targets with a required flow-through of the incremental sales to cash flow. We are evaluating additional changes to the compensation structure for our area operating partners.

We have also improved our field operations performance evaluation and development processes since 2009. All field managing partners and area managers receive feedback on performance with consistent metrics linked to quarterly restaurant, area and concept business objectives.

By offering these types of compensation arrangements and by providing the area operating, managing and chef partners a significant interest in the success of their restaurants, we believe we are able to attract and retain experienced and highly motivated area operating, managing and chef partners.

Supervision and Training

We require our area operating partners and restaurant managing partners to have significant experience in the full-service restaurant industry. As part of our management development programs, we engage in succession planning at a total company and concept level to identify promotable personnel, with focused training programs to prepare managers for the next level of responsibility. Our core concept presidents have been with us for an average of 20 years and have an average of 30 years of industry experience. Our regional field management team has an average of over 13 years of experience working with us at the managing partner level or above.

All operating partners and managing partners are required to complete a comprehensive training program that emphasizes our operating strategy, procedures and standards. Our senior management meets quarterly with our area operating partners to discuss business-related issues and share ideas. In addition, members of senior management visit restaurants regularly to ensure that our concept, strategy and standards of quality are being adhered to in all aspects of restaurant operations.

The restaurant managing and area operating partners, together with our Presidents, Regional Vice Presidents, Senior Vice Presidents of Training and Directors of Training, are responsible for selecting and training the employees for each new restaurant. The training period for new non-management employees lasts approximately one week and is characterized by on-the-job supervision by an experienced employee. Ongoing employee training remains the responsibility of the restaurant manager. Written tests and observation in the work place are used to evaluate each employee's performance. Special emphasis is placed on the consistency and quality of food preparation and service which is monitored through monthly meetings between kitchen managers and management.

Service

We seek to deliver superior service to each customer at every opportunity. We offer customers prompt, friendly and efficient service, keep wait staff-to-table ratios high and staff each restaurant with experienced management teams to ensure consistent and attentive customer service. In Zagat's customer survey in 2011, Bonefish Grill and Carrabba's were ranked first and third, respectively, for all full-service chains in the "Top Service" category.

In order to better assess and improve our performance, in 2009 we began using Service Management Group (SMG) to conduct an on-going satisfaction measurement program that utilizes a random invitation to participate in a web-based survey printed on customer checks and provides us with benchmarking information from other restaurants. The program measures satisfaction across a wide range of experience elements, from the pace of the experience to the temperature of the food. Results are compiled and reported through a central web site at the national, regional and individual restaurant level.

Currently, 24 casual dining restaurant concepts, including Outback Steakhouse, Carrabba's and Bonefish Grill, participate in the SMG survey web methodology and contribute to the SMG average comparison measures that we utilize in assessing our performance. The percentage of surveyed customers that rated their overall customer satisfaction at Outback Steakhouse as "excellent" or "very good" increased by 20% from April 2009 to December 2011, based on our SMG customer satisfaction measurement program, which we believe is attributable to the initiatives we implemented.

Food Preparation and Quality Control

Food safety is a critical priority, and we dedicate resources to ensuring that our customers enjoy safe, quality food products. We have taken various steps to mitigate food quality and safety risks and have central teams focused on this goal together with our supply chain, food safety/quality assurance and R&D teams.

We have an R&D facility located in Tampa that serves as a test kitchen and vendor product qualification site. Our supply chain organization manages internal auditors for vendor evaluations along with external third parties to inspect vendor adherence to quality, food safety and product specification on a risk based schedule. Vendors that do not comply with quality, food safety and other specifications are not utilized until they have corrective actions in place and are re-certified for compliance. Additionally, a daily "line check" is performed by the restaurant managing partner and their key team members to inspect food prepared for that day, as well as the freshness of liquor, beverages, condiments and other perishables used for all menu items.

We also employ two outside advisory councils comprised of external subject matter experts to advise our senior management on industry trends and on quality, safety and animal considerations pertinent to our industry, such as well-being strategies and procedures.

Sourcing and Supply

We take a centralized approach to purchasing and supply chain management, with our corporate team serving all concepts domestically and internationally. In addition, we have dedicated supply chain management personnel at the local level in our larger international operations in Asia and South America. The supply chain management organization is responsible for all food and operating supply purchases as well as a large percentage of field and home office services. In addition, we have logistics teams dedicated to optimizing freight costs. The supply chain management organization's mission is to utilize a combination of centralized domestic and locally-based supply to capture the efficiencies and economies of scale that come from making strategic buys, while maintaining (or improving) quality and building stronger partnerships with our key vendors.

We work to address the end-to-end costs (from the source to the fork) associated with the products and goods we purchase. We utilize a "total cost of ownership" (TCO) approach, which focuses on both the initial purchase price, coupled with the cost structure underlying the procurement and order fulfillment process. The TCO approach includes monitoring commodity markets and trends and seeking to execute product purchases at the most advantageous times. We develop commodity sourcing strategies for all major commodity categories based on the dynamics of each category. Those strategies include both spot purchases and long-term contracts of generally one year or less where we believe long-term contract prices are more attractive than anticipated spot prices. In addition, we limit exposure to potential risk by requiring our vendor partners to meet or exceed our quality assurance standards.

We have a national distribution program in place that includes food, beverage, and packaging goods. This program is with a custom distribution company that uses a limited number of warehouses that provide only products approved for our system.

Proteins represent about 50% of our commodity purchasing composition, with beef representing slightly over half of total purchased proteins. In 2011, we purchased more than 90% of our beef raw materials from four beef suppliers who represent approximately 75% of the total beef marketplace in the U.S. Due to the nature of our industry, we expect to continue to purchase a substantial amount of our beef from a small number of suppliers. Other major commodity categories purchased include produce, dairy, bread and pasta and energy sources to operate our restaurants, such as natural gas.

Restaurant Ownership Structures

Our restaurants are predominately company-owned or controlled, including through joint ventures, and otherwise operated under franchise arrangements. We generate our revenues primarily from our company-owned or controlled restaurants and secondarily through ongoing royalties from our franchised restaurants and sales of franchise rights.

Company-Owned Restaurants

Company-owned or controlled restaurants include restaurants owned directly by us, by limited partnerships in which we are a general partner and by joint ventures in which we are a member. Our legal ownership interests in these partnerships and joint ventures generally range from 50% to 90%. The results of operations of company-owned restaurants are included in our consolidated operating results. The portion of income or loss attributable to the other partners' interests is eliminated in the line item in our Consolidated Statements of Operations entitled "Net income (loss) attributable to noncontrolling interests."

In the future we do not plan to utilize limited partnerships for domestic company-owned restaurants. Instead, the restaurants will be wholly-owned by us and the area operating, managing and chef partners will receive their distributions of restaurant cash flow as employee compensation rather than partnership distributions.

With respect to Carrabba's restaurants opened after 1994, we pay royalties to the Carrabba's founders ranging from 1.0% to 1.5% of sales pursuant to agreements we entered into with the founders.

We also include the restaurants owned by our Roy's joint venture as company-owned restaurants, and their accounts and operations are included in our consolidated financial statements, even though we have less than majority ownership. We determined we are the primary beneficiary of the joint venture since we have the power to direct or cause the direction of the activities that most significantly impact the entity on a day-to-day basis, such as decisions regarding menu development, purchasing, restaurant expansion and closings and the management of employee-related processes. Additionally, we have the obligation to absorb losses or the right to receive benefits of the Roy's joint venture that could potentially be significant to the Roy's joint venture. The majority of capital contributions made by our partner in the Roy's joint venture, RY-8, have been funded by loans to RY-8 from a third party, which we guarantee. The guarantee is secured by a collateral interest in RY-8's membership interest in the joint venture. We did not have an economic interest in nine Roy's as of December 31, 2011, including six in Hawaii and one each in the continental United States, Japan and Guam.

Through our Brazilian Joint Venture with PGS Participacoes Ltda., we hold a 50% ownership interest in PGS Consultoria e Serviços Ltda. The Brazilian Joint Venture was formed in 1998 for the purpose of operating Outback Steakhouse franchise restaurants in Brazil. We account for the Brazilian Joint Venture under the equity method of accounting. We are responsible for 50% of the costs of new restaurants operated by the Brazilian Joint Venture and our joint venture partner is responsible for the other 50%. Income and loss derived from the Brazilian Joint Venture is presented in the line item "Income from operations of unconsolidated affiliates" in our Consolidated Statements of Operations.

In addition, under our settlement agreement with T-Bird, T-Bird has a right we refer to as the Put Right, which would require us to purchase for cash all of the equity interests in the T-Bird entities that own Outback Steakhouse restaurants and certain rights under the development agreement with T-Bird entity. The Put Right is non-transferable, other than under limited circumstances set forth in the Settlement Agreement. The Put Right will become exercisable by T-Bird for a one-year period beginning on the date of closing of this initial public offering. The Put Right is also exercisable if we sell our Outback Steakhouse concept. If the Put Right is exercised, we will pay a purchase price equal to a multiple of the T-Bird entities' adjusted EBITDA for the trailing 12 months, net of liabilities of the T-Bird entities. The multiple is equal to 75% of the multiple of our adjusted EBITDA reflected in our stock price in the case of an IPO or, in a sale of the Outback Steakhouse concept, 75% of the multiple of adjusted EBITDA that we are receiving in the sale. We have a one-time right to reject the exercise of the Put Right if the transaction would be dilutive to our consolidated earnings per share. In such event, the Put Right is extended until the first anniversary of our notice to the T-Bird entities of such rejection. The closing of the Put Right is subject to certain conditions, including the negotiation of a transaction agreement reasonably acceptable to the parties, the absence of dissenters' rights being exercised by the equity owners above a specified level and compliance with our debt agreements.

Unaffiliated Franchise Program

Our unaffiliated franchise arrangements grant third parties a license to establish and operate a restaurant using one of our concepts, our systems and our trademarks in a given area. The unaffiliated franchisee pays us for the concept ideas, strategy, marketing, operating system, training, purchasing power and brand recognition.

Franchised restaurants must be operated in compliance with each concept's methods, standards and specifications, including regarding menu items, ingredients, materials, supplies, services, fixtures, furnishings, decor and signs, although the franchisee has full discretion to determine menu prices. In addition, all franchisees are required to purchase all food, ingredients, supplies and materials from approved suppliers. Our regional vice presidents regularly inspect franchised restaurants to confirm compliance with our requirements.

At December 31, 2011, there were 106 domestic franchised Outback Steakhouse restaurants and 47 international franchised Outback Steakhouse restaurants. Each domestic franchisee paid an initial franchise fee of $40,000 for each restaurant and is required to pay a continuing monthly royalty of 3.0% of gross restaurant sales and a monthly marketing administration fee of 0.5% of gross restaurant sales. Initial fees and royalties for international franchisees vary by market. Generally, each international franchisee paid an initial franchise fee of $40,000 to $200,000 for each restaurant and are expected to pay a continuing monthly royalty of 2.0% to 4.0% of gross restaurant sales. Certain international franchisees enter into an international development agreement that requires them to pay a development fee in exchange for the right and obligation to develop and operate up to five restaurants within a defined development territory pursuant to separate franchise agreements. All domestic franchisees are required to expend an annually adjusted percentage of gross restaurant sales, up to a maximum of 3.5%, for national advertising on a monthly basis (3.0% in 2011).

At December 31, 2011, there was one domestic franchised Carrabba's. The franchisee paid an initial franchise fee of $40,000 and pays a continuing monthly royalty of 5.75% of gross restaurant sales.

At December 31, 2011, there were seven domestic franchised Bonefish Grills. Four of these franchisees paid an initial franchise fee of $50,000 for each restaurant and pay a continuing monthly royalty of 3.5% to 4.0% of gross restaurant sales. Three of these franchisees pay royalties up to 4.0%, depending on sales volumes. Under the terms of the franchise agreement, the franchisees are required to expend, on a monthly basis, a minimum of 2.5% of gross restaurant sales on local advertising and pay a monthly marketing administration fee of 0.5% of gross restaurant sales.

There were no unaffiliated franchises of any of our other restaurant concepts at December 31, 2011.

Under the development agreement granted to one of the T-Bird entities, for the period ending in 2031, the T-Bird entities have the exclusive right through 2031 to develop and operate Outback Steakhouse restaurants as a franchisee in the State of California. We have agreed to waive all rights of first refusal in our franchise arrangements with the T-Bird entities in connection with a sale of all, and not less than all, of the assets, or at least 75% of the ownership of the T-Bird entities.

Competition

The restaurant industry is highly competitive with a substantial number of restaurant operators that compete directly and indirectly with us in respect to price, service, location and food quality, and there are other well-established competitors with significant financial and other resources. There is also active competition for management personnel, attractive suitable real estate sites, supplies and restaurant employees. Further, we face growing competition from the supermarket industry, with improved selections of prepared meals, and from quick service and fast casual restaurants, as a result of higher-quality food and beverage offerings. We expect intense competition to continue in all of these areas.

Industry and internal research conducted suggests that consumers consider casual dining restaurants within a given trade area when making dining decisions. As a result, an individual restaurant's competitors will vary based on their trade area and will include both independent and chain restaurants. At an aggregate level, all major casual dining restaurants would be considered competitors of our concepts.

We believe our principal strategies, which include but are not limited to, the use of high quality ingredients, the variety of our menu and concepts, the quality and consistency of our food and service, the use of various promotions and the selection of appropriate locations for our restaurants, allow us to effectively and efficiently compete in the restaurant industry.

Government Regulation

We are subject to various federal, state, local and international laws affecting our business. Each of our restaurants is subject to licensing and regulation by a number of governmental authorities, which may include, among others, alcoholic beverage control, health and safety, nutritional menu labeling, health care, environmental and fire agencies in the state, municipality or country in which the restaurant is located. Difficulty in obtaining or failing to obtain the required licenses or approvals could delay or prevent the development of a new restaurant in a particular area. Additionally, difficulties or inabilities to retain or renew licenses, or increased compliance costs due to changed regulations, could adversely affect operations at existing restaurants.

Approximately 15% of our consolidated restaurant sales are attributable to the sale of alcoholic beverages. Alcoholic beverage control regulations require each of our restaurants to apply to a state authority and, in certain locations, county or municipal authorities for a license or permit to sell alcoholic beverages on the premises and to provide service for extended hours and on Sundays. Typically, licenses must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our restaurants, including minimum age of patrons and employees, hours of operation, advertising, training, wholesale purchasing, inventory control and handling and storage and dispensing of alcoholic beverages. The failure of a restaurant to obtain or retain liquor or food service licenses would adversely affect the restaurant's operations. Additionally, we are subject in certain states to "dramshop" statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person.

Our restaurant operations are also subject to federal and state labor laws, including the Fair Labor Standards Act, governing such matters as minimum wages, overtime, tip credits and worker conditions. Our employees who receive tips as part of their compensation, such as servers, are paid at a minimum wage rate, after giving effect to applicable tip credits. We rely on our employees to accurately disclose the full amount of their tip income, and we base our FICA tax reporting on the disclosures provided to us by such tipped employees. Our other personnel, such as our kitchen staff, are typically paid in excess of minimum wage. As significant numbers of our food service and preparation personnel are paid at rates related to the applicable minimum wage, further increases in the minimum wage or other changes in these laws could increase our labor costs. Our ability to respond to minimum wage increases by increasing menu prices will depend on the responses of our competitors and customers. Further, we are continuing to assess the impact of federal health care legislation on our health care benefit costs. The imposition of any requirement that we provide health insurance benefits to employees that are more extensive than the health insurance benefits we currently provide, or the imposition of additional employer paid employment taxes on income earned by our employees, could have an adverse effect on our results of operations and financial position. Our distributors and suppliers also may be affected by higher minimum wage and benefit standards, which could result in higher costs for goods and services supplied to us.

We may also be subject to lawsuits from our employees, the U.S. Equal Employment Opportunity Commission or others alleging violations of federal and state laws regarding workplace and employment matters, discrimination and similar matters. A number of lawsuits have resulted in the payment of substantial damages by the defendants. For example, in December 2009, we entered into a Consent Decree in settlement of certain litigation brought by the U.S. Equal Employment Opportunity Commission, which required us to make a settlement payment of $19.0 million. In addition, during the four-year term of the Consent Decree, we are required to fulfill certain training, record-keeping and reporting requirements, maintain an open access system for restaurant employees to express interest in promotions, and employ a human resources executive.

The Patient Protection and Affordability Act of 2010 (the "PPACA") enacted in March 2010 requires chain restaurants with 20 or more locations in the United States to comply with federal nutritional disclosure requirements. The FDA has indicated that it intends to issue final regulations by the middle of 2012 and begin enforcing the regulations by the end of 2012. A number of states, counties and cities have also enacted menu labeling laws requiring multi-unit restaurant operators to disclose certain nutritional information to customers, or

have enacted legislation restricting the use of certain types of ingredients in restaurants. Although the federal legislation is intended to preempt conflicting state or local laws on nutrition labeling, until we are required to comply with the federal law we will be subject to a patchwork of state and local laws and regulations regarding nutritional content disclosure requirements. Many of these requirements are inconsistent or are interpreted differently from one jurisdiction to another. While our ability to adapt to consumer preferences is a strength of our concepts, the effect of such labeling requirements on consumer choices, if any, is unclear at this time.

There is potential for increased regulation of food in the United States under the recent changes in the HACCP system requirements. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. Many states have required restaurants to develop and implement HACCP Systems and the United States government continues to expand the sectors of the food industry that must adopt and implement HACCP programs. For example, the Food Safety Modernization Act (the "FSMA"), signed into law in January 2011, granted the FDA new authority regarding the safety of the entire food system, including through increased inspections and mandatory food recalls. Although restaurants are specifically exempted from or not directly implicated by some of these new requirements, we anticipate that the new requirements may impact our industry. Additionally, our suppliers may initiate or otherwise be subject to food recalls that may impact the availability of certain products, result in adverse publicity or require us to take actions that could be costly for us or otherwise harm our business.

We are subject to the Americans with Disabilities Act, or the ADA, which, among other things, requires our restaurants to meet federally mandated requirements for the disabled. The ADA prohibits discrimination in employment and public accommodations on the basis of disability. Under the ADA, we could be required to expend funds to modify our restaurants to provide service to, or make reasonable accommodations for the employment of, disabled persons. In addition, our employment practices are subject to the requirements of the Immigration and Naturalization Service relating to citizenship and residency. Government regulations could affect and change the items we procure for resale. We may also become subject to legislation or regulation seeking to tax and/or regulate high-fat and high-sodium foods, particularly in the United States, which could be costly to comply with. Our results can be impacted by tax legislation and regulation in the jurisdictions in which we operate and by accounting standards or pronouncements.

We are also subject to laws and regulations relating to information security, privacy, cashless payments, gift cards and consumer credit, protection and fraud, and any failure or perceived failure to comply with these laws and regulations could harm our reputation or lead to litigation, which could adversely affect our financial condition.

See "Risk Factors" for a discussion of risks relating to federal, state, local and international regulation of our business.

Employees

As of December 31, 2011, we employed approximately 85,000 persons, of which 825 are corporate personnel, approximately 5,200 are restaurant management personnel and the remainder are hourly restaurant personnel. Of the 825 corporate employees, approximately 185 are in management and 640 are administrative or office employees. None of our employees are covered by a collective bargaining agreement.

Properties

During the year ended December 31, 2011, we added fifteen new restaurant sites, closed eleven others and, in October 2011, we sold our nine company-owned Outback Steakhouse restaurants in Japan to a subsidiary of S Foods, Inc. The buyer has the right to develop Outback Steakhouse international franchise restaurants in Japan in the future and will pay us a royalty based on sales volumes.

As of December 31, 2011, we had the following number of owned and franchised domestic restaurants located in the following states:

State	Outback Steakhouse	Carrabba's	Bonefish Grill	Fleming's	Roy's	Total
Alabama	14	4	4	1	—	23
Alaska	1	—	—	—	—	1
Arizona	16	8	—	5	2	31
Arkansas	8	1	2	—	—	11
California	63	—	—	11	9	83
Colorado	16	6	4	1	—	27
Connecticut	10	1	—	1	—	12
Delaware	2	—	—	—	—	2
Florida	92	65	45	7	6	215
Georgia	28	12	8	1	—	49
Hawaii	7	—	—	—	—	7
Idaho	5	—	1	—	—	6
Illinois	19	2	3	2	1	27
Indiana	15	3	4	1	—	23
Iowa	6	—	1	1	—	8
Kansas	6	2	2	—	—	10
Kentucky	11	3	3	—	—	17
Louisiana	14	3	3	1	—	21
Maine	1	—	—	—	—	1
Maryland	23	9	6	1	1	40
Massachusetts	15	3	—	1	—	19
Michigan	23	8	2	2	—	35
Minnesota	9	—	—	—	—	9
Mississippi	6	—	2	—	—	8
Missouri	13	1	1	1	—	16
Montana	3	—	—	—	—	3
Nebraska	4	1	1	1	—	7
Nevada	11	2	—	1	2	16
New Hampshire	2	1	—	—	—	3
New Jersey	19	8	11	2	—	40
New Mexico	5	—	—	—	—	5
New York	33	6	4	—	—	43
North Carolina	34	16	9	3	—	62
Ohio	30	10	6	3	—	49
Oklahoma	8	1	1	1	—	11
Oregon	8	—	—	—	—	8
Pennsylvania	26	9	5	1	—	41
Rhode Island	1	1	—	1	—	3
South Carolina	22	9	7	—	—	38
South Dakota	2	—	—	—	—	2
Tennessee	20	9	8	3	—	40
Texas	52	14	—	6	1	73
Utah	4	1	—	1	—	6
Vermont	1	—	—	—	—	1
Virginia	35	11	12	2	—	60
Washington	16	—	2	—	—	18
West Virginia	8	—	—	—	—	8
Wisconsin	6	2	1	2	—	11
Wyoming	2	—	—	—	—	2
Total	**775**	**232**	**158**	**64**	**22**	**1251**

In connection with the Merger on June 14, 2007, we implemented a new ownership and financing arrangement for some of our restaurant properties, pursuant to which Private Restaurant Properties, LLC, or PRP, our wholly-owned subsidiary, acquired 343 restaurant properties from our wholly-owned primary operating subsidiary, OSI Restaurant Partners, LLC, or OSI. Immediately after the purchase, PRP leased the properties back to a subsidiary of OSI (the "Tenant"), under a 15-year market rate master lease agreement (the "Master Lease"). PRP's sole purpose is to own and lease all its real property to the Tenant and PRP. As of December 31, 2011, approximately 25% of our restaurant sites were leased by Tenant from PRP. The remaining 75% of our restaurant sites were leased by our subsidiaries from third parties.

On March 14, 2012, PRP sold 67 properties to two independent real estate institutional investors and the Tenant entered into new 20-year market-rate leases with the buyers. The leases are net leases that require the Tenant to pay the costs of insurance, taxes and common area operating costs. Also, on March 27, 2012, we completed the CMBS Refinancing associated with the remaining 261 properties. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Transactions" for a description of the CMBS Refinancing. Following the CMBS Refinancing, New PRP continues to own and lease the 261 restaurant properties to the Tenant under the Amended and Restated Master Lease, which has a 15-year term. The Amended and Restated Master Lease is a net lease that requires the Tenant to pay the costs of insurance, taxes and common area operating costs. Following the Sale-Leaseback Transaction, approximately 20% of our restaurant sites are leased by Tenant from New PRP. The remaining 80% of our restaurant sites are leased from third parties, including the buyers of the 67 properties from PRP.

Initial lease expirations for our other leased properties typically range from five to ten years, with the majority of the leases providing for an option to renew for two or more additional terms. All of our leases provide for a minimum annual rent, and many leases call for additional rent based on sales volume at the particular location over specified minimum levels. Generally, the leases are net leases that require us to pay our share of the costs of insurance, taxes and common area operating costs.

As of December 31, 2011, we leased approximately 179,000 square feet of office space in Tampa, Florida for our corporate headquarters and research and development facilities under a lease expiring January 31, 2025.

Trademarks

We regard our "Outback Steakhouse," "Carrabba's Italian Grill," "Bonefish Grill," "Fleming's Prime Steakhouse and Wine Bar" and "Roy's" service marks and our "Bloomin' Onion" trademark as having significant value and as being important factors in the marketing of our restaurants. We have also obtained trademarks for several of our other menu items and for various advertising slogans. We are aware of names and marks similar to the service marks of ours used by other persons in certain geographic areas in which we have restaurants. However, we believe such uses will not adversely affect us. Our policy is to pursue registration of our marks whenever possible and to oppose vigorously any infringement of our marks.

We license the use of our registered trademarks to franchisees and third parties through franchise arrangements and licenses. The franchise and license arrangements restrict franchisees' and licensees' activities with respect to the use of our trademarks, and impose quality control standards in connection with goods and services offered in connection with the trademarks.

Seasonality and Quarterly Results

Our business is subject to seasonal fluctuations. Historically, customer spending patterns for our established restaurants are generally highest in the first quarter of the year and lowest in the third quarter of the year. Additionally, holidays, severe winter weather, hurricanes, thunderstorms and similar conditions may affect sales volumes seasonally in some of our markets. Quarterly results have been and will continue to be significantly affected by general economic conditions, the timing of new restaurant openings and their associated

pre-opening costs, restaurant closures and exit-related costs and impairments of goodwill and property, fixtures and equipment. As a result of these and other factors, our financial results for any given quarter may not be indicative of the results that may be achieved for a full fiscal year.

Legal Proceedings

We are subject to legal proceedings, claims and liabilities, such as liquor liability, sexual harassment and slip and fall cases, which arise in the ordinary course of business and are generally covered by insurance. In the opinion of management, the amount of ultimate liability with respect to those actions will not have a material adverse impact on our financial position or results of operations and cash flows. We accrue for loss contingencies that are probable and reasonably estimable. We generally do not accrue for legal costs expected to be incurred with a loss contingency until those services are provided.

MANAGEMENT

Below is a list of the names, ages as of March 15, 2012, positions, and a brief account of the business experience, of the individuals who serve as the executive officers and directors as of the date of this prospectus.

Name	Age	Position
Elizabeth A. Smith	48	Chairman of the Board of Directors and Chief Executive Officer
Dirk A. Montgomery	48	Chief Financial Officer and Executive Vice President
David Berg	50	Executive Vice President and President of Outback Steakhouse International
Jody L. Bilney	50	Executive Vice President and Chief Brand Officer
John W. Cooper	59	Executive Vice President and President of Bonefish Grill
Joseph J. Kadow	55	Executive Vice President and Chief Legal Officer
David A. Pace	52	Executive Vice President and Chief Resources Officer
Steven T. Shlemon	52	Executive Vice President and President of Carrabba's
Jeffrey S. Smith	49	Executive Vice President and President of Outback Steakhouse
Andrew B. Balson	45	Director
Robert D. Basham	64	Director
J. Michael Chu	53	Director
Philip H. Loughlin	44	Director
Mark E. Nunnelly	53	Director
Chris T. Sullivan	64	Director
Mark A. Verdi	45	Director

We will add one independent director before the completion of this offering. We anticipate that we will appoint at least one additional director who is not affiliated with us or any of our stockholders within 90 days of the completion of this offering and one additional director who is not affiliated with us or any of our stockholders within one year of the completion of this offering, resulting in a board that includes at least three independent directors.

Elizabeth A. Smith was appointed Chairman of our board of directors effective January 4, 2012 and has served as our Chief Executive Officer and a director since November 2009. From September 2007 to October 2009, Ms. Smith was President of Avon Products, Inc. and was responsible for its worldwide product-to-market processes, infrastructure and systems, including Global Brand Marketing, Global Sales, Global Supply Chain and Global Information Technology. In January 2005, Ms. Smith joined Avon Products as President, Global Brand, and was given the additional role of leading Avon North America in August 2005. From September 1990 to November 2004, Ms. Smith worked in various capacities at Kraft Foods Inc. Ms. Smith is a member of the board of directors of Staples, Inc. The board of directors believes Ms. Smith's qualifications to serve as Chairman include her role as Chief Executive Officer, her extensive experience with global companies and retail sales, her expertise in corporate strategy development and her knowledge of marketing, sales, supply chain and information technology systems.

Dirk A. Montgomery has served as our Chief Financial Officer ("CFO") and Senior Vice President since November 2005, and as an Executive Vice President since January 1, 2012 and will take on the new position of Chief Value Chain Officer upon appointment of a new CFO, with responsibility for our productivity team, the Global Supply Chain organization and the information technology organization. Mr. Montgomery will remain in his current role as CFO until we hire a new Chief Financial Officer. From 2000 to 2004, Mr. Montgomery was employed as Chief Financial Officer by Express, a subsidiary of Limited Brands, Inc.

David P. Berg has been the President of Outback Steakhouse International since September 2011 and our Executive Vice President since January 1, 2012. Prior to joining the company, Mr. Berg was Executive Vice President and Chief Operating Officer of GNC Holdings, Inc., a global specialty retailer of vitamins, supplements and nutritional products that operates in 48 countries, from June 2010 to September 2011 and served as Executive Vice President—International from September 2009 to June 2010. Mr. Berg was the Executive Vice President and Chief Operating Officer—Best Buy International for Best Buy Co., Inc. from 2008 to 2009 and served as a Vice President and Senior Vice President of Best Buy from 2002 to 2008. Mr. Berg is a member of the board of directors of Imation Corp.

Jody L. Bilney has served as Chief Brand Officer since January 2008 and our Executive Vice President since January 1, 2012. Ms. Bilney also has responsibility for our R&D function. She was Chief Marketing Officer of Outback Steakhouse from October 2006 to January 2008.

John W. Cooper has been the President of Bonefish Grill since August 2001 and our Executive Vice President since January 1, 2012.

Joseph J. Kadow has been our Executive Vice President and Chief Legal Officer since April 2005 and served as our Senior Vice President and General Counsel from April 1994 to April 2005. Mr. Kadow has also served as Secretary since April 1994.

David A. Pace has served as our Chief Resources Officer and Executive Vice President since August 2010. Mr. Pace served as a consultant for Egon Zehnder International from 2009 to 2010. From 2002 to 2008, Mr. Pace served as Executive Vice President of Partner Resources for Starbucks Coffee Company. Mr. Pace has also held various positions with other companies prior to his position with Starbucks Coffee Company, including with PepsiCo, Inc. and YUM Brands.

Steven T. Shlemon has been the President of Carrabba's since April 2000 and our Executive Vice President since January 1, 2012.

Jeffrey S. Smith has served as President of Outback Steakhouse since April 2007 and our Executive Vice President since January 1, 2012. Mr. Smith served as a Vice President of Bonefish Grill from May 2004 to April 2007 and as Regional Vice President—Operations of Outback Steakhouse from January 2002 to May 2004.

Andrew B. Balson has served as a director since June 2007 and is a Managing Director of Bain Capital. Mr. Balson serves on the boards of directors of Domino's Pizza, Inc., FleetCor Technologies, Inc., and Dunkin' Brands Group, Inc. as well as a number of other private companies. The board of directors believes Mr. Balson's qualifications to serve as a member of our board include his extensive experience with global companies, his industry and financial expertise and his years of experience providing strategic advisory services to complex organizations.

Robert D. Basham is one of our Founders and has served as a director since 1991. Mr. Basham was Chief Operating Officer from 1991 until March 2005 when he resigned and became Vice Chairman of the board until June 2007. From 1988 to 1991, Mr. Basham founded OSI and developed Outback Steakhouse restaurants prior to its initial public offering in 1991. The board of directors believes Mr. Basham's qualifications to serve as a member include his extensive experience in the restaurant industry and his historical perspective of our business and strategic challenges, including his leadership as a director and executive officer for over 20 years.

J. Michael Chu has served as a director since June 2007 and is a Managing Partner of Catterton Partners, a private equity firm he co-founded in 1989. The board of directors believes Mr. Chu's qualifications to serve as a member include his extensive experience in managing capital intensive operations, international operations, corporate finance and strategic advisory services.

Philip H. Loughlin has served as a director since June 2007 and is a Managing Director of Bain Capital. Prior to joining Bain Capital in 1996, Mr. Loughlin was a consultant at Bain & Company and served in operating roles at Eagle Snacks, Inc. and Norton Company. Mr. Loughlin serves on the boards of directors of Applied Systems, Inc., Ariel Holdings, Ltd., AMC Entertainment, Inc., and RBS WorldPay (Ship Luxo 3 S.a.r.l). The board of directors believes Mr. Loughlin's qualifications to serve as a member include his strong executive background in corporate strategic development and organizational acumen.

Mark E. Nunnelly has served as a director since June 2007 and is a Managing Director of Bain Capital. Prior to joining Bain Capital in 1989, Mr. Nunnelly was a Vice President of Bain & Company, with experience in the domestic, Asian and European strategy practices. Previously, Mr. Nunnelly worked at Procter & Gamble in product management. Mr. Nunnelly serves on the board of directors of Dunkin' Brands Group, Inc. The board of directors believes Mr. Nunnelly's qualifications to serve as a member include his industry experience, his extensive experience with managing capital intensive industry operations and his strong skills in international operations and strategic planning.

Chris T. Sullivan is one of our Founders and has served as a director since 1991. Mr. Sullivan was the Chairman of our board of directors from 1991 until June 2007 and was our Chief Executive Officer from 1991 until March 2005. Mr. Sullivan founded OSI in 1988 and developed Outback Steakhouse restaurants prior to its initial public offering in 1991. Mr. Sullivan serves on the board of directors of Lightyear Network Solutions, Inc., a provider of telecommunications services to businesses and residential consumers. The board of directors believes Mr. Sullivan's qualifications to serve as a member include his four decades of experience in the restaurant industry and his historical perspective of our business and strategic challenges, including his leadership as a director and executive officer for over 20 years.

Mark A. Verdi has served as a director since June 2007 and is a Managing Director of Bain Capital. Prior to joining Bain Capital in 2004, Mr. Verdi worked for IBM Global Services and Mainspring, Inc., a public strategy consulting firm. Mr. Verdi serves on the boards of directors of Burlington Coat Factory Warehouse Corporation, Burlington Coat Factory Investments Holdings, Inc., Burlington Coat Factory Holdings, Inc. and Styron Luxco Sarl. The board of directors believes Mr. Verdi's qualifications to serve as a member include his executive background in public and financial accounting for complex global organizations and years of experience in providing strategic advisory services.

Board Structure and Committee Composition

Upon the completion of this offering, we will have an audit committee, a nominating and corporate governance committee and a compensation committee with the composition and responsibilities described below. Each committee will operate under a charter that will be approved by our board of directors prior to completion of the offering. The members of each committee are appointed by and serve at the pleasure of the board of directors. In addition, from time to time, special committees may be established under the direction of the board of directors when necessary to address specific issues.

We intend to avail ourselves of the "controlled company" exception under rules. As a result, we will not have a majority of independent directors, and our nominating and corporate governance committee and compensation committee will not be composed entirely of independent directors as defined under rules. The controlled company exception does not modify the independence requirements for the audit committee, and we intend to comply with the requirements of the Sarbanes-Oxley Act and rules with respect to the audit committee. These rules require that our audit committee be composed of at least three members, one of whom must be independent on the date of listing on , a majority of whom must be independent within 90 days of the effective date of the registration statement containing this prospectus, and all of whom must be independent within one year of the effective date of the registration statement containing this prospectus.

Audit Committee

The purpose of the audit committee will be set forth in the audit committee charter and will be primarily to assist the board in overseeing:

- the integrity of our financial statements, our financial reporting process and our systems of internal accounting and financial controls;
- our compliance with legal and regulatory requirements;
- the independent auditor's qualifications and independence;
- the evaluation of enterprise risk issues; and
- the performance of our internal audit function and independent auditor.

Upon completion of this offering, the audit committee will consist of , and . Our board of directors has determined that is an independent director and an "audit committee financial expert" within the meaning of Item 407 of Regulation S-K. Prior to the completion of this offering, our board of directors will adopt a written charter under which the audit committee will operate. A copy of the charter, which will satisfy the applicable standards of the SEC and , will be available on our website.

Nominating and Corporate Governance Committee

The purpose of the nominating and corporate governance committee will be set forth in the nominating and corporate governance committee charter and will be primarily to:

- identify individuals qualified to become members of our board of directors, and to recommend to our board of directors the director nominees for each annual meeting of stockholders or to otherwise fill vacancies on the board;
- review and recommend to our board of directors committee structure, membership and operations;
- recommend to our board of directors the persons to serve on each committee and a chairman for such committee;
- develop and recommend to our board of directors a set of corporate governance guidelines applicable to us; and
- lead our board of directors in its annual review of its performance.

Upon completion of this offering, the nominating and corporate governance committee will consist of , and . Prior to the completion of this offering, our board of directors will adopt a written charter under which the nominating and corporate governance committee will operate. A copy of the charter, which will satisfy the applicable standards of the SEC and , will be available on our website.

Compensation Committee

The purpose of the compensation committee will be set forth in the compensation committee charter and will be primarily to:

- oversee our executive compensation policies and practices;

- discharge the responsibilities of our board of directors relating to executive compensation by determining and approving the compensation of our Chief Executive Officer and our other executive officers and reviewing and approving any compensation and employee benefit plans, policies and programs, and exercising discretion in the administration of such programs; and

- produce, approve and recommend to our board of directors for its approval reports on compensation matters required to be included in our annual proxy statement or annual report, in accordance with all applicable rules and regulations.

Upon completion of this offering, the compensation committee will consist of Messrs. Balson, Chu and Sullivan. Prior to the completion of this offering, our board of directors will adopt a written charter under which the compensation committee will operate. A copy of the charter, which will satisfy the applicable standards of the SEC and , will be available on our website.

Board Leadership Structure

The board of directors does not have a formal policy on whether the roles of Chief Executive Officer and chairman of the board of directors should be separate. However, Elizabeth A. Smith currently serves as both Chief Executive Officer and chairman of the board of directors. The board of directors has considered its leadership structure and believes at this time that the company and its stockholders are best served by having one person serve both positions. Combining the roles fosters accountability, effective decision-making and alignment between interests of the board of directors and management. Ms. Smith also is able to use the in-depth focus and perspective gained in her executive function to assist our board of directors in addressing both internal and external issues affecting the company. The board of directors expects to periodically review its leadership structure to ensure that it continues to meet the company's needs.

Board's Role in Risk Oversight

The entire board of directors is engaged in risk management oversight. At the present time, the board of directors has not established a separate committee to facilitate its risk oversight responsibilities. The board of directors will continue to monitor and assess whether such a committee would be appropriate. The audit committee assists the board of directors in its oversight of our risk management and the process established to identify, measure, monitor, and manage risks, in particular major financial risks. The board of directors will receive regular reports from management, as well as from the audit committee, regarding relevant risks and the actions taken by management to address those risks.

Code of Business Conduct and Ethics

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions. Following this offering, a current copy of the code, and information regarding any amendment to or waiver from its provisions, will be posted on our website.

COMPENSATION DISCUSSION AND ANALYSIS

Introduction

This Compensation Discussion and Analysis discusses the objectives and design of our executive compensation program. It includes a description of the compensation provided for 2011 to our executive officers who are named in the Summary Compensation Table under "Executive Compensation." Our "named executive officers" for 2011 were:

- Elizabeth A. Smith, Chief Executive Officer
- Dirk A. Montgomery, Chief Financial Officer
- David P. Berg, Executive Vice President and President of Outback Steakhouse International
- Jody L. Bilney, Executive Vice President and Chief Brand Officer
- Joseph J. Kadow, Executive Vice President and Chief Legal Officer

Overview of Compensation Philosophy and 2011 Performance

For 2011, the compensation committee of the board of directors of OSI was responsible for setting the compensation of our executive officers and certain other corporate executives. Following the offering, executive compensation will be established by the compensation committee of the board of directors of Bloomin' Brands. The compensation committee of OSI and Bloomin' Brands, which we refer to in this prospectus collectively as the "compensation committee," consist of the same members: Messrs. Balson, Chu and Sullivan.

The compensation committee's primary objective is to establish an executive compensation program that will enable us to attract and retain qualified executives in today's competitive market, that motivates and rewards them to achieve annual company-wide and concept-specific performance goals and that aligns management, employee and shareholder interests over the long-term. Our compensation program is designed to provide a total competitive compensation package that aligns the interests of executive officers and our shareholders by tying a significant portion of an executive's cash compensation to the achievement of annual performance goals and long-term incentive compensation to growth in the value of the company.

We achieved strong financial performance in 2011, and we believe that our named executive officers were instrumental in helping us achieve these results. Highlights of our 2011 performance include the following:

- an increase in consolidated revenues of 5.9% to $3.8 billion, driven primarily by 4.9% growth in combined comparable restaurant sales at existing domestic company-owned core restaurants;
- 15 system-wide restaurant openings across most brands, and 194 Outback Steakhouse remodels in 2011;
- productivity and cost management initiatives that we estimate allowed us to save over $50 million in the aggregate in 2011; and
- generation of income from operations of $213.5 million in 2011 compared to $168.9 million in 2010, primarily attributable to the increase in consolidated revenues described above and a $33.3 million payment received in November 2011 from T-Bird in connection with a settlement agreement that satisfied all outstanding litigation.

This strong financial performance led to significant payments to our named executive officers under our annual cash incentive plan as described under "—Compensation Elements—Performance-Based Cash Incentives" below.

Compensation Setting Process

Our compensation committee oversees our executive compensation program and is responsible for approving the type and amount of compensation paid to our named executive officers. The compensation committee approves employment agreements with our executive officers and administers our equity compensation plan. The compensation committee also has overall responsibility for establishing, implementing and monitoring the executive compensation program for our corporate level executives other than our named executive officers. Salary and target bonus amounts, as well as stock option awards for other corporate level executives, are recommended by management to the compensation committee for its consideration and approval.

Each of our named executive officers has an employment agreement with us that was entered into at the time of the Merger or, if later, at the time of hire. Each employment agreement establishes, among other things, the executive's minimum base salary and minimum target bonus, measured as a percentage of base salary. Each year since the Merger, the compensation committee has reviewed with management whether any changes to base salary or bonus targets of our named executive officers were appropriate. No changes were made to the base salaries or bonus targets of our named executive officers for 2011.

The compensation committee did not, for compensation paid in 2011, use a compensation consultant or formally obtain competitive data, except with respect to the stock option grants described under "—Compensation Elements—Long-Term Stock Incentives."

Compensation Elements

The principal components of compensation for our named executive officers consist of the following:

- base salary;
- performance-based cash incentives;
- for our Chief Executive Officer, retention-based cash incentives;
- long-term stock incentives, generally in the form of stock options;
- other benefits and perquisites; and
- change in control and termination benefits.

Mix of Total Compensation

A significant percentage of cash compensation and total compensation for our named executive officers is allocated to performance-based compensation. Performance-based cash incentives are targeted to approach or exceed base salaries so that a meaningful percentage of their annual cash compensation is dependent on our performance. Long-term stock incentives in the form of stock options supplement cash compensation and provide value to our executives when the company's equity value increases. Generally, our executives are only able to realize value from stock options upon a liquidity event such as a change in control or initial public offering. Some of our named executive officers hold restricted stock that was granted to them at the time of the Merger. Since the Merger, the compensation committee has not used restricted stock as a form of compensation for our executive officers, but the compensation committee may re-evaluate its use in the future. In evaluating annual compensation of our named executive officers and other members of management, the compensation committee considers previous equity grants.

Base Salary

Base salaries are established pursuant to employment agreements with each of our named executive officers and generally reflect demonstrated experience, skills and competencies. Base salary levels of our named

executive officers may be increased as part of the annual performance review process, upon an executive officer's promotion or other change in job responsibilities or if necessary to address internal or external equity issues as recommended by management. Base salaries of the named executive officers are listed in the table below.

Named Executive Officer	2011 Base Salary	Change From 2010
Elizabeth A. Smith	$ 1,000,000	—
Dirk A. Montgomery	472,000	—
David P. Berg (1)	450,000	N/A
Jody L. Bilney	400,000	—
Joseph J. Kadow	497,640	—

(1) Mr. Berg was hired as President of Outback International effective September 12, 2011.

Performance-Based Cash Incentives

Cash incentives are awarded to all of our executive officers under performance-based cash incentive plans. These awards are payable based on the achievement of annually established financial objectives, which are intended to provide incentives and rewards for achievement of the company's annual financial goals for corporate executive officers and a combination of company goals and concept goals for our executive officers who have operating responsibility at one of our concepts. The design of the bonus plans reflects the compensation committee's belief that a significant portion of annual compensation for each named executive officer should be based on the financial performance of the company.

Annual performance-based cash incentive targets, measured as a percentage of base salary, are set forth in each named executive officer's employment agreement and are listed in the table below. The compensation committee believes, based on its own analysis and experience in the restaurant industry, that the total potential annual cash compensation of the named executive officers is competitive with the marketplace. The following table presents the 2011 annual performance-based cash incentive target for each named executive officer, as a percentage of his or her base salary.

Named Executive Officer	2011 Annual Performance-Based Cash Incentive Target, as a Percentage of Base Salary	Change From 2010
Elizabeth A. Smith	85%	—
Dirk A. Montgomery	150%	—
David P. Berg (1)	85%	N/A
Jody L. Bilney	100%	—
Joseph J. Kadow	100%	—

(1) Mr. Berg was hired as President of Outback International effective September 12, 2011. His 2011 bonus was guaranteed at his targeted amount.

For 2011, the annual performance-based cash incentive plan for our named executive officers, except for Mr. Berg (the "2011 Corporate Bonus Plan"), was based on two equally weighted measures of OSI's 2011 financial performance: Adjusted EBITDA (the "Adjusted EBITDA Bonus") and comparable sales performance targets (the "Comparable Sales Bonus"). Under each of these measures, each named executive officer could earn up to 75% of such executive's annual cash incentive target, with the aggregate maximum payout for each under the 2011 Corporate Bonus Plan capped at 150% of the executive's annual cash incentive target.

For purposes of the 2011 Corporate Bonus Plan, "OSI Adjusted EBITDA" was calculated by adjusting OSI's earnings before interest, taxes, depreciation and amortization ("EBITDA") to exclude certain stock-based compensation expenses, non-cash expenses, and significant non-recurring items. OSI Adjusted EBITDA is a

measure established for the 2011 Corporate Bonus Plan and is different than Adjusted EBITDA for Bloomin' Brands used elsewhere in this prospectus. The OSI Adjusted EBITDA Bonus was payable on a sliding scale of OSI Adjusted EBITDA ranging from $365.0 million (representing payout at 15% of target) to a maximum payout at OSI Adjusted EBITDA of $435.0 million (representing payout at 75% of target), with OSI Adjusted EBITDA of $395.0 million representing payout at 50% of target. The Comparable Sales Bonus was based on the company's 2011 comparable sales performance relative to the company's 2011 comparable sales targets. The Comparable Sales Bonus was payable on a sliding scale of comparable sales ranging from 0% (representing payment at 25% of target) to a maximum payout at 4.1% (representing payout at 75% of target), with 2.1% representing payment at target.

OSI Adjusted EBITDA and comparable sales performance payment levels were established by the compensation committee at the beginning of the year based on consideration of company initiatives as well as industry and general economic conditions and trends, among other considerations. The actual OSI Adjusted EBITDA Bonus payout to our named executive officers under the 2011 Corporate Bonus Plan was at 65.9% of target which resulted from OSI Adjusted EBITDA of $424.0 million. The actual Comparable Sales Bonus payout to our named executive officers was at 75% of target, which resulted from company-wide comparable sales performance of 5.7%. Accordingly, the total payouts to our named executive officers under the 2011 Corporate Bonus Plan, as reported in the Summary Compensation Table, were 140.9% of their bonus targets.

For 2011, the annual performance-based cash incentive plan for Mr. Berg, President of Outback International (the "2011 International Bonus Plan"), was based 50% on the 2011 Corporate Business Plan, as described above, and 50% on a bonus plan structured much like the 2011 Corporate Bonus Plan, but based on the results of Outback International. Under each of these measures, Mr. Berg could earn up to 75% of his annual cash incentive target, with the aggregate maximum payout capped at 150% of his annual cash incentive target. The Outback International component was based on two equally weighted measures of Outback International's performance: 2011 adjusted EBITDA for Outback International ("International Adjusted EBITDA"), which was calculated in a manner similar to OSI Adjusted EBITDA, and comparable sales performance for Outback International relative to 2011 comparable sales targets (the "International Comparable Sales"). The bonus based on International Adjusted EBITDA was payable on a sliding scale of International Adjusted EBITDA ranging from $53.7 million (representing payout at 7.5% of target) to a maximum payout at International Adjusted EBITDA of $64.7 million (representing payout at 37.5% of target), with International Adjusted EBITDA of $58.7 million representing payout at target. The bonus based on International Comparable Sales was payable on a sliding scale of International Comparable Sales ranging from 1% (representing payout at 12.5% of target) to a maximum payout at 5% (representing payout at 37.5% of target), with 3% representing payment at 25% of target. For 2011, Mr. Berg's bonus was guaranteed at target pursuant to his employment agreement. The actual payment to Mr. Berg for 2011 was 145.4% of his target bonus based on the results of the 2011 Corporate Bonus Plan, International Adjusted EBITDA of $72.0 million and International Comparable Sales of 14.9%.

In addition to her participation in the 2011 Corporate Bonus Plan, Ms. Smith's cash bonus compensation includes two separate bonus arrangements: a retention bonus (the "Retention Bonus") and a performance-based bonus (the "Incentive Bonus"). The Retention Bonus provides for an aggregate bonus opportunity of $12.0 million, which is payable to Ms. Smith over a four-year period that began in 2010 in installments of $1.8 million, $3.0 million and two installments of $3.6 million, generally subject to her remaining continuously employed through the applicable payment date. The Retention Bonus is structured with larger payments scheduled for the later payment dates in order to provide a greater incentive to Ms. Smith to remain employed through the full term of her employment agreement. The Incentive Bonus provides for an aggregate bonus opportunity of up to $15.2 million. The Incentive Bonus will generally only be paid to Ms. Smith if we complete an initial public offering or experience a change in control (each a "Qualifying Liquidity Event") and if certain performance targets are met relating to the value of our common stock at the time of the Qualifying Liquidity Event. This offering, if it is completed, will be a Qualifying Liquidity Event.

Performance-based cash incentives earned by the named executive officers are reflected in the "Executive Compensation—Summary Compensation Table" under the heading "Non-Equity Incentive Plan Compensation." Threshold, target and maximum payments for the 2011 Bonus Plan are reflected in "Executive Compensation—Grants of Plan-Based Awards for Fiscal 2011." The installments paid with respect to Ms. Smith's Retention Bonus are reflected in "Executive Compensation—Summary Compensation Table" under the heading "Bonus."

Long-Term Stock Incentives

Long-term stock incentives are designed to align a significant portion of total compensation with our long-term goal of increasing the value of the company. At the time of the Merger, the long-term stock incentive component of the compensation package consisted of restricted stock and stock options. Since that time, long-term stock incentive awards have consisted solely of stock options and have been primarily granted to newly hired or promoted executive officers.

Stock options are designed to reward longer-term performance, facilitate equity ownership, deter recruitment of our key personnel by competitors and others and further align the interests of our executives with those of our stockholders. Stock option awards under the 2007 Incentive Plan have generally been limited to our executive officers and other key employees and managers who are in a position to contribute substantially to our growth and success.

Shares acquired upon the exercise of stock options under the 2007 Incentive Plan are generally subject to a stockholder's agreement that contains a management call option that allows us to repurchase all shares purchased through exercise of stock options upon termination of employment at any time prior to the earlier of an initial public offering or a change in control. If an employee's termination of employment is a result of death or disability, by us other than for Cause or by the employee for Good Reason (see "Executive Compensation—Potential Payments Upon Termination or Change in Control" for a summary of these definitions), we may repurchase exercised stock under this call option at fair market value. If an employee's termination of employment is by us for Cause or by the employee without Good Reason, we may repurchase the stock under this call provision for the lesser of the exercise price or fair market value. Additionally, the holder of shares acquired upon the exercise of stock options is prohibited from transferring the shares to any person, subject to narrow exceptions, and should a permitted transfer occur, the transferred shares remain subject to the management call option. As a result of the transfer restrictions and call option, we do not record compensation expense for stock options that contain the call option since employees cannot realize monetary benefit from the options or any shares acquired upon the exercise of the options unless the employee is employed at the time of an initial public offering or a change in control.

In November 2009, Ms. Smith received a stock option grant that contained a modified form of the management call option for one quarter of the option shares. In accordance with accounting guidance for stock-based compensation, this form of the management call option does not preclude us from recording compensation expense during the vesting period. Compensation expense is not recorded for the remaining three quarters of the option shares since they are not considered vested from an accounting standpoint until the occurrence of a Qualifying Liquidity Event, as defined in Ms. Smith's stock option agreement.

On July 1, 2011, Ms. Smith was granted an option to purchase 550,000 shares of our common stock under the 2007 Incentive Plan in accordance with the terms of her employment agreement. This option has an exercise price of $10.03 per share and is subject to the modified form of the management call option that applied to one quarter of her 2009 grant. In accordance with accounting for stock-based compensation, this modified form of the call option does not preclude us from recording compensation expense during the service period. These options will vest and compensation expense will be recorded in equal amounts over a five-year period on each anniversary of the grant date, contingent upon her continued employment with us.

Mr. Berg was granted an option to purchase 250,000 shares of our common stock under the 2007 Incentive Plan in connection with his hiring in September 2011. This option has an exercise price of $10.03 per share, and the shares are subject to the management call option and transfer restrictions. As a result of these provisions, among other considerations, compensation expense will not be recorded for his grant. The shares subject to the option will vest in equal amounts over a five-year period on each anniversary of his employment start date, contingent upon his continued employment with us, and any unvested portion will be forfeited upon termination of his employment.

On December 9, 2011, Mr. Kadow and Ms. Bilney were granted an option to purchase 134,250 and 200,800 shares of our common stock, respectively, under the 2007 Incentive Plan as one-time market adjustments based on the recommendation of OSI's compensation consultant after a review of total compensation of the officers. These options have an exercise price of $10.03 per share, and the shares are subject to the management call option and transfer restrictions. As a result of these provisions, among other considerations, compensation expense has not been recorded for these grants. The options will vest in equal amounts over a five-year period on each anniversary of the grant date, contingent upon continued employment with us, and any unvested portion will be forfeited upon termination of employment.

See "Executive Compensation—Grants of Plan-Based Awards for Fiscal 2011" for additional information regarding 2011 stock option grants to the named executive officers.

Other Benefits and Perquisites

Under their employment agreements, the named executive officers are each entitled to receive certain perquisites and personal benefits. We believe these benefits are reasonable and consistent with our overall compensation program and better enable us to attract and retain qualified employees for key positions. Such benefits include complimentary food at our restaurant concepts (limited to $100 per visit and a quarterly maximum of $1,000), automobile allowances, life insurance, medical insurance, annual physical examinations, vacation, personal use of corporate aircraft for our Chief Executive Officer, and reimbursement for income taxes on certain taxable benefits. In connection with Ms. Smith's commencement of employment and transition and relocation to Florida, we agreed to reimburse her for certain costs related to her relocation, including travel and moving expenses and reimbursement of taxes for these amounts. The compensation committee periodically reviews the levels of perquisites and other personal benefits provided to the named executive officers.

We own endorsement split dollar life insurance policies with a death benefit of approximately $5.0 million for each of Messrs. Montgomery and Kadow, which were acquired in 2006. We are the beneficiary of the policies to the extent of premiums paid or the cash value, whichever is greater, with the balance being paid to a personal beneficiary designated by the executive. The executive's employment agreements provide that we may not terminate the arrangements regardless of continued employment, except that we may terminate Mr. Montgomery's agreement prior to January 1, 2013.

Effective October 1, 2007, we implemented a deferred compensation plan for our highly compensated employees who are not eligible to participate in the OSI Restaurant Partners, LLC Salaried Employees 401(k) Plan and Trust. The deferred compensation plan allows highly compensated employees to contribute from 5% to 90% of their base salary and up to 100% of their cash bonus on a pre-tax basis to an investment account consisting of various investment fund options. The plan permits us to make a discretionary contribution to the plan on behalf of an eligible employee from time to time; however, no such discretionary contribution has been made to date. In the event of the employee's termination of employment other than by reason of disability or death, the employee is entitled to receive the full balance in the account in a single lump sum unless the employee has completed either five years of participation or ten years of service as of the date of termination of employment, in which case, the account will be paid as elected by the employee in equal annual installments over a specified period of two to 15 years. If the employee's employment terminates due to death or disability prior to commencement of benefits, we will pay to the employee (or the employee's beneficiary if applicable) the full balance in the account in a single lump sum.

The amounts attributable to perquisites and other personal benefits provided to the named executive officers are reflected in the "Executive Compensation—Summary Compensation Table" under the heading "All Other Compensation."

Change in Control and Termination Benefits

Each of the named executive officers is party to an employment agreement and other arrangements with the company that may entitle him or her to payments or benefits upon a termination of employment and/or a change in control. For a summary of these agreements and arrangements, see "Executive Compensation—Potential Payments Upon Termination or Change in Control—Summary of Employment Agreements and Other Compensatory Arrangements."

Compensation Changes for 2012

In the fourth quarter of 2011, management engaged the consulting firm Radford, or the compensation consultant, to provide comparative market data and recommendations in connection with our analysis of our cash and equity compensation practices for executive officers. As a result of this analysis, the compensation committee granted stock options to two named executive officers as described above and made market-based adjustments to base salaries and bonus targets. For 2012, Ms. Smith's base salary was reduced by $75,000 to $925,000, Ms. Bilney's base salary was increased by $50,000 to $450,000 and Mr. Kadow's base salary was increased by $2,360 to $500,000. In addition, Ms. Smith's bonus target was increased from 85% to 100% of base salary and the bonus targets for all of the other named executive officers are now 85% of base salary.

Our annual performance-based cash incentive plan for 2012 (the "2012 Bonus Plan") will be structured substantially the same as the 2011 program based on achievement of company-wide or concept adjusted EBITDA and comparable sales targets. However, for 2012, executives' payout under the 2012 Bonus Plan will be subject to reduction (but not increase) based on individual performance as determined by the compensation committee.

In February 2012, the compensation committee retained Radford as its compensation consultant. Following the offering, the compensation committee expects to obtain comparative market data each year as a basis for making recommendations regarding the various elements of compensation provided to our executive officers.

Tax and Accounting Implications

In making decisions about executive compensation, the compensation committee took into account certain tax and accounting considerations, including Sections 409A and 280G of the Internal Revenue Code. As neither OSI's nor our equity securities were publicly held, Section 162(m) of the Internal Revenue Code did not apply to the company. Additionally, we account for stock-based payments in accordance with the requirements of Accounting Standards Codification No. 718, "Compensation—Stock Compensation." Following this offering, at such time as we are subject to the deduction limitations of Section 162(m), we expect that our compensation committee will seek to qualify the variable compensation paid to our named executive officers for an exemption from the deductibility limitations of Section 162(m). However, our compensation committee may, in its judgment, authorize compensation payments that do not comply with the exemptions in Section 162(m) when it believes that such payments are appropriate to attract and retain executive talent.

Our compensation committee regularly considers the accounting implications of significant compensation decisions, especially in connection with decisions that relate to our equity incentive award plans and programs. As accounting standards change, we may revise certain programs to appropriately align accounting expenses of our equity awards with our overall executive compensation philosophy and objectives.

Compensation Committee Interlocks and Insider Participation

The compensation committee consists of Andrew Balson, J. Michael Chu and Chris T. Sullivan. Mr. Balson is our director and an officer and a Managing Director of Bain Capital. Affiliates of Bain Capital are our stockholders. Mr. Chu is our director and an officer and a Managing Partner and Co-Founder of Catterton Partners. Catterton Partners and its affiliates are our stockholders. Mr. Sullivan is one of our Founders, our former Chief Executive Officer, one of our stockholders and our director.

Upon completion of the Merger, we entered into the management agreement with Kangaroo Management Company I, LLC, or the management company, whose members are the Founders and entities affiliated with Bain Capital and Catterton. In accordance with the terms of the management agreement, the management company provides management services to us until the tenth anniversary of the completion of the Merger, with one-year extensions thereafter until terminated. The management company receives an aggregate annual management fee equal to $9.1 million and reimbursement for out-of-pocket and other reimbursable expenses incurred by it, its members, or their respective affiliates in connection with the provision of services pursuant to the agreement. Management fees, including out-of-pocket and other reimbursable expenses, of $9.4 million for the year ended December 31, 2011 were included in general and administrative expenses in our Consolidated Statement of Operations. Of this amount, $3.2 million was paid to Bain Capital, $0.6 million was paid to Catterton, $2.2 million was paid to Mr. Sullivan and $3.4 million was paid to the other Founders who are not members of the compensation committee. The management agreement includes customary exculpation and indemnification provisions in favor of the management company, Bain Capital and Catterton and their respective affiliates. The management agreement may be terminated by us, Bain Capital and Catterton at any time and will terminate automatically upon an initial public offering or a change in control.

Compensation-Related Risk

As part of its oversight and administration of our compensation programs, the compensation committee considered the impact of our compensation policies and programs for our employees, including our executive officers, to determine whether they present a significant risk to the company or encourage excessive risk taking by our employees. Based on its review, the compensation committee concluded that our compensation programs do not encourage excessive risk taking and are not reasonably likely to have a material adverse effect on the company.

EXECUTIVE COMPENSATION

Summary Compensation Table

The following table summarizes compensation for the three-year period ending December 31, 2011 earned by our principal executive officer, our principal financial officer and our three other most highly compensated executive officers. These individuals are referred to as our named executive officers.

Named Executive Officer	Year	Salary	Bonus (1)	Stock Awards (2)	Option Awards (2)		Non-Equity Incentive Plan Compensation (3)	All Other Compensation (4)	Total
Elizabeth A. Smith	2011	$1,000,000	$3,000,000	—	$ 3,041,066		$ 1,197,650	$ 308,523	$ 8,547,239
Chief Executive Officer	2010	1,000,000	1,800,000	—	—		1,275,000	793,998	4,868,998
(Principal Executive Officer)	2009	115,385	107,123	—	4,447,875	(5)	—	150,235	4,820,618
Dirk A. Montgomery	2011	472,000	—	—	—		997,572	3,552	1,473,124
Chief Financial Officer	2010	472,000	—	—	122,546	(6)	1,062,000	3,349	1,659,895
(Principal Financial and	2009	472,000	212,400	—	—		1,188,024	3,100	1,875,524
Accounting Officer)									
David P. Berg (7)	2011	135,616	550,000	—	1,382,303		556,155	23,104	2,647,178
President of Outback Steakhouse International, LP									
Jody L. Bilney	2011	400,000	217,451	—	1,094,064		563,600	4,200	2,279,315
Executive Vice President	2010	400,000	214,203	—	32,023	(6)	600,000	4,200	1,250,426
and Chief Brand Officer	2009	400,000	336,536	—	—		671,200	4,200	1,411,936
Joseph J. Kadow	2011	497,640	—	—	731,465		701,175	9,620	1,939,900
Executive Vice President	2010	497,640	—	—	256,035	(6)	746,460	9,315	1,509,450
and Chief Legal Officer	2009	497,640	149,292	—	—		835,040	9,188	1,491,160

(1) Bonus amounts consist of: (i) for Ms. Smith, the 2011 and 2010 bonuses are amounts paid under her Retention Bonus and the 2009 bonus is her target annual bonus, pro-rated for the number of days she was employed during 2009, (ii) for Ms. Bilney, the 2011 and 2010 bonuses, and part of her 2009 bonus, reflect cash paid for the vesting of a portion of her restricted stock that was granted at the time of her employment and then converted at the time of the Merger into the right to receive cash on a deferred basis, (iii) for Mr. Berg, the 2011 bonus represents $550,000 paid in 2011 as part of a one-time signing bonus of $700,000 per the terms of his employment agreement and (iv) for all named executive officers other than Ms. Smith, the 2009 bonus amounts represent a discretionary bonus at an amount equal to 30% of the executive's annual cash incentive target.

(2) Represents the aggregate grant date fair value of stock option awards. The stock option awards were valued at fair value on the grant date using the Black-Scholes option pricing model. See Note 3, "Stock-Based and Deferred Compensation Plans," of our Notes to Consolidated Financial Statements for the assumptions made to value the stock option awards.

(3) Non-equity incentive plan compensation represents amounts earned under the 2011 and 2010 Annual Bonus Plans and the financial and OSI plan bonuses in 2009. The financial and OSI plan bonus amounts earned in 2009 were based on the achievement of specified, pre-determined levels of Adjusted EBITDA relative to a percentage of the named executive officer's bonus potential.

(4) The table below sets forth the 2011 components of "All Other Compensation."

(5) Aggregate grant date fair value in 2009 relates only to a portion of Ms. Smith's stock options awarded that year. See the "—Outstanding Equity Awards at Fiscal Year-End" table, including footnote 4 thereto. No compensation expense is included in the Summary Compensation Table with respect to the remainder of the stock options granted to her in 2009 since the performance conditions are not considered probable of occurrence. See "—Grants of Plan-Based Awards for Fiscal 2009" for additional details on these performance-based stock option awards.

(6) Represents the aggregate exchange date incremental fair value of stock option awards computed in accordance with accounting guidance for stock-based compensation. The stock option awards were valued at fair value on the exchange date using the Black-Scholes option pricing model. See Note 2 to the " —Outstanding Equity Awards at Fiscal Year-End" table for a description of the option exchange program.

(7) Mr. Berg commenced employment effective September 12, 2011.

All Other Compensation

Named Executive Officer	Year	Life Insurance	Auto	Airplane (1)	Reimbursable Other Expenses (2)	Total
Elizabeth A. Smith	2011	$ —	$ —	$ 293,789	$ 14,734	$ 308,523
Dirk A. Montgomery	2011	3,552	—	—	—	3,552
David P. Berg	2011	—	—	—	23,104	23,104
Jody L. Bilney	2011	—	4,200	—	—	4,200
Joseph J. Kadow	2011	4,820	4,800	—	—	9,620

(1) The amount in this column reflects the aggregate incremental cost to the company of personal use of the company aircraft based on an hourly charge, determined to include the cost of fuel and other variable costs associated with the particular flights. Since the company's aircraft are primarily for business travel, the company does not include the fixed costs that do not change based on usage, including the cost to purchase the aircraft and the cost of maintenance not related to specific trips. The amount for Ms. Smith includes the reimbursement of a "gross-up" for the payment of taxes ($0.1 million). Reimbursement for tax gross-up was capped at 50 hours for Ms. Smith in 2011.

(2) The amounts paid were for relocation-related costs and include the reimbursement of a "gross-up" for the payment of taxes: Ms. Smith ($3,897) and Mr. Berg ($5,185).

Grants of Plan-Based Awards for Fiscal 2011

Stock Options and Non-Equity Incentives

The following table summarizes for fiscal 2011 the non-equity incentive plan awards under the 2011 Bonus Plan as well as long-term stock incentive awards in the form of stock options:

Named Executive Officer	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Option Awards Number of Securities Underlying Options (#)	Exercise Price of Option Awards ($/Sh)	Grant Date Fair Value of Option Awards ($)
		Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#)	Maximum (#)			
Elizabeth A. Smith										
Annual Bonus Plan (1)	—	$ 340,000	$ 850,000	$ 1,275,000	—	—	—	—	$ —	$ —
Stock Options (2)	7/1/2011	—	—	—	—	—	—	550,000	10.03	3,041,066
Dirk A. Montgomery										
Annual Bonus Plan (1)	—	283,200	708,000	1,062,000	—	—	—	—	—	—
David P. Berg										
Annual Bonus Plan (1)	—	153,000	382,500	573,750	—	—	—	—	—	—
Stock Options (2)	7/1/2011	—	—	—	—	—	—	250,000	10.03	1,382,303
Jody L. Bilney										
Annual Bonus Plan (1)	—	160,000	400,000	600,000	—	—	—	—	—	—
Stock Options (2)	12/9/2011	—	—	—	—	—	—	200,800	10.03	1,094,064
Joseph J. Kadow										
Annual Bonus Plan (1)	—	199,056	497,640	746,460	—	—	—	—	—	—
Stock Options (2)	12/9/2011	—	—	—	—	—	—	134,250	10.03	731,465

(1) Amounts represent performance-based cash incentive awards under the 2011 Bonus Plan.

(2) Ms. Smith was granted an option to purchase 550,000 shares of common stock under the 2007 Incentive Plan in accordance with the terms of her employment agreement. These stock options have an exercise price of $10.03 per share and are subject to a modified form of the management call option. In accordance with accounting for stock-based compensation, this modified form of the call option does not preclude us from recording compensation expense during the service period. These shares will vest and compensation expense will be recorded in equal amounts over a five-year period on each anniversary of the grant date, contingent upon her continued employment with us. Mr. Kadow and Ms. Bilney were granted an option to purchase 134,250 and 200,800 shares of common stock, respectively, under the 2007 Incentive Plan as one-time market adjustments to their total compensation. Their stock options have an exercise price of $10.03 per share and vest 20% on each anniversary of the grant date, contingent upon their continued employment with us. Compensation expense will not be recorded for their grants described above as, among other considerations, they are subject to the management call option and transfer restrictions. Mr. Berg was granted an option to purchase 250,000 shares of common stock under the 2007 Incentive Plan in connection with his hiring. His stock options have an exercise price of $10.03 per share and vest 20% on each anniversary of his employment start date, contingent upon his continued employment with us. He forfeits any portion of an option that is unvested upon his termination date. Compensation expense will not be recorded for his grant as, among other considerations, it is subject to the management call option and transfer restrictions.

Outstanding Equity Awards at Fiscal Year-End

The following table summarizes outstanding stock options and unvested restricted stock awards for each named executive officer as of December 31, 2011. The holder of restricted stock has the right to vote and receive dividends with respect to the shares, but may not transfer or otherwise dispose of the shares. The unvested portion of each restricted stock award is subject to forfeiture if the holder's employment terminates prior to vesting.

	Options Awards					Stock Awards	
	Number of Securities Underlying Unexercised Options (#)		Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price Per Share (2)	Option Expiration Date	Shares of Restricted Stock Awards That Have Not Vested	
Named Executive Officer	Exercisable	Unexercisable (1)				Number of Shares (#) (1)	Market Value (3)
Elizabeth A. Smith							
Stock Options - Grant A - Tranche A (4)(5)	435,000	652,500	—	$ 6.50	11/16/2019	—	$ —
Stock Options - Grant A - Tranche B, C, D (4)(6)	—	—	3,262,500	6.50	11/16/2019	—	—
Stock Options - Grant B	—	550,000	—	10.03	7/1/2021	—	—
Dirk A. Montgomery	107,148	45,923	—	6.50	6/14/2017	82,300	989,246
David P. Berg	—	250,000	—	10.03	7/1/2021	—	—
Jody L. Bilney	—	—	—	—	—	20,575	247,312
Stock Options - Grant A	22,000	18,000	—	6.50	2/11/2018	—	—
Stock Options - Grant B	—	200,800	—	10.03	12/9/2021	—	—
Joseph J. Kadow							
Stock Options - Grant A	223,866	95,944	—	6.50	6/14/2017	—	—
Stock Options - Grant B	—	134,250	—	10.03	12/9/2021	—	—

(1) Stock option and restricted stock grants vest and become nominally exercisable in 20% increments over a period of five years contingent on continued employment. See "—Potential Payments Upon Termination or Change in Control" for additional information regarding accelerated vesting on certain terminations of employment.

(2) In March 2010, we offered all then active executive officers, other than Ms. Smith (since her stock options already had an exercise price of $6.50 per share), and all of our other then active employees the opportunity to exchange outstanding stock options with an exercise price of $10.00 per share for the same number of replacement stock options with an exercise price of $6.50 per share. Under the exchange program, the vested portion of the eligible stock options as of the grant date of the replacement stock options were exchanged for stock options that were fully vested. The unvested portion of the exchanged

stock options were exchanged for unvested replacement stock options that vest and become exercisable over a period of time that is equal to the remaining vesting period of the exchanged stock options, plus one year, subject to the participant's continued employment through the new vesting date. All eligible stock options were exchanged pursuant to the exchange program. The original stock options were cancelled, and the issuance of the replacement stock options occurred on April 6, 2010.

(3) Market value is calculated by multiplying $12.02, which is the fair market value of a share of common stock on December 31, 2011 by the number of shares subject to the award.

(4) On November 16, 2009, we granted Ms. Smith an option to purchase an aggregate of 4,350,000 shares of common stock under the 2007 Incentive Plan in four tranches (A-D) of 1,087,500 options each. The stock options have a term of ten years and an exercise price of $6.50, which represents an amount equal to or greater than the fair market value of a share of common stock on the date the option was granted. The options vest in five equal annual installments, with accelerated vesting upon a termination of employment without cause or for good reason, each as defined in Ms. Smith's employment agreement (50% in the event of a termination of employment other than after a Qualifying Liquidity Event and 100% in the event of a termination of employment following a Qualifying Liquidity Event). In accordance with the accounting guidance for stock-based compensation, 3,262,500 of the options (tranches B, C and D) are not considered probable of occurrence since a Qualifying Liquidity Event was not probable at the time of grant. As such, there is no associated fair value on the grant date. The stock options, to the extent vested, will remain outstanding for a period ranging from 90 days to three years in the case of a termination of Ms. Smith's employment, depending on the type of stock option and the nature of the termination, except that all stock options, whether or not then vested, will be forfeited upon a termination for cause.

(5) Tranche A stock options vest and become exercisable in equal installments on each of November 16, 2010, 2011, 2012, 2013 and 2014, generally subject to Ms. Smith remaining continuously employed on each vesting date.

(6) Tranches B, C and D stock options vest in equal installments on each of November 16, 2010, 2011, 2012, 2013 and 2014, generally subject to Ms. Smith remaining continuously employed through each vesting date, and will only become exercisable (to the extent then vested) upon a Qualifying Liquidity Event in which the value of our common stock at such Qualifying Liquidity Event exceeds a certain minimum threshold ranging from $5.00 per share to $10.00 per share, depending on the particular tranche.

Option Exercises and Restricted Stock Vested for Fiscal 2011

The following table summarizes the vesting of restricted stock during fiscal 2011. No stock options were exercised during fiscal 2011.

	Option Awards		Restricted Stock Awards	
Named Executive Officer	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise ($)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting ($) (1)
Elizabeth A. Smith	—	$ —	—	$ —
Dirk A. Montgomery	—	—	82,300	785,965
David P. Berg	—	—	—	—
Jody L. Bilney	—	—	20,575	196,491
Joseph J. Kadow	—	—	—	—

(1) Value realized on vesting of restricted stock awards is calculated by multiplying the estimated fair market value of our common stock on June 14, 2011 ($9.55 per share) by the number of shares vesting.

On June 14, 2011, 82,300 and 20,575 shares of restricted stock issued to Mr. Montgomery and Ms. Bilney, respectively, vested. In accordance with the terms of the Employee Rollover Agreements and the Restricted Stock Agreements entered into with the executives at the time of the Merger, we loaned approximately $0.3 million and $0.1 million to these individuals, respectively, in June 2011 for their personal income tax and associated interest obligations that resulted from vesting. The loans are full recourse and are collateralized by the

vested shares of restricted stock. The total outstanding balances of restricted stock loans for the named executive officers as of December 31, 2011 were as follows: Mr. Montgomery, $0.8 million; Mr. Kadow, $0.4 million; and Ms. Bilney, $0.2 million. During the first quarter of 2012, these officers repaid their entire loan balances.

Pension Benefits

The company does not sponsor any defined benefit pension plans.

Nonqualified Defined Contribution and Other Nonqualified Deferred Compensation Plans

We have a Deferred Compensation Plan for our highly compensated employees who are not eligible to participate in the OSI Restaurant Partners, LLC Salaried Employees 401(k) Plan and Trust, as described in "Compensation Discussion and Analysis—Compensation Elements—Other Benefits and Perquisites."

The following table summarizes current year contributions to our Deferred Compensation Plan by the only named executive officer who participated along with aggregate gains for the year and the aggregate balance as of December 31, 2011. We did not make any contributions to the Deferred Compensation Plan during 2011. Named executive officers are fully vested in all contributions to the plan. The amounts listed as executive contributions are included as "Salary" in the "Summary Compensation Table." Aggregate earnings of the Deferred Compensation Plan are not included in the "Summary Compensation Table."

Named Executive Officer	Executive Contributions in 2011	Aggregate Earnings in 2011	Withdrawals/ Distributions in 2011	Aggregate Balance at December 31, 2011
Dirk A. Montgomery	$ 47,200	$ (3,277)	$ —	$ 384,031

Potential Payments Upon Termination or Change in Control

Summary of Employment Agreements and Other Compensatory Arrangements

We have entered into employment agreements and other arrangements with each of our named executive officers that provide certain rights and benefits upon termination of employment and/or a change in control. See the table included under "—Executive Benefits and Payments Upon Separation" below for the amount of compensation payable under the employment agreements and other arrangements described below to the individuals serving as named executive officers as of the end of fiscal 2011.

Rights and Potential Payments Upon Termination or Change in Control: Ms. Smith

Effective November 16, 2009, we entered into an employment agreement with Ms. Smith in connection with the commencement of her employment with us. Her employment agreement is for a period of five years commencing on November 16, 2009, subject to earlier termination under certain circumstances described below. The term of her employment is automatically renewed for successive renewal terms of one year unless either party elects not to renew by giving written notice to the other party not less than 60 days prior to the start of any renewal term.

Ms. Smith's employment may be terminated as follows:

- upon her death or Disability (as such term is defined in the agreement);
- by us for Cause. For purposes of her employment agreement, "Cause" is defined to include: her (i) willful failure to perform, or gross negligence in the performance of, her duties and responsibilities to us or our affiliates (other than any such failure from incapacity due to physical or mental illness), subject to notice and cure periods, (ii) indictment or conviction of or plea of guilty

or nolo contendere to a felony or other crime involving moral turpitude, (iii) engaging in illegal misconduct or gross misconduct that is intentionally harmful to us or our affiliates or (iv) any material and knowing violation by her of any covenant or restriction contained in her employment agreement or any other agreement entered into with us or our affiliates;

- by us other than for Cause;
- by Ms. Smith for Good Reason. For purposes of her employment agreement, "Good Reason" is defined to include: (i) a material diminution in the nature or scope of the executive's duties, authority or responsibilities, including, without limitation, loss of membership on our or certain of our subsidiaries' board of directors (with certain listed exceptions), (ii) a reduction of her annual base salary or annual target cash bonus, (iii) requiring her to be based at a location in excess of 50 miles from the location of our principal executive offices in Tampa, Florida as of the effective date of her employment agreement, or (iv) a material breach by us of our obligations under her employment agreement or the Retention Bonus agreement; or
- by Ms. Smith other than for Good Reason.

Under Ms. Smith's employment agreement, she will be entitled to receive severance benefits if her employment is terminated by us other than for Cause or if she terminates employment for Good Reason. If her employment is terminated under these circumstances, she will be entitled to receive severance benefits as follows:

- earned but unpaid base salary as of the date of termination, any annual bonus earned in the fiscal year preceding that in which termination occurs that remains unpaid, and unreimbursed expenses, including certain tax gross-up payments through the date of termination; and
- severance equal to two times the sum of her base salary at the rate in effect on the date of termination plus her target annual cash bonus for the year of termination, payable in 24 equal monthly installments from the effective date of such termination.

In the event Ms. Smith's employment is terminated due to her death or Disability, she will receive any earned but unpaid amounts described above as of the date of her employment termination. She will also be entitled to receive a pro rata annual target bonus calculated based on the number of days during the year that she was employed. A change in control of the company does not trigger any severance payments to her under the employment agreement.

In addition to the rights and potential payments due Ms. Smith upon termination under her employment agreement, Ms. Smith, upon termination of employment or a change in control, also has certain rights and potential payments due her under the Retention and Incentive Bonus agreements, as described below.

Retention Bonus

On a termination of Ms. Smith's employment by us without Cause or by her for Good Reason, she will be entitled to receive any then unpaid amounts of the Retention Bonus, whether vested or unvested, and this amount will be reduced (but not below zero) by the severance amount provided under her employment agreement as described above.

Incentive Bonus

Ms. Smith's Incentive Bonus is divided into four tranches (A-D) of $3.8 million each. Tranche A vests 20% over five years and is paid on the earlier of a Qualifying Liquidity Event or the tenth anniversary of the Incentive Bonus agreement. The other tranches also vest 20% per year over five years, but are generally only

payable in the event of a Qualifying Liquidity Event meeting applicable performance targets for each tranche. If Ms. Smith's employment is terminated by us other than for Cause or by her for Good Reason prior to the occurrence of a Qualifying Liquidity Event, the vested portion and 50% of the unvested portion of the tranche A Incentive Bonus will be payable to Ms. Smith upon such termination. In addition, after such a termination, the vested portion and 50% of the unvested portions of the other tranches of the Incentive Bonus (or a percentage thereof) may become payable upon a subsequent Qualifying Liquidity Event meeting applicable performance targets for each tranche. If any such termination occurs following a change in control, all of the tranche A Incentive Bonus will be payable to Ms. Smith, and, if any such change in control meets applicable performance targets for each tranche, the other tranches of the Incentive Bonus will be payable to Ms. Smith to the extent earned. If Ms. Smith is employed by us on the first anniversary of a change in control (or a change in control that meets the relevant performance targets, as applicable), to the extent earned, the then unpaid portion of the Incentive Bonus will be paid to her.

If Ms. Smith's employment is terminated by reason of her death or Disability, Ms. Smith (or her estate) will be entitled to receive the vested portion of the tranche A Incentive Bonus as of the date of such termination. If a Qualifying Liquidity Event occurs within one year following such a termination, Ms. Smith (or her estate) may also be entitled to receive the vested portions of the other tranches of the Incentive Bonus to the extent such Qualifying Liquidity Event meets applicable performance targets for each tranche.

Upon a voluntary termination of employment, Ms. Smith will not receive any of the Incentive Bonus unless and until a subsequent Qualifying Liquidity Event occurs. Upon such an occurrence, Ms. Smith would be entitled to receive the vested portion of the tranche A Incentive Bonus (as of the date of her termination) and the vested portions of the other tranches of the Incentive Bonus (as of the date of her termination) to the extent the Qualifying Liquidity Event meets applicable performance targets for each tranche.

If Ms. Smith's employment terminates following an initial public offering that does not meet the applicable share price performance targets, Ms. Smith (or her estate) will be entitled to receive the then time-vested portion of this bonus if the relevant share price targets are subsequently met in the one-year period following her termination in the case of termination due to death or Disability or the 90-day period following any other termination of employment.

In the case of a termination for Cause, any unpaid portion of the Incentive Bonus will be forfeited in its entirety.

Rights and Potential Payments Upon Termination or Change in Control: Messrs. Montgomery and Kadow

Mr. Montgomery and Mr. Kadow entered into employment agreements with us as of June 14, 2007, the Merger closing date. The employment agreements have been amended since that time. Their employment agreements, as amended, were for an original term of five years commencing on June 14, 2007 and expiring on the fifth anniversary thereof. The terms of their employment agreements are automatically renewed for successive renewal terms of one year unless either party elects not to renew by giving written notice to the other party not less than 60 days prior to the start of any renewal term.

The employment of each executive may be terminated as follows:

- upon the executive's death or Disability (as such term is defined in the agreement); or
- by us for Cause. For Mr. Montgomery, "Cause" is defined to include: his (i) gross neglect of duty or prolonged absence from duty (other than any such failure resulting from incapacity due to physical or mental illness), subject to notice and cure periods; (ii) conviction or a plea of guilty or nolo contendere with respect to commission of a felony under federal law or in the last of the stage in which such action occurred; (iii) the willful engaging in illegal misconduct or gross misconduct that

is materially and demonstrably injurious to us or (iv) any material violation of any material covenant or restriction contained in his employment agreements. For Mr. Kadow, "Cause" means any of the following: (i) conviction or plea of guilty or nolo contendere with respect to commission of a felony under federal law or under the law of the state in which such action occurred or (ii) the willful engaging in illegal misconduct or gross misconduct that is materially and demonstrably injurious to us;

- at our election, at any time and including in the event of a determination by us to cease business operations;
- by the executive for Good Reason. For purposes of their agreements, "Good Reason" is defined to include: (i) the assignment to the executive of any duties inconsistent in any respect with the executive's position, duties or responsibilities as in effect immediately prior to the effective date, or any diminution in such position, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and that is promptly remedied by us; (ii) a reduction in the executive's base salary or benefits as in effect immediately prior to the effective date; (iii) requiring the executive to be based at or generally work from any location more than 50 miles from the location at which the executive was based or generally worked immediately prior to the effective date or (iv) the failure by us to provide the fringe benefits provided for in their agreements; or
- by the executive without Good Reason.

For all purposes of their agreements, termination for Cause shall be deemed to have occurred on the date of the executive's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Under each executive's employment agreement, the executive will be entitled to receive severance benefits if his employment is terminated by us other than for Cause or if he terminates employment for Good Reason. If the executive's employment is terminated under these circumstances, he will be entitled to receive severance benefits as follows:

- severance equal to the base salary then in effect and the average of the three most recent annual bonuses paid to the executive, payable in 12 equal monthly installments from the effective date of such termination;
- any accrued but unpaid bonus in respect to the fiscal year preceding the year in which such termination of employment occurred;
- continuation for one year of medical, dental and vision benefits generally available to executive officers; and
- full vesting of life insurance benefits if not already vested.

Their employment agreements provide that they will only receive, upon termination of employment for death or Disability, any accrued but unpaid bonus in respect to the fiscal year preceding that in which termination occurs. The executives must deliver a separation agreement to us within 30 days of their termination dates or their severance will be forfeited. A change in control does not trigger any severance payments to the executive under his employment agreement.

Rights and Potential Payments Upon Termination or Change in Control: Ms. Bilney

Ms. Bilney entered into an employment agreement with us effective October 1, 2006 and amended effective February 5, 2008. Her employment agreement was for an original term of five years, commencing on October 1, 2006 and expiring on the fifth anniversary thereof. The term of her employment agreement is automatically renewed for successive renewal terms of one year unless either party elects not to renew by giving written notice to the other party not less than 60 days prior to the start of any renewal term.

Ms. Bilney's employment may be terminated as follows:

- upon her death or Disability (as such term is defined in the agreement);
- by us for Cause. For purposes of her agreement, "Cause" is defined to include: (i) her failure to perform the duties assigned to her in a manner satisfactory to us, in our sole discretion; (ii) any dishonesty in her dealing with us or our affiliates, the commission of fraud by her, negligence in the performance of her duties, insubordination, willful misconduct, or her conviction (or plea of guilty or nolo contendere) of any felony or any other crime involving dishonesty or moral turpitude; (iii) any violation of any covenant or restriction contained in specified sections of her employment agreement; or (iv) any violation of any of our or our affiliates' material published policies; or
- at our election, including upon the sale of majority ownership interest in us or substantially all of our assets or in the event of a determination by us to cease business operations.

For all purposes of her agreement, termination for Cause shall be deemed to have occurred on the date of the executive's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Ms. Bilney's employment agreement provides that she will receive severance benefits in the event of a termination of employment by us without Cause. Under these circumstances, she will be entitled to receive an amount equal to the sum of the base salary then in effect payable bi-weekly for one year. A change in control does not trigger any severance payments to her under her employment agreement.

Rights and Potential Payments Upon Termination or Change in Control: Mr. Berg

Mr. Berg entered into an employment agreement with Outback International, effective September 12, 2011 and amended effective November 4, 2011. The initial term of his employment agreement is for a period of five years commencing on September 12, 2011 and expiring on the fifth anniversary thereof subject to earlier termination as described in the termination section of the agreement as explained below. The term of his employment agreement is automatically renewed for successive renewal terms of one year unless either party elects not to renew by giving written notice to the other party not less than 60 days prior to the start of any renewal term.

Mr. Berg's employment may be terminated as follows:

- upon his death or Disability (as such term is defined in the agreement);
- by Outback International for Cause. For purposes of his agreement, "Cause" is defined to include: (i) any dishonesty in his dealing with Outback International, the commission of fraud by the executive, negligence in the performance of his duties, insubordination, willful misconduct, or his conviction (or plea of guilty or nolo contendere) of any felony or any other crime involving dishonesty or moral turpitude; (ii) any violation of any covenant or restriction contained in his employment agreement; or (iii) any violation of any material published policy of Outback International or its affiliates;

- at the election of Outback International, including upon the sale of majority ownership interest in the company or substantially all the assets of the company or in the event of a determination by the company to cease business operations; or

- by Outback International in its sole discretion, for any reason or no reason.

For all purposes of his agreement, termination for Cause shall be deemed to have occurred on the date of the executive's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Mr. Berg's employment agreement provides that he will only receive severance benefits in the event of a termination of employment if his employment is terminated by Outback International in its sole discretion, for any reason or no reason. In this case, he will be entitled to receive as severance compensation an amount equal to the sum of his base salary then in effect payable bi-weekly for one year. A change in control does not trigger any severance payments to him under his employment agreement.

Stock Options and Restricted Stock

The treatment of equity awards held by the named executive officers upon a termination of employment and/or a change in control is described below.

Stock Options: Ms. Smith

Pursuant to the terms of Ms. Smith's option agreement, upon a termination of Ms. Smith's employment with us by her for Good Reason or by us other than for Cause, Ms. Smith will be entitled to receive accelerated vesting of her outstanding options (50% in the event of a termination of employment other than after a qualifying change in control and 100% in the event of a termination of employment following a qualifying change in control). A portion of Ms. Smith's outstanding stock options will become exercisable only following an initial public offering or a change in control in which the value of our common stock exceeds certain minimum thresholds. This offering, if it is completed, will exceed the minimum thresholds. The options, to the extent vested, will remain outstanding for a period ranging from 90 days to three years in the case of a termination of Ms. Smith's employment, depending on the type of option and the nature of the termination, except that all options, whether or not then vested, will be forfeited on a termination for Cause.

Stock Options and Restricted Stock: Mr. Montgomery, Mr. Kadow, Ms. Bilney and Mr. Berg

Pursuant to agreements with Mr. Montgomery, Mr. Kadow, Ms. Bilney and Mr. Berg, any then outstanding unvested stock options will terminate upon any termination of employment (in connection with a change in control or otherwise).

To the extent the stock option is vested and exercisable prior to the cessation of employment, the stock option will remain exercisable (i) for one year in the case of a termination of employment resulting from death or Disability or (ii) for 90 days following the termination of employment for any other reason.

Pursuant to an agreement with Mr. Montgomery and Ms. Bilney, unvested restricted stock will vest immediately upon (i) a change in control; (ii) termination of the executive by us without Cause; (iii) termination by the executive for Good Reason or (iv) death or Disability. Unvested restricted stock will immediately be forfeited if the executive is terminated by us for Cause.

All of Mr. Kadow's restricted stock awards are vested. Mr. Berg does not have any outstanding restricted stock awards.

Restrictive Covenants

Each of the named executive officers is subject to non-competition and other restrictive covenants under his or her employment agreement. Based on the terms of their agreements, each named executive officer has agreed not to compete with us during his or her employment and for a specified period of time following a termination of employment for any reason (Ms. Smith, Ms. Bilney and Mr. Berg for a period of 24 months and Messrs. Montgomery and Kadow for a period of 12 months). Each named executive officer's continued compliance with this non-competition covenant is a condition to our obligation to pay the severance amounts due under his or her employment agreement, and in the case of Ms. Smith, any amounts due under her Retention Bonus agreement.

Tax Gross-Up

If a "change in control" under Treasury Regulations 1.280G-1 occurs, we and our executives, other than Ms. Smith, have agreed to use commercially reasonable best efforts to take such actions as may be necessary to avoid the imposition of any excise tax imposed by Section 4999 of the Code on the executive, including seeking to obtain stockholder approval in accordance with the terms of Section 280G(b)(5) of the Code. In the case of Ms. Smith, if she does not request that we seek the stockholder approval referenced in the preceding sentence, we will provide her with a gross-up for 50% of any excise taxes imposed under Section 4999 of the Code.

Life Insurance

We maintain endorsement split dollar life insurance policies with a $5.0 million death benefit for each of Messrs. Montgomery and Kadow. We are the beneficiary of the policies to the extent of premiums paid or the cash value, whichever is greater, with the balance being paid to a personal beneficiary designated by the named executive officer. We have agreed not to terminate the arrangements regardless of continued employment except that we may terminate Mr. Montgomery's agreement prior to his completion of seven years of employment with us commencing January 1, 2006.

In the event of termination by us without Cause or a termination by the executive for Good Reason, we will pay the remaining premiums under the policy terms and the named executive officer will become fully vested.

Executive Benefits and Payments Upon Separation

The table below reflects the amount of compensation payable under the employment agreements and arrangements described above to the individuals serving as named executive officers following a termination of employment (i) by us without Cause or by the executive for Good Reason without a change in control, (ii) by us without Cause or by the executive for Good Reason, following a change in control, (iii) by the executive voluntarily, (iv) as a result of Disability or (v) as a result of death, in each case, assuming that such termination of employment occurred on December 31, 2011. No payments or benefits are due to the named executive officers following a termination of employment for Cause. The table assumes that the change in control transaction resulted in per share consideration of $12.02, which was the fair market value of a share of common stock on December 31, 2011, as determined by an independent stock valuation. The actual amounts to be paid upon a termination of employment or a change in control can only be determined at the time of such executive's separation from us, or upon the occurrence of a change in control (if any).

Named Executive Officer	Executive Payments and Benefits Upon Separation (1)	Involuntary Termination Without Cause or Termination by Executive For Good Reason Without Change in Control ($)	Involuntary Termination Without Cause or Termination by Executive For Good Reason With Change in Control ($)	Voluntary Termination ($)	Disability ($)	Death ($)
Elizabeth A. Smith (2)	Severance	$ 3,700,000	$ 3,700,000	$ —	$ —	$ —
	Stock Options (3)	4,202,100	21,045,000	—	2,401,200	2,401,200
	Incentive Bonus	2,664,375	15,225,000	—	1,522,500	1,522,500
	Retention Bonus	3,500,000	3,500,000	—	—	—
	Total	**$ 14,066,475**	**$ 43,470,000**	**$ —**	**$ 3,923,700**	**$ 3,923,700**
Dirk A. Montgomery	Severance	$ 1,625,332	$ 1,625,332	$ —	$ —	$ —
	Stock Options (3)	591,457	591,457	591,457	591,457	591,457
	Health and Welfare Benefits	7,940	7,940	—	—	—
	Split Dollar Life Insurance (4)	—	—	—	—	5,000,000
	Restricted Stock (5)	989,246	989,246	—	989,246	989,246
	Total	**$ 3,213,975**	**$ 3,213,975**	**$ 591,457**	**$ 1,580,703**	**$ 6,580,703**
David P. Berg	Severance (7)	$ 450,000	$ —	$ —	$ —	$ —
	Stock Options (3)	—	—	—	—	—
	Total	**$ 450,000**	**$ —**	**$ —**	**$ —**	**$ —**
Jody L. Bilney	Severance (6)	$ 400,000	$ —	$ —	$ —	$ —
	Stock Options (3)	121,440	121,440	121,440	121,440	121,440
	Restricted Stock (5)	247,312	247,312	—	247,312	247,312
	Total	**$ 768,752**	**$ 368,752**	**$ 121,440**	**$ 368,752**	**$ 368,752**
Joseph J. Kadow	Severance	$ 1,308,296	$ 1,308,296	$ —	$ —	$ —
	Stock Options (3)	1,235,740	1,235,740	1,235,740	1,235,740	1,235,740
	Health and Welfare Benefits	14,442	14,442	—	—	—
	Split Dollar Life Insurance (4)	—	—	—	—	5,000,000
	Total	**$ 2,558,478**	**$ 2,558,478**	**$ 1,235,740**	**$ 1,235,740**	**$ 6,235,740**

(1) Amounts in the table do not include amounts for accrued but unpaid base salary, annual bonus or other expenses.

(2) This table assumes that Ms. Smith has requested that we seek shareholder approval of payments in connection with the assumed change in control and that she is therefore not entitled to a 50% excise tax gross-up. It also assumes that Ms. Smith is not entitled to a pro rata bonus on a termination due to death or disability since she is assumed to have been employed until the end of the fiscal year.

(3) Amounts represent intrinsic value of vested stock options since the fair market value of a share of common stock, as of December 31, 2011, was greater than the exercise price of the stock options held by the named executive officers.
(4) See "Compensation Discussion and Analysis—Compensation Elements—Other Benefits and Perquisites" for discussion of the split dollar life insurance policies. The amounts in the table represent the amounts due to the personal beneficiaries designated by the named executive officers and are reduced by the premiums paid by us or the cash value, whichever is greater.
(5) The fair market value of the unvested restricted stock due to Mr. Montgomery and Ms. Bilney under these termination circumstances is determined by multiplying the number of shares of restricted stock by $12.02, which is the fair market value of a share of common stock on December 31, 2011.
(6) Ms. Bilney's severance (base salary in effect at termination) is only payable upon termination of employment by us without cause (as defined in her employment agreement).
(7) Mr. Berg's severance (base salary in effect at termination) is only payable in the event his employment is terminated at the election of Outback International in its sole discretion, for any reason or no reason.

Director Compensation

The following table summarizes the amounts earned and paid to members of our board of directors for 2011:

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)	All Other Compensation ($)	Total ($)
A. William Allen III (1)	$200,000	$ —	$ —	$ —	$ —	$ 4,200	$ 204,200
Andrew Balson (2)	—	—	—	—	—	—	—
Robert D. Basham (3)	—	—	—	—	—	325,300	325,300
J. Michael Chu (2)	—	—	—	—	—	—	—
Philip Loughlin (2)	—	—	—	—	—	—	—
Mark Nunnelly (2)	—	—	—	—	—	—	—
Elizabeth A. Smith	*	*	*	*	*	*	*
Chris T. Sullivan (3)	—	—	—	—	—	323,100	323,100
Mark Verdi (2)	—	—	—	—	—	—	—

* See "—Summary Compensation Table"
(1) Mr. Allen received an annual retainer of $0.2 million for serving as the Chairman of the board of directors and received $4,200 for life insurance. Mr. Allen resigned from the board of directors effective January 1, 2012.
(2) Directors are associated with Bain Capital Partners or Catterton and do not receive compensation for service on the board of directors.
(3) Mr. Basham and Mr. Sullivan are Founders and serve on the board of directors. As result of the termination of their employment agreements effective October 1, 2010, each of our Founders received a severance payment of $0.6 million, which is equal to the amount of base salary due the Founder through the later of the termination date of the employment agreement or 24 months. The severance payments are payable bi-weekly over a two-year period from their termination dates. The amounts in the table include $25,300 and $23,100, for Mr. Basham and Mr. Sullivan, respectively, for life insurance and $0.3 million each in severance payments received during 2011.

Equity Incentive Plans

2012 Incentive Award Plan

In connection with this offering, our board of directors plans to adopt the Bloomin' Brands, Inc. 2012 Incentive Award Plan (the "2012 Incentive Plan"). The 2012 Incentive Plan will replace our 2007 Incentive Plan (described below). The following summary describes the material terms of the 2012 Incentive Plan. This summary is not a complete description of all provisions of the 2012 Incentive Plan and is qualified in its entirety by reference to the 2012 Incentive Plan, a copy of which will be filed with the SEC.

Purpose. The purposes of the 2012 Incentive Plan are to motivate and reward employees and other individuals who are expected to contribute significantly to our success to perform at the highest level and to further our best interests.

Administration. The 2012 Incentive Plan will be administered by our compensation committee. The compensation committee will have the authority to, among other things, designate recipients, determine the types, amounts and terms and conditions of awards, and to take other actions necessary or desirable for the administration of the 2012 Incentive Plan. The compensation committee will also have authority to implement certain clawback policies and procedures, and may provide for clawbacks as a result of financial restatements in an award agreement.

Authorized Shares. Subject to adjustment as described in the 2012 Incentive Plan, the maximum number of shares of our common stock available for issuance pursuant to the 2012 Incentive Plan is initially shares. As of the first business day of each fiscal year, commencing on January 1, 2013, the aggregate number of shares that may be issued pursuant to the 2012 Incentive Plan will automatically increase by a number equal to % of the total number of our shares then issued and outstanding. Shares underlying awards that are expired, forfeited, or otherwise terminated without the delivery of shares, or are settled in cash, will again be available for issuance under the 2012 Incentive Plan.

Eligibility. Awards may be granted to employees, consultants and directors. In certain circumstances, we may also grant substitute awards to holders of equity-based awards of a company that we acquire or combine with (a "substitute award").

Types of Awards. The 2012 Incentive Plan provides for grants of stock options, stock appreciation rights, restricted stock and restricted stock units, performance awards and other stock-based awards determined by the compensation committee.

- *Stock Options.* The exercise price of an option is not permitted to be less than the fair market value of a share of our common stock on the date of grant, other than in the case of a substitute award. The compensation committee will determine the vesting, exercise and other terms, although the term of an option may not exceed ten years from the grant date. However, the committee may provide for an extension of such ten-year term in an award agreement if exercise at expiration would be prohibited by law or our insider trading policy. Options may be granted as incentive stock options that meet the requirements of Section 422 of the Internal Revenue Code.

- *Stock Appreciation Rights.* A stock appreciation right is an award that entitles the participant to receive stock or cash upon exercise or settlement that is equal to the excess of the value of the shares subject to the right over the exercise or hurdle price of the right. The exercise or hurdle price is not permitted to be less than the fair market value of a share of our common stock on the date of

grant, other than in the case of a substitute award. The compensation committee will determine the vesting, exercise and other terms, although the term of a stock appreciation right will not exceed ten years from the grant date. However, the committee may provide for an extension of such ten-year term in an award agreement if exercise at expiration would be prohibited by law or our insider trading policy.

- *Restricted Stock and Restricted Stock Units.* A restricted stock award is an award of our common stock subject to vesting restrictions. A restricted stock unit is a contractual right to receive cash, shares or a combination of both based on the value of a share of our common stock. The compensation committee will determine the vesting and delivery schedule and other terms of restricted stock and restricted stock unit awards.

- *Performance Awards.* A performance award is an award, which may be stock-based or cash-based, that will be earned upon achievement or satisfaction of performance conditions specified by the compensation committee.

- *Other Stock-Based Awards.* The compensation committee may also grant other awards that are payable in or otherwise based on or related to shares of common stock and determine the terms and conditions of such awards.

Termination of Employment or Service. The compensation committee will determine the effect of a termination of employment or service on an award. However, unless otherwise provided, upon a termination of employment or service all unvested options and stock appreciation rights will terminate. Unless otherwise provided, vested options and stock appreciation rights must be exercised within certain limited time periods after the date of termination, depending on the reason for termination; provided, however, that if a participant's employment or service is terminated for cause (as will be defined in the award agreement), all options and stock appreciation rights, whether vested or unvested, will terminate immediately.

Performance Measures. The 2012 Incentive Plan provides that grants of performance awards will be made based upon, and subject to achieving, one or more performance measures over a performance period of not less than one year established by the compensation committee.

If the compensation committee intends that a performance award qualify as performance-based compensation for purposes of Section 162(m) of the Internal Revenue Code, the award agreement will include a pre-established formula, such that payment, retention or vesting of the award is subject to the achievement of one or more performance measures during a performance period. The performance measures must be specified in the award agreement or by the compensation committee within the first 90 days of the performance period. Performance measures may be established on an absolute or relative basis, and may be established on a corporate-wide basis or with respect to one or more concepts, business units, divisions, subsidiaries or business segments. Relative performance may be measured against a group of peer companies, a financial market index or other acceptable objective and quantifiable indices.

A performance measure with respect to a performance award intended to qualify as performance-based compensation for purposes of Section 162(m) means one or more of the following measures with respect to the company or our restaurant concepts: sales; revenue; net sales; net revenue; revenue or sales growth or product revenue or sales growth; comparable or same restaurant sales; system-wide sales; operating income (before or after taxes); pre- or after-tax income or loss (before or after allocation of corporate overhead and bonus); net earnings; earnings per share; net income or loss (before or after taxes); return on equity; total shareholder return; return on assets or net assets; appreciation in and/or maintenance of share price; market share; gross profits; earnings or loss (including earnings or loss before taxes, interest and taxes, or interest, taxes, depreciation and amortization including, in each case, specified adjustments); economic value-added models or equivalent metrics; comparisons with various stock market indices; reductions in costs; cash flow or cash flow per share (before or after dividends); return on

capital (including return on total capital or return on invested capital); cash flow return on investment; improvement in or attainment of expense levels or working capital levels, including cash, inventory and accounts receivable; operating margin; gross margin; cash margin; year-end cash; debt reduction; shareholder equity; operating efficiencies; market share; customer satisfaction; customer growth; employee satisfaction; research and development achievements; regulatory achievements (including submitting or filing applications or other documents with regulatory authorities or receiving approval of any such applications or other documents and passing pre-approval inspections); financial ratios, including those measuring liquidity, activity, profitability or leverage; cost of capital or assets under management; financing and other capital raising transactions (including sales of the company's equity or debt securities; sales or licenses of the company's assets, including its intellectual property, whether in a particular jurisdiction or territory or globally; or through partnering transactions); and implementation, completion or attainment of measurable objectives with respect to research, development, commercialization, products or projects, production volume levels, acquisitions and divestitures; and recruiting and maintaining personnel.

With respect to any award intended to qualify as performance-based compensation for purposes of Section 162(m), no participant may be awarded during any calendar year, subject to adjustment as described in the 2012 Incentive Plan, more than the following amounts of awards: (i) options and stock appreciation rights that relate to shares of common stock; (ii) performance awards that relate to shares of common stock and (iii) cash awards that relate to $.

Transferability. Awards under the plan generally may not be transferred except through will or by the laws of descent and distribution. However, if provided in an award agreement (for awards other than incentive stock options), certain additional transfers may be permitted in limited circumstances.

Change of Control. The compensation committee may provide for accelerated vesting of an award upon, or as a result of events following, a change of control (as defined in the 2012 Incentive Plan). This may be done in the award agreement or in connection with the change of control. In the event of a change of control, the compensation committee may also cause an award to be canceled in exchange for a cash payment to the participant or cause an award to be assumed by a successor corporation.

No Repricing. Stockholder approval will be required in order to reduce the exercise or hurdle price of an option or stock appreciation right or to cancel such an award in exchange for a new award when the exercise or hurdle price is below the fair market value of the underlying common stock.

Amendment and Termination. The board of directors may amend or terminate the 2012 Incentive Plan. Shareholder approval (if required by law or stock exchange rule) or participant consent (if the action would materially adversely affect the participant's rights) may be required for certain actions. The 2012 Incentive Plan will terminate on the earliest of: (i) ten years from its effective date and (ii) when the board of directors terminates the 2012 Incentive Plan.

2007 Equity Incentive Plan

The following is a description of the material terms of our 2007 Equity Incentive Plan, which we refer to as the "2007 Incentive Plan." This summary is not a complete description of all provisions of the 2007 Incentive Plan and is qualified in its entirety by reference to the 2007 Incentive Plan, a copy of which has been filed with the SEC. Following this offering, we will no longer make awards under the 2007 Incentive Plan and will instead make awards under the 2012 Incentive Plan (described above). However, 2007 Incentive Plan will continue to govern outstanding awards made under it.

Administration. The 2007 Incentive Plan is administered by our board of directors, subject to delegation to a committee or other persons in certain circumstances. The board will delegate administration of the 2007

Incentive Plan following this offering to the compensation committee. The administrator has the authority to interpret the 2007 Incentive Plan, to determine eligibility for and grant awards, to determine, modify or waive the terms and conditions of awards, and otherwise to do all things necessary to carry out the purposes of the 2007 Incentive Plan.

Authorized Shares. As of March 15, 2012, options to purchase 11,863,378 shares of our common stock at a weighted average exercise price of approximately $7.52 were outstanding under the 2007 Incentive Plan. Subject to adjustment, the maximum number of shares of common stock that may be delivered in satisfaction of awards under the 2007 Incentive Plan is 12,350,000. As noted above, we will no longer make awards under the 2007 Incentive Plan following this offering.

Eligibility. The administrator selected participants from among our key employees, directors, consultants and advisors.

Types of Awards. The 2007 Incentive Plan provides for grants of stock options and restricted stock. The exercise price of an option is not permitted to be less than the fair market value of a share of common stock on the date of grant. Options may not have a term that exceeds ten years from the grant date. Additional requirements may apply to options intended to be incentive stock options under Section 422 of the Internal Revenue Code.

Termination of Employment. Unless otherwise provided by the administrator, upon a termination of employment all unvested awards will be forfeited. Unless otherwise provided, vested options must be exercised within certain limited time periods after the date of termination, depending on the reason for termination; provided, however, that if a participant's employment is terminated for cause, all options will terminate immediately.

Transferability. Awards under the 2007 Incentive Plan may not be transferred except through will or by the laws of descent and distribution.

Corporate Transactions. In the event of certain corporate transactions (including dissolution or liquidation, the sale of substantially all of the assets, or certain mergers or consolidations), unless otherwise provided in connection with a particular award, the administrator may provide for substitution of new awards for outstanding awards or may cancel awards in exchange for a cash payments based on the value of the award, in each case subject to restrictions that the administrator deems appropriate.

Amendment and Termination. The administrator may amend or terminate the 2007 Incentive Plan. Shareholder approval (if required by law) or participant consent (if the action would materially adversely affect the participant's rights) may be required for certain actions.

RELATED PARTY TRANSACTIONS

Arrangements With Our Investors

Management Agreement

Upon completion of the Merger, we entered into a management agreement with Kangaroo Management Company I, LLC, as the management company, whose members are the Founders and entities affiliated with Bain Capital and Catterton. In accordance with the management agreement, the management company provides management services to us until the tenth anniversary of the completion of the Merger, with one-year extensions thereafter until terminated. The management company receives an aggregate annual management fee equal to $9.1 million and reimbursement for out-of-pocket and other reimbursable expenses incurred by it, its members, or their respective affiliates in connection with the provision of services pursuant to the agreement. Management fees, including out-of-pocket and other reimbursable expenses, of $9.4 million, $11.6 million, $10.7 million, $9.9 million and $5.2 million for the years ended December 31, 2011, 2010, 2009, 2008 and the period from June 15 to December 31, 2007, respectively, were included in General and administrative expenses in our Consolidated Statement of Operations.

The management agreement includes customary exculpation and indemnification provisions in favor of the management company, Bain Capital and Catterton and their respective affiliates. The management agreement may be terminated by us, Bain Capital and Catterton at any time and will terminate automatically upon the completion of this offering or a change of control.

Stockholders Agreement

In connection with the Merger, we entered into a stockholders agreement with our Sponsors and certain other investors, stockholders and executive officers. In connection with the completion of this offering, all of the provisions of the stockholders agreement will have been terminated in accordance with the terms of the stockholders agreement.

Registration Rights Agreement

In connection with the Merger, we entered into a registration rights agreement with our Sponsors and certain other stockholders. The registration rights agreement provides our Sponsors with certain demand registration rights following the expiration of the 180-day lock-up period in respect of the shares of our common stock held by them. In addition, in the event that we register additional shares of common stock for sale to the public following the completion of this offering, we are required to give notice of such registration to our Sponsors and the other stockholders party to the agreement of our intention to effect such a registration, and, subject to certain limitations, our Sponsors and such holders have piggyback registration rights providing them with the right to require us to include shares of common stock held by them in such registration. We are required to bear the registration expenses, other than underwriting discounts and commissions and transfer taxes, associated with any registration of shares by our Sponsors or other holders described above. The registration rights agreement also contains certain restrictions on the sale of shares by our Sponsors. The registration rights agreement includes customary indemnification provisions in favor of any person who is or might be deemed a controlling person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, who we refer to as controlling persons, and related parties against liabilities under the Securities Act incurred in connection with the registration of any of our debt or equity securities. These provisions provide indemnification against certain liabilities arising under the Securities Act and certain liabilities resulting from violations of other applicable laws in connection with any filing or other disclosure made by us under the securities laws relating to any such registration. We agreed to reimburse such persons for any legal or other expenses incurred in connection with investigating or defending any such liability, action or proceeding, except that we are not required to indemnify any such person or reimburse related legal or other expenses if such loss or expense arises out of or is based on any untrue statement or omission made in reliance upon and in conformity with written information provided by such person.

Other Arrangements

Tax Loans

Shares of our restricted stock issued to certain of our current and former executive officers and other members of management vest each June 14 through 2012. In accordance with the terms of their applicable agreements, we loaned an aggregate of $0.9 million, $0.7 million and $3.3 million to these individuals in 2011, 2010 and 2009, respectively, for their personal income tax and associated interest obligations that resulted from vesting of restricted stock. As of December 31, 2011, a total of $7.2 million of loans to current and former executive officers and other members of management were outstanding. The loans are full recourse and are collateralized by the vested shares of our restricted stock. Although these loans are permitted in accordance with the terms of the agreements, we are not required to issue them in the future. The 2011 loan amounts for our board members and/or executive officers were as follows: Jody L. Bilney, $0.1 million and Dirk A. Montgomery, $0.3 million . The 2010 loan amounts for our board members and/or executive officers were as follows: A. William Allen III, $0.1 million; Ms. Bilney, $0.1 million; Joseph J. Kadow, $6,000; Mr. Montgomery, $0.2 million; Richard L. Renninger, $0.1 million; and Irene D. Wenzel, $10,000. The 2009 loan amounts for our board members or executive officers were as follows: Mr. Allen, $1.6 million; Paul E. Avery, $1.1 million; Ms. Bilney, $28,000; Mr. Kadow, $0.3 million; Mr. Montgomery, $0.1 million; and Mr. Renninger, $28,000. The total amounts outstanding for our board members or executive officers as of December 31, 2011 were as follows: Mr. Allen, $2.6 million, Mr. Montgomery, $0.8 million; Mr. Kadow, $0.4 million; and Ms. Bilney $0.2 million, which were the largest amounts outstanding during 2011 for each of these individuals. There were no amounts repaid by any executive officer and/or director during 2011. Ms. Bilney and Messrs. Kadow and Montgomery fully repaid their loans in the first quarter of 2012, and as of March 15, 2012, there were no amounts outstanding for our current board members or executive officers.

MVP LRS, LLC

In 2011, MVP LRS, LLC, an entity owned primarily by the Founders (two of whom are also members of our board of directors) paid us a total of $0.6 million of lease payments for two restaurants in its Lee Roy Selmon's concept, which was purchased from us in 2008.

Director and Executive Officer Investments and Employment Arrangements

A. William Allen III, our Chief Executive Officer through November 15, 2009 and Chairman of our board of directors through December 31, 2011, through a revocable trust in which he and his wife are the grantors, trustees and sole beneficiaries, owns all of the equity interests in AWA III Steakhouses, Inc., which owns 2.50% of OSI/Flemings, LLC, a Delaware limited liability company. OSI/Flemings, LLC owns certain Fleming's Prime Steakhouse and Wine Bar restaurants directly or indirectly by serving as the general partner of limited partnerships. Mr. Allen, through his ownership interest in OSI/Flemings, LLC, received $0.6 million, $0.5 million and $0.2 million in distributions during 2011, 2010 and 2009, respectively and, in 2009, made capital contributions of $0.2 million. In addition, we entered into a consulting services agreement dated August 23, 2011 (the "Consulting Agreement") with Mr. Allen. In accordance with the Consulting Agreement, Mr. Allen will provide consulting services as an independent contractor to us and identify, evaluate and recommend acquisition and investment opportunities for us in the restaurant business. Beginning in the first quarter of 2012, Mr. Allen will receive a consulting fee at the rate of $50,000 per calendar quarter, payable in advance, until the earlier of the consulting project's completion or termination. Either party has the right to terminate the Consulting Agreement with ten business days' notice.

Jeffrey S. Smith, an executive officer, has made investments in the aggregate amount of approximately $0.5 million in eleven Outback Steakhouse restaurants, fourteen Carrabba's Italian Grill restaurants and fourteen Bonefish Grill restaurants (five of which are franchise restaurants). This officer received distributions of $0.1 million in each of the years ended December 31, 2011, 2010, and 2009 from these ownership interests.

Relationships With Family Members of Executive Officers

A sibling of Mr. Shlemon, an executive officer, is employed with one of our subsidiaries as a restaurant managing partner, with an annual compensation, including bonus, of approximately $0.1 million for the years ended December 31, 2011, 2010 and 2009. As a qualified managing partner, the sibling was entitled to make investments in our restaurants, on the same basis as other qualified managing partners, and has made an additional investment of invested $0.4 million in partnerships that own and operate two Outback Steakhouse restaurants. In 2011, 2010 and 2009, this sibling received distributions of $23,000, $26,000 and $25,000, respectively, related to his investments as a qualified managing partner and $0.1 million related to his additional investments in the partnerships noted above in each of these years.

A sibling of Joseph J. Kadow, a named executive officer, is employed by one of our subsidiaries as a Vice President of Operations. In 2011, 2010 and 2009, the sibling received total cash compensation of $0.6 million , $0.7 million and $0.6 million, respectively and benefits consistent with other employees in the same capacity. In addition, the sibling receives distributions that are based on a percentage of a particular restaurant's annual cash flows (on the same basis as other similarly situated employees). He has invested an aggregate of $0.3 million in 25 limited partnerships that own and operate nine Outback Steakhouse restaurants, 11 Bonefish Grill restaurants and five Carrabba's Italian Grill restaurants. This sibling received a return of his investment and distributions in the aggregate amount of $0.1 million in each of the years ended December 31, 2011, 2010 and 2009.

The wife of John W. Cooper, an executive officer, is employed by one of our subsidiaries as Senior Vice President, Training. In 2011, 2010 and 2009, she received total cash compensation of $0.3 million, $0.3 million and $0.2 million, respectively and benefits consistent with other employees in the same capacity.

Sale of Lee Roy Selmon's Concept

Effective December 31, 2008, we sold our interest in our Lee Roy Selmon's concept, which included six restaurants, to MVP LRS, LLC, an entity owned primarily by our Founders (two of whom are also board members), one of its named executive officers and a former employee, for $4.2 million. In the third quarter of 2009, the named executive officer transferred his ownership interest in Selmon's to two of the Founders (who are also board members) at his initial investment cost. We continued to provide certain accounting, technology, purchasing and other services to Selmon's at agreed-upon rates, however, all services, except for purchasing, were transitioned to Selmon's during the first quarter of 2010. Purchasing services were transitioned to Selmon's on January 1, 2012. We earned $29,000, $26,000 and $0.2 million for the services described above in 2011, 2010 and 2009, respectively. We also subleased restaurant properties to MVP LRS, LLC, and continue to do so. We received $0.6 million in connection with these subleases in each of the years ended December 31, 2011, 2010 and 2009.

Review, Approval or Ratification of Transactions With Related Persons

OSI adopted a written code of business conduct and ethics in 2004, which was revised in 2007. The above transactions were reviewed under the OSI code of business conduct and ethics. We have adopted a code of business conduct and ethics for the review and approval or ratification of related person transactions following the completion of this offering. Under each of these codes of business conduct and ethics, as applicable, each member of the board of directors and each member of management and the management of our subsidiaries and of each of our significant affiliates must disclose to the Chief Legal Officer and/or audit committee, as applicable, the material terms of the related person transaction, including the approximate dollar value of the amount involved in the transaction, and all the material facts as to the related person's direct or indirect interest in, or relationship to, the related person transaction. The Chief Legal Officer and/or audit committee must advise the board of the related person transaction and any requirement for disclosure in our applicable filings under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended and related rules, and, to the extent required to be disclosed, management must ensure that the related person transaction is disclosed in accordance with such acts and related rules.

DESCRIPTION OF INDEBTEDNESS

Senior Credit Facility

General

On June 14, 2007, OSI, as borrower, and OSI HoldCo, Inc. ("OSI HoldCo"), OSI's immediate parent corporation, entered into senior secured credit facilities with a syndicate of institutional lenders and financial institutions. The credit agreement related to the senior secured credit facilities was amended on January 28, 2010. These senior secured credit facilities provide for senior secured financing of up to approximately $1.6 billion, consisting of:

- a $1.3 billion term loan facility that matures June 14, 2014;
- a $150.0 million working capital revolving credit facility, including letter of credit and swing-line loan sub-facilities, that matures June 14, 2013; and
- a $100.0 million pre-funded revolving credit facility that provides financing for capital expenditures only and matures June 14, 2013.

Proceeds of the term loans were used to finance the Merger. Proceeds of loans and letters of credit under the working capital revolving credit facility provide financing for working capital and general corporate purposes and, subject to a rent-adjusted leverage condition, for capital expenditures for new restaurant growth. Proceeds of loans under the pre-funded revolving credit facility are available to provide financing for capital expenditures, subject to OSI's full utilization of amounts on deposit in a $100 million capital expenditure account initially funded on the closing date of the Merger, which may also be available to repay indebtedness under certain circumstances.

All borrowings under the senior secured credit facilities are subject to the satisfaction of customary conditions, including the absence of a default and the accuracy of certain representations and warranties.

Interest Rate and Fees

Borrowings under the senior secured credit facilities, other than swingline loans, bear interest at a rate per annum equal to, at OSI's option, either (i) a base rate determined by reference to the higher of (a) the prime rate of Deutsche Bank AG New York Branch and (b) the federal funds effective rate plus 1/2 of 1% or (ii) a eurocurrency rate adjusted for statutory reserve requirements for a 30, 60, 90 or 180 day interest period, or a nine- or twelve-month interest period if agreed upon by the applicable lenders, in each case, plus an applicable margin. Swingline loans bear interest at the interest rate applicable to base rate loans.

The applicable margin for borrowings under the senior secured credit facilities is (i) for term loans and pre-funded revolving credit loans, (a) 1.25% for base rate loans and (b) 2.25% for eurocurrency rate loans, and (ii) for working capital revolving credit loans, (a) 1.00% to 1.50% for base rate loans and (b) 2.00% to 2.50% for eurocurrency rate loans, subject to step downs based upon our total leverage ratio.

With either the base rate or the eurocurrency rate, the interest rate is reduced by 25 basis points if OSI's Moody's Applicable Corporate Rating then most recently published is B1 or higher (the rating was Caa1 at December 31, 2011).

On the last day of each calendar quarter, OSI is required to pay a commitment fee ranging from 0.38% to 0.50% per annum in respect of any unused commitments under the working capital revolving credit facility, which is subject to reduction based upon OSI's total leverage ratio, and a facility fee of 2.43% in respect of the undrawn portion of the pre-funded revolving credit facility. The fee is based on the applicable rate for eurocurrency rate loans under the pre-funded revolving credit facility plus the cost of investing the cash deposit related to the facility. Fees for the letters of credit range from 2.00% to 2.25%. We are also required to pay certain other agency fees.

Prepayments

OSI is required to prepay outstanding term loans, subject to certain exceptions, with:

- 50% of OSI's "annual excess cash flow" (with step-downs to 25% and 0% based upon OSI's rent-adjusted leverage ratio), as defined in the credit agreement and subject to certain exceptions;
- 100% of OSI's "annual minimum free cash flow," as defined in the credit agreement, not to exceed $75.0 million for each fiscal year, if OSI's rent-adjusted leverage ratio exceeds a certain threshold;
- 100% of the net proceeds of certain assets sales and insurance and condemnation events, subject to reinvestment rights and certain other exceptions; and
- 100% of the net proceeds of any debt incurred, excluding permitted debt issuances.

Additionally, OSI is required, on an annual basis, to (i) first, repay outstanding loans under the pre-funded revolving credit facility and (ii) second, fund the capital expenditure account to the extent amounts on deposit are less than $100.0 million, in both cases with 100% of OSI's "annual true cash flow," as defined in the credit agreement.

In addition, commitment reductions of the working capital revolving credit facility and pre-funded revolving credit facility, and voluntary prepayments of the term loans and loans under the working capital revolving credit facility are permitted, in whole or in part, in minimum amounts without premium or penalty, other than customary breakage costs with respect to eurocurrency rate loans. Voluntary prepayments of loans under the pre-funded revolving credit facility may only be made with the proceeds of new cash equity contributions unless such loans are to be repaid in full and all commitments thereunder are terminated.

Amortization of Principal

The senior secured credit facilities require scheduled quarterly payments on the term loans equal to 0.25% of the original principal amount of the term loans for the first six years and three quarters following June 14, 2007. These payments are reduced by the application of any prepayments, and any remaining balance will be paid at maturity.

Guarantees and Collateral

The obligations under the senior secured credit facilities are guaranteed by each of OSI's current and future domestic wholly-owned restricted subsidiaries in its Outback and Carrabba's concepts, certain non-restaurant subsidiaries and OSI HoldCo and subject to the next succeeding sentence, are secured by a perfected security interest in substantially all of OSI's assets and the assets of the guarantors, in each case, now owned or later acquired, including a pledge of all of OSI's capital stock, the capital stock of substantially all of OSI's domestic wholly-owned subsidiaries and 65% of the capital stock of certain of OSI's material foreign subsidiaries that are directly owned by OSI, OSI HoldCo or a guarantor. Additionally, the senior secured credit facilities require OSI to provide additional guarantees of the senior secured credit facilities in the future from other domestic wholly-owned restricted subsidiaries if the consolidated EBITDA (as defined in the credit agreement) attributable to OSI's non-guarantor domestic wholly-owned restricted subsidiaries (taken together as a group) would exceed 10% of OSI's consolidated EBITDA as determined on a company-wide basis, at which time guarantees would be required from additional domestic wholly-owned restricted subsidiaries in such number that would be sufficient to lower the aggregate consolidated EBITDA of the non-guarantor domestic wholly-owned restricted subsidiaries (taken together as a group) to an amount not in excess of 10% of OSI's company-wide consolidated EBITDA.

Restrictive Covenants and Other Matters

The senior secured credit facilities require OSI to comply with certain financial covenants, including a quarterly maximum total leverage ratio test, which financial covenant becomes more restrictive over time, and,

subject to OSI exceeding a minimum rent-adjusted leverage level, an annual minimum free cash flow test. In addition, the senior secured credit facilities agreement includes negative covenants that, subject to certain exceptions, limit OSI's ability and the ability of its restricted subsidiaries, to, among other things:

- incur liens;
- make investments and loans;
- make capital expenditures;
- incur indebtedness or guarantees;
- engage in mergers, acquisitions and asset sales;
- declare dividends, make payments or redeem or repurchase equity interests;
- alter the business they conduct;
- engage in certain transactions with affiliates;
- enter into agreements limiting subsidiary distributions; and
- prepay, redeem or purchase certain indebtedness.

The senior secured credit facilities contain certain customary representations and warranties, affirmative covenants and events of default. If an event of default occurs, the lenders under the senior secured credit facilities will be entitled to take various actions, including the acceleration of amounts due under the senior secured credit facilities and all actions permitted to be taken by a secured creditor.

This summary describes the material provisions of the senior secured credit facilities, but may not contain all information that is important to you. We urge you to read the provisions of the credit agreement governing the senior secured credit facilities, which has been included as an exhibit to the registration statement of which this prospectus forms a part. See "Where You Can Find More Information."

Senior Notes

General

On June 14, 2007, OSI and OSI Co-Issuer, Inc. ("Co-Issuer"), as co-issuers, issued the Senior Notes in an original aggregate principal amount of $550.0 million under an indenture among OSI, Co-Issuer, a third-party trustee and certain guarantors. The principal balance of the Senior Notes outstanding at December 31, 2011 and 2010 was $248.1 million. The Senior Notes mature on June 15, 2015. Interest is payable semiannually in arrears, at 10% per annum, in cash on each June 15 and December 15. Interest is computed on the basis of a 360-day year consisting of twelve 30-day months. The notes are guaranteed, jointly and severally, on an unsecured basis by each of OSI's and Co-Issuer's restricted subsidiaries that act as a guarantor under the senior secured credit facilities or other indebtedness of OSI.

The Senior Notes are general, unsecured senior obligations of OSI, Co-Issuer and the guarantors and are equal in right of payment to all existing and future senior indebtedness, including the senior secured credit facility. The Senior Notes are effectively subordinated to all of OSI's, Co-Issuer's and the guarantors' secured indebtedness, including the senior secured credit facility, to the extent of the value of the assets securing such indebtedness. The Senior Notes are senior in right of payment to all of OSI's, Co-Issuer's and the guarantors' existing and future subordinated indebtedness.

Covenants

The indenture governing the outstanding Senior Notes contains a number of covenants that, among other things and subject to certain exceptions, restrict OSI's ability and the ability of its restricted subsidiaries to:

- pay dividends on capital stock or redeem, repurchase or retire capital stock or any subordinated indebtedness;
- make investments, loans, advances and acquisitions;
- incur additional indebtedness or issue certain types of capital stock;
- incur certain liens;
- consolidate, merge or transfer all or substantially all of OSI's assets and the assets of the guarantors;
- engage in transactions with affiliates;
- prepay, redeem or purchase certain indebtedness;
- enter into agreements restricting the restricted subsidiaries' ability to pay dividends; and
- guarantee indebtedness of OSI.

The indenture also prohibits Co-Issuer from holding any material assets, becoming liable for any material obligation, engaging in any material trade or business or conducting any material business activity, subject to certain limited exceptions.

Optional Redemption

OSI and Co-Issuer may redeem the outstanding Senior Notes, in whole or in part, at the redemption prices (expressed as percentages of principal amount of Senior Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon to the redemption date, if redeemed during the twelve-month period beginning on June 15 of each of the years indicated below:

Year	Percentage
2012	102.5%
2013 and thereafter	100.0%

If OSI experiences certain kinds of changes in control, OSI and Co-Issuer must offer to purchase the outstanding Senior Notes at 101% of their principal amount, plus accrued and unpaid interest.

Asset Sales

If OSI or its restricted subsidiaries engage in certain asset sales, OSI or the restricted subsidiary generally must either invest the net cash proceeds from such sales in its business within a specified period of time or prepay certain debt (which may include open market purchases of the notes or offers to purchase the notes). If net proceeds not invested or applied in accordance with the foregoing exceed $40.0 million, OSI must make an offer to purchase a principal amount of the outstanding Senior Notes equal to those excess net cash proceeds, subject to certain exceptions. The purchase price of the outstanding Senior Notes will be 100% of their principal amount, plus accrued and unpaid interest.

This summary describes the material provisions of the Senior Notes but may not contain all information that is important to you. We urge you to read the provisions of the indenture governing these Senior Notes, which has been included as an exhibit to the registration statement of which this prospectus forms a part. See "Where You Can Find More Information."

2012 CMBS Loan

General

The 2012 CMBS Loan is in the amount of $500.0 million and consists of:

- a $324.8 million first mortgage loan to New Private Restaurant Properties, LLC ("New PRP");
- an $87.6 million first mezzanine loan to the parent of New PRP, New PRP Mezz 1, LLC ("New PRP 1"); and
- an $87.6 million second mezzanine loan to the parent of New PRP 1, New PRP Mezz 2, LLC ("New PRP 2").

Each of the loans comprising the 2012 CMBS Loan has a scheduled maturity date of April 10, 2017. The proceeds from the 2012 CMBS Loan, together with the proceeds from the Sale-Leaseback Transaction and excess cash, were used to repay our existing CMBS Loan.

Concurrently with the funding of the first mortgage loan, the originating lenders sold it to an affiliate of one of the lenders, who in turn transferred it into a securitization trust. The sale of the interests in such trust closed concurrently with, and were the source of, the funding of the first mortgage loan. In connection with the origination of the first and second mezzanine loans, the originating lenders syndicated all of their respective interests in the first and second mezzanine loans to third-party investors.

Interest Rate

The first mortgage loan has five fixed-rate components and a floating rate component, with original principal amounts and component interest rates as follows:

Mortgage Loan Component	Initial Principal Balance	Rate Description	Component Interest Rate
A-1	$ 41,316,000	Fixed	2.3666%
A-2-FX	$ 143,464,000	Fixed	3.3756%
A-2-FL	$ 48,720,000	Floating	LIBOR *plus* 2.3736%(1)
B	$ 29,300,000	Fixed	4.8536%
C	$ 26,100,000	Fixed	5.8336%
D	$ 35,900,000	Fixed	6.8096%

(1) In no event will LIBOR be less than 1% per annum.

In connection with the 2012 CMBS Loan, New PRP entered into an interest rate cap (the "Rate Cap") as a method to limit the volatility of the floating rate component of the first mortgage loan. Under the Rate Cap, if the 30-day LIBOR market rate exceeds 7% per annum, the counterparty must pay to New PRP such excess on the notional amount of the floating rate component. New PRP paid $4,680 for the Rate Cap and is amortizing the cost of this asset to interest expense. Should it be necessary, New PRP would record any mark-to-market changes in the fair value of its derivative instruments into earnings in the period of change. The Rate Cap has a term of approximately two years from the closing of the 2012 CMBS Loan. Upon the expiration or termination of the Rate Cap or the downgrade of the credit ratings of the counterparty under the Rate Cap below specified thresholds, New PRP is required to replace the Rate Cap with a replacement interest rate cap in a notional amount equal to the outstanding principal balance (if any) of the floating rate component.

The first mezzanine loan bears interest at a fixed rate of 9% per annum.

The second mezzanine loan bears interest at a fixed rate of 11.25% per annum.

Payments of Principal and Interest

On a monthly basis, each of New PRP, New PRP 1 and New PRP 2 will pay with respect to its loan an amount equal to accrued interest plus principal based on a 25 year amortization schedule; provided that they will pay accrued interest only on the first payment date of April 10, 2012. Scheduled monthly principal payments under the mortgage loan will generally be applied in sequential order (in other words, first to Component A-1, then Components A-2-FX and A-2-FL, then Component B, then Component C and then Component D), as a consequence of which, as the lower-interest rate components are repaid over the course of the term, New PRP's blended interest rate on the mortgage loan will rise.

Prepayments; Defeasance; Release of Collateral

New PRP will be permitted to prepay the floating rate component of the first mortgage loan, in whole or in part, at any time, subject to the satisfaction of certain conditions. With respect to any prepayment made prior to April 10, 2013 that is not made in connection with the release of a property, New PRP must pay a prepayment premium in an amount equal to 1.0% of the amount prepaid.

Except as described above with respect to the mortgage borrower's right to prepay the floating rate component, none of the borrowers under the mortgage or mezzanine loans will be permitted to voluntarily prepay its respective loan in whole or in part prior to January 10, 2017. At any time on and after that date, each borrower will be permitted to prepay (in whole but not in part) its loan (plus accrued interest through the next payment date) without payment of any yield maintenance premium, prepayment premium or other prepayment penalty or fee, subject to the satisfaction of certain conditions, including that the first mezzanine loan may not be prepaid unless the first mortgage loan has been or is then being prepaid in full and the second mezzanine loan may not be prepaid unless the first mortgage loan and first mezzanine loan have been or are then being prepaid in full.

In connection with the release of a property, new PRP may defease all or any portion of the fixed-rate components of the mortgage loan, subject to the satisfaction of certain conditions, including that the floating rate component has been paid in full and that a pro rata portion of each mezzanine loan is being concurrently defeased. Components of the mortgage loan will be defeased in sequential order (in other words, first the A-1 Component, then the A-2-Component, and so on through the D Component). Each mezzanine borrower may defease its mezzanine loan, in whole or in part, subject to the satisfaction of certain conditions, including that a pro rata portion of the mortgage loan and the other mezzanine loan are being concurrently defeased.

New PRP will be required to prepay the first mortgage loan in connection with certain casualties and condemnations. No yield maintenance premium, prepayment premium or other prepayment penalty or fee will be due in connection with any such involuntary prepayment.

New PRP has the right to obtain the release of properties from the lien securing the first mortgage loan, and New PRP 1 and New PRP 2 may cause New PRP to effect such release, upon the defeasance of the first mortgage loan (or, if the floating rate component is still outstanding, the prepayment of that component) and if the floating rate component has been fully repaid, the defeasance of the mezzanine loans in the amounts required in the applicable loan agreement and the satisfaction of certain other conditions.

Guarantees and Collateral

The first mortgage loan is secured by mortgages on 261 restaurant properties owned by New PRP. Subject to certain limited exceptions, recourse on the first mortgage loan is limited to New PRP's interest in such properties, the master lease with Private Restaurant Master Lessee LLC ("Master Lessee"), as described below, and the guaranty of the tenant's obligations under such master lease issued by OSI.

The first mezzanine loan is secured by 100% of New PRP 1's ownership interests in New PRP, The second mezzanine loan is secured by 100% of New PRP 2's ownership interests in New PRP 1. Subject to certain limited exceptions, recourse on each such loan is limited to its respective collateral.

OSI HoldCo I, Inc. has guaranteed to the lender under each loan the recourse obligations of its respective borrower.

Restrictive Covenants and Other Matters

New PRP's sole purpose is to own and lease all its real property to Master Lessee, and New PRP is generally not permitted to acquire additional assets or properties under the 2012 CMBS Loan.

The first mortgage loan includes negative covenants that, subject to certain exceptions, limit New PRP's ability to, among other things:

- incur debt;
- incur liens;
- partition any restaurant property;
- transfer any restaurant property;
- file for bankruptcy;
- incur material liability under ERISA;
- modify reciprocal easement agreements;
- take actions relating to zoning reclassification of any restaurant property;
- change its principal place of business; and
- cancel, forgive or release any material claim or debt owed to it.

In addition, the mortgage loan requires that, subsequent to certain initial public offerings of indirect parent entities of the mortgage loan borrower (the "IPO Entity"), such as this offering, either (i) our Sponsors, our Founders and the management stockholders or other permitted holders (collectively, "Permitted Holders"), own no less than 51% of the voting stock of the IPO Entity, and have the right, directly or indirectly, to designate (and do so designate) a majority of the board of directors of the IPO Entity, or (ii) both of the following criteria are satisfied: (a) no "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, other than Permitted Holders, is the owner of more than the greater of (1) 35% of the shares outstanding of the IPO Entity, and (2) the percentage of the then outstanding voting stock of the IPO Entity owned by the Permitted Holders, and (b) a majority of the board of directors of the IPO Entity consist of the directors of HoldCo on the closing date of the mortgage loan, and each other director of OSI HoldCo if such other director's nomination for election to the board of directors of OSI HoldCo is recommended by a majority of the then continuing directors or such other director receives the vote of one or more of the Permitted Holders in his or her election by the stockholders of OSI HoldCo. For purposes of the mortgage loan, management stockholders means members of management of OSI or its subsidiaries (excluding the Founders) who are both (i) actively involved in the management of OSI or its subsidiaries and (ii) investors in OSI HoldCo or any direct or indirect parent thereof.

The mezzanine loans contain similar negative covenants.

The first mortgage loan and mezzanine loans contain certain customary representations and warranties, affirmative covenants and events of default. Also, the first mezzanine loan is cross-defaulted to the mortgage loan and the second mezzanine loan is cross-defaulted to the first mezzanine loan and the first mortgage loan. In addition, all of the loans are cross-defaulted to the above-described lease with Master Lessee. If an event of default under one or more loans occurs, the applicable lender(s) will be entitled to take various actions, including the acceleration of amounts due under the applicable loan.

This summary describes the material provisions of each of the loan documents for the 2012 CMBS Loan, but may not contain all of the information that is important to you. We urge you to read the 2012 CMBS loan documents, which have been included as exhibits to the registration statement of which this prospectus forms a part. See “Where You Can Find More Information.”

Notes Payable

As of December 31, 2011 and 2010, OSI had approximately $9.1 million and $7.6 million, respectively, of notes payable at interest rates ranging from 0.76% to 7.00% and from 1.07% to 7.00%, respectively. These notes have been primarily issued for buyouts of managing and operating partner interests in the cash flows of their restaurants and generally are payable over two to five years.

Debt Guarantee

OSI is the guarantor of an uncollateralized line of credit that permits borrowing of up to $24.5 million for its joint venture partner, RY-8, in the development of Roy’s restaurants. The line of credit originally expired in December 2004 and was amended for a fourth time on April 1, 2009 to a revised termination date of April 15, 2013. According to the credit agreement, RY-8 may borrow, repay, re-borrow or prepay advances at any time before the termination date of the agreement. On the termination date of the agreement, the entire outstanding principal amount of the loan then outstanding and any accrued interest will be due. At December 31, 2011 and 2010, the outstanding balance on the line of credit was $24.5 million.

RY-8’s obligations under the line of credit are unconditionally guaranteed by OSI and Roy’s Holdings, Inc., RY-8’s parent company (“RHI”). If an event of default occurs, as defined in the agreement, the total outstanding balance, including any accrued interest, is immediately due from the guarantors. At December 31, 2011 and 2010, $24.5 million of the $150.0 million working capital revolving credit facility was committed for the issuance of a letter of credit for this guarantee.

If an event of default occurs and RY-8 is unable to pay the outstanding balance owed, OSI would, as one of the two guarantors, be liable for this balance. However, in conjunction with the credit agreement, RY-8 and RHI have entered into an Indemnity Agreement and a pledge of interest and security agreement in OSI’s favor. These agreements provide that if OSI is required to perform under its obligation as guarantor pursuant to the credit agreement, then RY-8 and RHI will indemnify OSI against all losses, claims, damages or liabilities which arise out of or are based upon OSI’s guarantee of the credit agreement. RY-8’s and RHI’s obligations under these agreements are collateralized by a first priority lien upon and a continuing security interest in any and all of RY-8’s interests in the joint venture.

PRINCIPAL STOCKHOLDERS

The following table sets forth certain information with respect to the beneficial ownership of our common stock at March 15, 2012 for:

- each person whom we know beneficially owns more than five percent of our common stock;
- each of our directors;
- each of our named executive officers; and
- all of our directors and executive officers as a group.

The number of shares beneficially owned by each stockholder is determined under rules issued by the SEC. Unless otherwise indicated below, the address for each listed director, officer and stockholder is c/o Bloomin' Brands, Inc., 2202 North West Shore Boulevard, Suite 500, Tampa, Florida 33607.

The percentage of common stock beneficially owned by each person before the offering is based on 106,516,725 shares of common stock outstanding as of March 15, 2012, and the percentage beneficially owned after the offering is based on shares of common stock expected to be outstanding following this offering after giving effect to the shares of common stock offered hereby. See "Description of Capital Stock." Shares of common stock that may be acquired within 60 days following March 15, 2012 pursuant to the exercise of options are deemed to be outstanding for the purpose of computing the percentage ownership of such holder but are not deemed to be outstanding for computing the percentage ownership of any other person shown in the table.

Upon the completion of this offering, investment funds affiliated with our Sponsors will own, in the aggregate, approximately % of our common stock, assuming the underwriters do not exercise their option to purchase additional shares of our common stock. As a result, we intend to be a "controlled company" within the meaning of the corporate governance rules of the .

	Shares Owned Before the Offering		Shares Owned after the Offering	
Name of Beneficial Owner	Number	Percentage	Number	Percentage
Bain Capital and related funds (1)	70,075,000	65.79%		
Catterton and related funds (2)	14,500,000	13.61%		
Andrew B. Balson (3)	—	—		
Robert D. Basham (4)	8,604,652	8.08%		
David P. Berg (5)	—	—		
Jody L. Bilney (6)	130,875	*		
J. Michael Chu (2)(7)	14,500,000	13.61%		
Joseph J. Kadow (8)	532,491	*		
Philip Loughlin (3)	—	—		
Dirk A. Montgomery (9)	518,648	*		
Mark Nunnelly (3)	—	—		
Elizabeth A. Smith (10)	1,740,000	1.61%		
Chris T. Sullivan (11)	5,929,331	5.57%		
Mark Verdi (3)	—	—		
All directors and executive officers as a group	18,584,648	17.01%		

* Indicates less than one percent of common stock.

(1) The shares included in the table consist of: (i) 54,006,582 shares of common stock held by Bain Capital (OSI) IX, L.P., whose managing partner is Bain Capital Investors, LLC ("BCI"); (ii) 15,295,203 shares of

common stock held by Bain Capital (OSI) IX Coinvestment, L.P., whose managing partner is BCI; (iii) 637,456 shares of common stock held by Bain Capital Integral 2006, LLC, whose administrative member is BCI; (iv) 126,959 shares of common stock held by BCIP TCV, LLC, whose administrative member is BCI; and (v) 8,800 shares of common stock held by BCIP Associates—G, whose managing general partner is BCI. As a result of the relationships described above, BCI may be deemed to share beneficial ownership of the shares held by each of Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., Bain Capital Integral Investors 2006, LLC, BCIP TCV, LLC and BCIP Associates-G (collectively, the "Bain Capital Entities"). Voting and investment determinations with respect to the shares held by the Bain Capital Entities are made by an investment committee comprised of the following managing directors of BCI: Andrew Balson, Steven Barnes, Joshua Bekenstein, John Connaughton, Todd Cook, Paul Edgerley, Christopher Gordon, Blair Hendrix, Jordan Hitch, Jon Kilgallon, Lew Klessel, Matthew Levin, Ian Loring, Philip Loughlin, Seth Meisel, Mark Nunnelly, Stephen Pagliuca, Ian Reynolds, Mark Verdi and Stephen Zide. As a result, and by virtue of the relationships described in this footnote, the investment committee of BCI may be deemed to exercise voting and dispositive power with respect to the shares held by the Bain Capital Entities. Each of the members of the investment committee of BCI disclaims beneficial ownership of such shares. Each of the Bain Capital Entities has an address c/o Bain Capital Partners, LLC, John Hancock Tower, 200 Clarendon Street, Boston, Massachusetts 02116.

(2) Represents shares held of record by Catterton Partners VI -Kangaroo, L.P. ("Catterton Partners VI"), a Delaware limited partnership, and Catterton Partners VI—Kangaroo Coinvest, L.P. ("Catterton Partners VI, Coinvest"), a Delaware limited partnership. Catterton Managing Partner VI, L.L.C. ("Catterton Managing Partner VI"), a Delaware limited liability company, is the general partner of Catterton Partners VI and Catterton Partners VI, Coinvest. CP6 Management, L.L.C. ("CP6 Management," and together with Catterton Partners VI, Catterton Partners VI, Coinvest, and Catterton Managing Partner VI collectively, "Catterton Partners and Related Funds"), a Delaware limited liability company, is the managing member of Catterton Managing Partner VI and as such exercises voting and dispositive control over the shares held of record by Catterton Partners VI and Catterton Partners VI, Coinvest.

(3) Does not include shares of common stock held by the Bain Capital Entities. Each of Messrs. Balson, Loughlin, Nunnelly and Verdi is a Managing Director and serves on the investment committee of BCI and as a result, and by virtue of the relationships described in footnote (1) above, may be deemed to share beneficial ownership of the shares held by the Bain Capital Entities. Each of Messrs. Balson, Loughlin, Nunnelly and Verdi disclaims beneficial ownership of the shares held by the Bain Capital Entities. The address for Messrs. Balson, Nunnelly and Verdi is c/o Bain Capital Partners, LLC, John Hancock Tower, 200 Clarendon Street, Boston, Massachusetts 02116.

(4) Shares owned by RDB Equities, Limited Partnership, an investment partnership ("RDBLP"). Mr. Basham is a limited partner of RDBLP and the sole member of RDB Equities, LLC, the sole general partner of RDBLP.

(5) Does not include 250,000 shares subject to stock options that are not exercisable within 60 days of March 15, 2012 by Mr. Berg.

(6) Includes 20,575 shares of restricted stock that vest on June 14, 2012, and 20,575 shares of restricted stock that vest on June 14, 2013. Also includes 28,000 shares subject to stock options that Ms. Bilney has the right to acquire within 60 days of March 15, 2012 at an exercise price of $6.50 per share. Does not include 212,800 shares subject to stock options that are not exercisable within 60 days of March 15, 2012.

(7) The management of CP6 Management is controlled by a managing board. J. Michael Chu and Scott A. Dahnke are the members of the managing board of CP6 Management and as such could be deemed to share voting and dispositive control over the shares held of record and beneficially owned by Catterton Partners and Related Funds. Mr. Chu disclaims beneficial ownership of any shares held of record and beneficially owned by Catterton Partners and Related Funds. The business address of Mr. Chu is c/o Catterton Partners, 599 West Putnam Avenue, Greenwich, Connecticut 06830.

(8) Includes 223,866 shares subject to stock options that Mr. Kadow has the right to acquire within 60 days of March 15, 2012 at an exercise price of $6.50 per share. Does not include 230,194 shares subject to stock options that are not exercisable within 60 days of March 15, 2012.

(9) Includes 82,300 shares of restricted stock that vest on June 14, 2012, and 82,300 shares of restricted stock that vest on June 14, 2013. Also includes 107,148 shares subject to stock options that Mr. Montgomery has the right to acquire within 60 days of March 15, 2012 at an exercise price of $6.50 per share. Does not include 45,923 shares subject to stock options that are not exercisable within 60 days of March 15, 2012.

(10) Includes 1,740,000 shares subject to stock options that Ms. Smith has the right to acquire within 60 days of March 15, 2012 at an exercise price of $6.50 per share. Does not include up to 3,160,000 shares subject to stock options that are not exercisable within 60 days of March 15, 2012.

(11) Includes 5,317,916 shares owned by CTS Equities, Limited Partnership, an investment partnership ("CTSLP"). Mr. Sullivan is a limited partner of CTSLP and the sole member of CTS Equities, LLC, the sole general partner of CTSLP. Also includes 611,415 shares held by a charitable foundation for which Mr. Sullivan serves as trustee.

DESCRIPTION OF CAPITAL STOCK

General

Upon the closing of this offering, our certificate of incorporation will be amended and restated to provide for authorized capital stock of 475,000,000 shares of common stock, par value $0.01 per share, and 25,000,000 shares of undesignated preferred stock. As of March 15, 2012, we had outstanding 106,516,725 shares of common stock held by 61 stockholders of record, and we had outstanding options to purchase 11,863,378 shares of common stock, which options were exercisable at a weighted average exercise price of $7.52 per share.

After giving effect to this offering, we will have shares of common stock and no shares of preferred stock outstanding. The following summary describes all material provisions of our capital stock. We urge you to read our certificate of incorporation and our bylaws, which are included as exhibits to the registration statement of which this prospectus forms a part.

Our certificate of incorporation and bylaws will contain provisions that are intended to enhance the likelihood of continuity and stability in the composition of the board of directors and that may have the effect of delaying, deferring or preventing a future takeover or change in control of our company unless that takeover or change in control is approved by our board of directors. These provisions include a classified board of directors, elimination of stockholder action by written consents (except in limited circumstances), elimination of the ability of stockholders to call special meetings (except in limited circumstances), advance notice procedures for stockholder proposals, and supermajority vote requirements for amendments to our certificate of incorporation and bylaws.

Common Stock

Dividend Rights. Subject to preferences that may apply to shares of preferred stock outstanding at the time, holders of outstanding shares of common stock will be entitled to receive dividends out of assets legally available at the times and in the amounts as the board of directors may from time to time determine.

Voting Rights. Each outstanding share of common stock will be entitled to one vote on all matters submitted to a vote of stockholders. Holders of shares of our common stock will not have cumulative voting rights.

Preemptive Rights. Our common stock will not be entitled to preemptive or other similar subscription rights to purchase any of our securities.

Conversion or Redemption Rights. Our common stock will be neither convertible nor redeemable.

Liquidation Rights. Upon our liquidation, the holders of our common stock will be entitled to receive pro rata our assets that are legally available for distribution, after payment of all debts and other liabilities and subject to the prior rights of any holders of preferred stock then outstanding.

Listing. We intend to apply to have our shares of common stock listed on under the symbol “BLM.”

Preferred Stock

Our board of directors may, without further action by our stockholders, from time to time, direct the issuance of shares of preferred stock in series and may, at the time of issuance, determine the designations, powers, preferences, privileges, and relative participating, optional or special rights as well as the qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption

and liquidation preferences, any or all of which may be greater than the rights of the common stock. Satisfaction of any dividend preferences of outstanding shares of preferred stock would reduce the amount of funds available for the payment of dividends on shares of our common stock. Holders of shares of preferred stock may be entitled to receive a preference payment in the event of our liquidation before any payment is made to the holders of shares of our common stock. Under specified circumstances, the issuance of shares of preferred stock may render more difficult or tend to discourage a merger, tender offer or proxy contest, the assumption of control by a holder of a large block of our securities or the removal of incumbent management. Upon the affirmative vote of a majority of the total number of directors then in office, our board of directors, without stockholder approval, may issue shares of preferred stock with voting and conversion rights that could adversely affect the holders of shares of our common stock and the market value of our common stock. Upon completion of this offering, there will be no shares of preferred stock outstanding, and we have no present intention to issue any shares of preferred stock.

Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws

Our certificate of incorporation and bylaws will contain certain provisions that are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and that may have the effect of delaying, deferring or preventing a future takeover or change in control of the company unless that takeover or change in control is approved by our board of directors.

These provisions include:

Classified Board. Our certificate of incorporation will provide that our board of directors will be divided into three classes of directors, with the classes as nearly equal in number as possible. As a result, approximately one-third of our board of directors will be elected each year. The classification of directors will have the effect of making it more difficult for stockholders to change the composition of our board. In addition, because our board will be classified, under Delaware General Corporation Law, directors may only be removed for cause. Our certificate of incorporation will also provide that, subject to any rights of holders of preferred stock to elect additional directors under specified circumstances, the number of directors will be fixed exclusively pursuant to a resolution adopted by our board of directors. Upon completion of this offering, our board of directors will have nine members.

Action by Written Consent; Special Meetings of Stockholders . Our certificate of incorporation will provide that stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting once investment funds affiliated with our Sponsors cease to beneficially own more than 50% of our outstanding shares. Our certificate of incorporation and bylaws will also provide that, except as otherwise required by law, special meetings of the stockholders can be called only pursuant to a resolution adopted by a majority of the total number of directors that the company would have if there were no vacancies or, until the date that investment funds affiliated with our Sponsors cease to beneficially own more than 50% of our outstanding shares, at the request of holders of 50% or more of our outstanding shares. Except as described above, stockholders will not be permitted to call a special meeting or to require the board of directors to call a special meeting.

Advance Notice Procedures. Our bylaws will establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to the board of directors. Stockholders at an annual meeting will only be able to consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the board of directors or by a stockholder who was a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has given our Secretary timely written notice, in accordance with our bylaws, of the stockholder's intention to bring that business before the meeting. Although the bylaws will not give the board of directors the power to approve or disapprove stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, the bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may

discourage or deter a potential acquiror from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the company.

Super Majority Approval Requirements. The Delaware General Corporation Law generally provides that the affirmative vote of a majority of the outstanding stock entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless either a corporation's certificate of incorporation or bylaws require a greater percentage. Our certificate of incorporation and bylaws will provide that the affirmative vote of holders of at least 75% of the total votes entitled to vote in the election of directors will be required to amend, alter, change or repeal our bylaws and specified provisions of our certificate of incorporation once investment funds affiliated with our Sponsors cease to beneficially own more than 50% of our outstanding shares. This requirement of a supermajority vote to approve amendments to our certificate of incorporation and bylaws could enable a minority of our stockholders to exercise veto power over any such amendments.

Authorized but Unissued Shares. Our authorized but unissued shares of common stock and preferred stock will be available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of a majority of our common stock by means of a proxy contest, tender offer, merger or otherwise.

Business Combinations With Interested Stockholders. We have elected in our certificate of incorporation not to be subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with a person or group owning 15% or more of the corporation's voting stock, for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Accordingly, we are not subject to any anti-takeover effects of Section 203. However, our certificate of incorporation will contain provisions that have the same effect as Section 203, except that they provide that our Sponsors and their respective affiliates will not be deemed to be "interested stockholders," regardless of the percentage of our voting stock owned by them, and accordingly will not be subject to such restrictions.

Corporate Opportunities

Our restated certificate of incorporation will provide that we renounce any interest or expectancy of the company in the business opportunities of our Sponsors and of their officers, directors, agents, shareholders, members, partners, affiliates and subsidiaries and each such party shall not have any obligation to offer us those opportunities unless presented to a director or officer of the company in his or her capacity as a director or officer of the company.

Limitations on Liability and Indemnification of Officers and Directors

Our restated certificate of incorporation will limit the liability of our directors to the fullest extent permitted by the Delaware General Corporation Law and provides that we will indemnify them to the fullest extent permitted by such law. We expect to enter into indemnification agreements with our current directors and executive officers prior to the completion of this offering and expect to enter into a similar agreement with any new directors or executive officers. We expect to increase our directors' and officers' liability insurance coverage prior to the completion of this offering.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be . Its telephone number is .

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for shares of our common stock. We cannot predict the effect, if any, that future sales of shares of our common stock, or the availability for future sale of shares of our common stock, will have on the market price of shares of our common stock prevailing from time to time. The sale of substantial amounts of shares of our common stock in the market, or the perception that such sales could occur, could harm the prevailing market price of shares of our common stock.

Sale of Restricted Shares

Upon completion of this offering, we will have shares of common stock outstanding. Of these shares, the shares sold in this offering, plus any shares sold upon exercise of the underwriters' option to purchase additional shares, will be freely tradable without restriction under the Securities Act, except for any shares purchased by our "affiliates" as that term is defined in Rule 144 promulgated under the Securities Act. In general, affiliates include our executive officers, directors, and 10% shareholders. Shares purchased by affiliates will remain subject to the resale limitations of Rule 144.

Upon completion of this offering, shares of our common stock will be "restricted securities," as that term is defined in Rule 144 promulgated under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rules 144 or 701 promulgated under the Securities Act, which are summarized below.

As a result of the lock-up agreements described below and the provisions of Rules 144 and Rule 701 promulgated under the Securities Act, the shares of our common stock (excluding the shares sold in this offering) will be available for sale in the public market as follows:

- shares will be eligible for sale on the date of this prospectus;
- shares will be eligible for sale upon the expiration of the lock-up agreements, as more particularly described below, beginning 180 days after the date of this prospectus; and
- shares will be eligible for sale, upon the exercise of vested options, upon the expiration of the lock-up agreements, as more particularly described below, beginning 180 days after the date of this prospectus.

Rule 144

Generally, Rule 144 provides that an affiliate who has beneficially owned "restricted" shares of our common stock for at least six months will be entitled to sell on the open market in brokers' transactions, within any three-month period, a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; or
- the average weekly trading volume of the common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

In addition, sales under Rule 144 are subject to requirements with respect to manner of sale, notice, and the availability of current public information about us.

If any person who is deemed to be our affiliate purchases shares of our common stock in this offering or acquires shares of our common stock pursuant to one of our employee benefits plans, sales under Rule 144 of the shares held by that person will be subject to the volume limitations and other restrictions described in the preceding two paragraphs.

The volume limitation, manner of sale and notice provisions described above will not apply to sales by non-affiliates. For purposes of Rule 144, a non-affiliate is any person or entity who is not our affiliate at the time of sale and has not been our affiliate during the preceding three months. Once we have been a reporting company for 90 days, persons who have beneficially owned restricted shares of our common stock for six months may rely on Rule 144 provided that certain public information regarding us is available. The six-month holding period increases to one year if we have not been a reporting company for at least 90 days. However, a non-affiliate who has beneficially owned the restricted shares proposed to be sold for at least one year will not be subject to any restrictions under Rule 144 regardless of how long we have been a reporting company.

Rule 701

Under Rule 701, each of our employees, officers, directors, consultants or advisors who purchased shares pursuant to a written compensatory plan or contract is eligible to resell these shares 90 days after the effective date of this offering in reliance upon Rule 144, but without compliance with specific restrictions. Rule 701 provides that affiliates may sell their Rule 701 shares under Rule 144 without complying with the holding period requirement and that non-affiliates may sell their shares in reliance on Rule 144 without complying with the holding period, public information, volume limitation, or notice provisions of Rule 144.

Lock-Up Agreements

We, our directors and officers and holders of substantially all of our equity securities have agreed, subject to certain exceptions, not to offer, sell or transfer any common stock or securities convertible into or exchangeable or exercisable for common stock for 180 days after the date of this prospectus without first obtaining the written consent of each of the representatives of the underwriters, subject to a possible extension beyond the end of such 180-day period. See “Underwriting” for a description of these lock-up agreements.

Registration Statements on Form S-8

We intend to file one or more registration statements on Form S-8 under the Securities Act as soon as practicable after the completion of this offering for shares issued upon the exercise of options and shares to be issued under our employee benefit plans. As a result, any such options or shares will be freely tradable in the public market. We have granted options to purchase shares of our common stock that will vest and will be exercisable upon the completion of this offering. However, such shares held by affiliates will still be subject to the volume limitation, manner of sale, notice, and public information requirements of Rule 144 unless otherwise resalable under Rule 701.

Registration Rights

Beginning 180 days after the date of this prospectus, subject to certain exceptions and automatic extensions in certain circumstances, holders of shares of our common stock will be entitled to the registration rights described under “Related Party Transactions—Arrangements With Our Investors.” Registration of these shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon effectiveness of the registration.

MATERIAL U.S. FEDERAL INCOME AND ESTATE TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a summary of the material U.S. federal income and estate tax considerations relating to the purchase, ownership and disposition of our common stock by Non-U.S. Holders (defined below). This summary does not purport to be a complete analysis of all the potential tax considerations relevant to Non-U.S. Holders of our common stock. This summary is based upon the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the Treasury regulations promulgated or proposed thereunder and administrative and judicial interpretations thereof, all as of the date hereof and all of which are subject to change or differing interpretations at any time, possibly with retroactive effect.

This summary assumes that shares of our common stock are held as "capital assets" within the meaning of Section 1221 of the Internal Revenue Code. This summary does not purport to deal with all aspects of U.S. federal income and estate taxation that might be relevant to particular Non-U.S. Holders in light of their particular investment circumstances or status, nor does it address specific tax considerations that may be relevant to particular persons (including, for example, financial institutions, broker-dealers, insurance companies, partnerships or other pass-through entities, certain U.S. expatriates, tax-exempt organizations, pension plans, "controlled foreign corporations," "passive foreign investment companies," corporations that accumulate earnings to avoid U.S. federal income tax, persons in special situations, such as those who have elected to mark securities to market or those who hold common stock as part of a straddle, hedge, conversion transaction, synthetic security or other integrated investment, or holders subject to the alternative minimum tax). In addition, except as explicitly addressed herein with respect to estate tax, this summary does not address estate and gift tax considerations or considerations under the tax laws of any state, local or non-U.S. jurisdiction.

For purposes of this summary, a "Non-U.S. Holder" means a beneficial owner of common stock that for U.S. federal income tax purposes is not treated as a partnership and is not:

- an individual who is a citizen or resident of the United States;
- a corporation or any other organization taxable as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is included in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust, if (i) a U.S. court is able to exercise primary supervision over the trust's administration and one or more U.S. persons have the authority to control all of the trust's substantial decisions or (i) the trust has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If an entity that is classified as a partnership for U.S. federal income tax purposes holds our common stock, the tax treatment of persons treated as its partners for U.S. federal income tax purposes will generally depend upon the status of the partner and the activities of the partnership. Partnerships and other entities that are classified as partnerships for U.S. federal income tax purposes and persons holding our common stock through a partnership or other entity classified as a partnership for U.S. federal income tax purposes are urged to consult their own tax advisors.

There can be no assurance that the Internal Revenue Service ("IRS") will not challenge one or more of the tax consequences described herein, and we have not obtained, nor do we intend to obtain, a ruling from the IRS with respect to the U.S. federal income or estate tax consequences to a Non-U.S. Holder of the purchase, ownership or disposition of our common stock.

THIS SUMMARY IS NOT INTENDED TO BE TAX ADVICE. NON-U.S. HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS CONCERNING THE U.S. FEDERAL INCOME AND ESTATE TAXATION, STATE, LOCAL AND NON-U.S. TAXATION AND OTHER TAX CONSEQUENCES TO THEM OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK.

Distributions on Our Common Stock

As discussed under "Dividend Policy" above, we do not currently expect to pay regular dividends on our common stock. If we do make a distribution of cash or property with respect to our common stock, any such distributions generally will constitute dividends for U.S. federal income tax purposes to the extent of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will constitute a return of capital and will first reduce the holder's basis in our common stock, but not below zero. Any remaining excess will be treated as capital gain, subject to the tax treatment described below in "Gain on Sale, Exchange or Other Taxable Disposition of Our Common Stock." Any such distribution would also be subject to the discussion below in "—Additional Withholding and Information Reporting Requirements."

Dividends paid to a Non-U.S. Holder generally will be subject to a 30% U.S. federal withholding tax unless such Non-U.S. Holder provides us or our agent, as the case may be, with the appropriate IRS Form W-8, such as:

- IRS Form W-8BEN (or successor form) certifying, under penalties of perjury, a reduction in withholding under an applicable income tax treaty, or
- IRS Form W-8ECI (or successor form) certifying that a dividend paid on common stock is not subject to withholding tax because it is effectively connected with a trade or business in the United States of the Non-U.S. Holder (in which case such dividend generally will be subject to regular graduated U.S. federal income tax rates as described below).

The certification requirement described above also may require a Non-U.S. Holder that provides an IRS form or that claims treaty benefits to provide its U.S. taxpayer identification number. Special certification and other requirements apply in the case of certain Non-U.S. Holders that are intermediaries or pass-through entities for U.S. federal income tax purposes.

Each Non-U.S. Holder is urged to consult its own tax advisor about the specific methods for satisfying these requirements. A claim for exemption will not be valid if the person receiving the applicable form has actual knowledge or reason to know that the statements on the form are false.

If dividends are effectively connected with a trade or business in the United States of a Non-U.S. Holder (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment), the Non-U.S. Holder, although exempt from the withholding tax described above (provided that the certifications described above are satisfied), generally will be subject to U.S. federal income tax on such dividends on a net income basis in the same manner as if it were a resident of the United States. In addition, if a Non-U.S. Holder is treated as a corporation for U.S. federal income tax purposes, the Non-U.S. Holder may be subject to an additional "branch profits tax" equal to 30% (unless reduced by an applicable income treaty) of its earnings and profits in respect of such effectively connected dividend income.

If a Non-U.S. Holder is eligible for a reduced rate of U.S. federal withholding tax pursuant to an income tax treaty, the holder may obtain a refund or credit of any excess amount withheld by timely filing an appropriate claim for refund with the IRS.

Gain on Sale, Exchange or Other Taxable Disposition of Our Common Stock

Subject to the discussion below in "—Additional Withholding and Information Reporting Requirements," in general, a Non-U.S. Holder will not be subject to U.S. federal income tax or withholding tax on gain realized upon such holder's sale, exchange or other taxable disposition of shares of our common stock unless (i) such Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the

taxable year of disposition, and certain other conditions are met, (ii) we are or have been a "United States real property holding corporation," as defined in the Internal Revenue Code (a "USRPHC"), at any time within the shorter of the five-year period preceding the disposition and the Non-U.S. Holder's holding period in the shares of our common stock, and certain other requirements are met, or (iii) such gain is effectively connected with the conduct by such Non-U.S. Holder of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment maintained by such Non-U.S. Holder in the United States).

If the first exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30% (or at a reduced rate under an applicable income tax treaty) on the amount by which such Non-U.S. Holder's capital gains allocable to U.S. sources (including gain, if any, realized on a disposition of our common stock) exceed capital losses allocable to U.S. sources during the taxable year of the disposition. If the third exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to such gain on a net income basis in the same manner as if it were a resident of the United States, and a Non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect any earnings and profits attributable to such gain at a rate of 30% (or at a reduced rate under an applicable income tax treaty).

Generally, a corporation is a USRPHC only if the fair market value of its U.S. real property interests (as defined in the Internal Revenue Code) equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Although there can be no assurance in this regard, we believe that we are not, and do not anticipate becoming, a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property relative to the fair market value of other business assets, there can be no assurance that we will not become a USRPHC in the future. Even if we became a USRPHC, a Non-U.S. Holder would not be subject to U.S. federal income tax on a sale, exchange or other taxable disposition of our common stock by reason of our status as a USRPHC so long as our common stock is regularly traded on an established securities market at any time during the calendar year in which the disposition occurs and such Non-U.S. Holder does not own and is not deemed to own (directly, indirectly or constructively) more than 5% of our common stock at any time during the shorter of the five-year period ending on the date of disposition and the holder's holding period. However, no assurance can be provided that our common stock will be regularly traded on an established securities market for purposes of the rules described above. Prospective investors are encouraged to consult their own tax advisors regarding the possible consequences to them if we are, or were to become, a USRPHC.

Additional Withholding and Information Reporting Requirements

Legislation enacted in March 2010 (commonly referred to as "FATCA") generally will impose a U.S. federal withholding tax of 30% on payments to certain non-U.S. entities (including certain intermediaries), including dividends on and the gross proceeds from a sale or other disposition of our common stock, unless such persons comply with a complicated U.S. information reporting, disclosure and certification regime. This new regime requires, among other things, a broad class of persons to enter into agreements with the IRS to obtain, disclose and report information about their investors and account holders. This new regime and its requirements are different from and in addition to the certification requirements described elsewhere in this discussion. As currently proposed, the FATCA withholding rules would apply to certain payments, including dividend payments on our common stock, if any, paid after December 31, 2013, and to payments of gross proceeds from the sale or other dispositions of our common stock paid after December 31, 2014.

Although administrative guidance and proposed regulations have been issued, regulations implementing the new FATCA regime have not yet been finalized and the exact scope of these rules remains unclear and potentially subject to material changes. Prospective investors should consult their own tax advisors regarding the possible impact of these rules on their investment in our common stock, and the entities through which they hold our common stock, including, without limitation, the process and deadlines for meeting the applicable requirements to prevent the imposition of this 30% withholding tax under FATCA.

Backup Withholding and Information Reporting

We must report annually to the IRS and to each Non-U.S. Holder the gross amount of the distributions on our common stock paid to the holder and the tax withheld, if any, with respect to the distributions.

Non-U.S. Holders may have to comply with specific certification procedures to establish that the holder is not a United States person (as defined in the Internal Revenue Code) in order to avoid backup withholding at the applicable rate, currently 28% and scheduled to increase to 31% for taxable years 2013 and thereafter, with respect to dividends on our common stock. Dividends paid to Non-U.S. Holders subject to the U.S. withholding tax, as described above in "—Distributions on Our Common Stock," generally will be exempt from U.S. backup withholding.

Information reporting and backup withholding will generally apply to the proceeds of a disposition of our common stock by a Non-U.S. Holder effected by or through the U.S. office of any broker, U.S. or foreign, unless the holder certifies its status as a Non-U.S. Holder and satisfies certain other requirements, or otherwise establishes an exemption. Dispositions effected through a non-U.S. office of a U.S. broker or a non-U.S. broker with substantial U.S. ownership or operations generally will be treated in a manner similar to dispositions effected through a U.S. office of a broker. Prospective investors should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

Copies of information returns may be made available to the tax authorities of the country in which the Non-U.S. Holder resides or in which the Non-U.S. Holder is incorporated under the provisions of a specific treaty or agreement.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a Non-U.S. Holder can be refunded or credited against the Non-U.S. Holder's U.S. federal income tax liability, if any, provided that an appropriate claim is timely filed with the IRS.

Federal Estate Tax

Common stock owned (or treated as owned) by an individual who is not a citizen or a resident of the United States (as defined for U.S. federal estate tax purposes) at the time of death will be included in the individual's gross estate for U.S. federal estate tax purposes, unless an applicable estate or other tax treaty provides otherwise, and, therefore, may be subject to U.S. federal estate tax.

Medicare Contributions Tax

For taxable years beginning after December 31, 2012, a 3.8% tax is imposed on the net investment income (which includes dividends and gains recognized upon of a disposition of stock) of certain individuals, trusts and estates with adjusted gross income in excess of certain thresholds. This tax is imposed on individuals, estates and trusts that are U.S. Holders. The tax is expressly not imposed on nonresident aliens; however, estates and trusts that are not U.S. Holders are not expressly exempted from the tax. Therefore, non-U.S. Holders of our common shares should consult their tax advisors regarding application of this Medicare contribution tax in their particular situations.

UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC and J.P. Morgan Securities LLC are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

Underwriter	Number of Shares
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Morgan Stanley & Co. LLC	
J.P. Morgan Securities LLC	
Deutsche Bank Securities Inc.	
Goldman, Sachs & Co.	
Total	

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares.

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to Bloomin' Brands, Inc.	$	$	$

The expenses of the offering, not including the underwriting discount, are estimated at $ and are payable by us.

Option to Purchase Additional Shares

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to additional shares at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

Reserved Shares

At our request, the underwriters have reserved for sale, at the initial public offering price, up to % of the shares offered by this prospectus for sale to some of our directors, officers, employees and certain other persons who are associated with us. If these persons purchase reserved shares, this will reduce the number of shares available for sale to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus.

No Sales of Similar Securities

We, our executive officers and directors and our other existing security holders have agreed, subject to certain exceptions, not to sell or transfer any of our common stock or securities convertible into, exchangeable for, exercisable for, or repayable with our common stock, for 180 days after the date of this prospectus without first obtaining the written consent of the representatives. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly:

- offer, pledge, sell or contract to sell any of our common stock;
- sell any option or contract to purchase any of our common stock;
- purchase any option or contract to sell any of our common stock;
- grant any option, right or warrant for the sale of any of our common stock;
- lend or otherwise dispose of or transfer any of our common stock;
- request or demand that we file a registration statement related to our common stock; or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any of our common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lock-up provision applies to our common stock and to securities convertible into or exchangeable or exercisable for or repayable with our common stock. It also applies to our common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. In the event that either (x) during the last 17 days of the lock-up period referred to above, we issue an earnings release or material news or a material event relating to us occurs or (y) prior to the expiration of the lock-up period, we announce that we will release earnings results or become aware that material news or a material event will occur during the 16-day period beginning on the last day of the lock-up period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Listing

We expect the shares to be approved for listing on the under the symbol "BLM."

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations among us and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us;
- our financial information;
- the history of, and the prospects for, our company and the industry in which we compete;
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

Price Stabilization, Short Positions and Penalty Bids

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. "Covered" short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares described above. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option granted to them. "Naked" short sales are sales in excess of such option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on , in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Distribution

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

Other Relationships

The underwriters and their respective affiliates are full-service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

Merrill Lynch, Pierce, Fenner & Smith Incorporated and Deutsche Bank Securities Inc. acted as initial purchasers in connection with the offering of our Senior Notes. In addition, affiliates of certain underwriters act in various capacities under our senior credit facility. Bank of America, N.A., an affiliate of, Merrill Lynch, Pierce, Fenner & Smith Incorporated, acts as syndication agent and Deutsche Bank AG New York Branch, an affiliate of Deutsche Bank Securities Inc., acts as administrative agent, pre-funded revolving credit facility deposit bank, swing line lender and a letter of credit issuer. Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Deutsche Bank Securities Inc. also act as lenders under our senior credit facility. In addition, Bank of America, N.A., an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, and German American Capital Corporation, an affiliate of Deutsche Bank Securities Inc., co-originated our 2012 CMBS Loan. Banc of America Merrill Lynch Large Loan Inc., an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, acted as depositor in connection with the securitization of the mortgage loan portion of the 2012 CMBS Loan. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Deutsche Bank Securities Inc. also acted as co-lead manager, bookrunner and placement agent, and JP Morgan Securities LLC acted as co-manager and placement agent for the 2012 CMBS Loan. Bank of America, N.A., is also acting as servicer for the 2012 CMBS Loan.

The underwriters may have ongoing relationships with, render services to, and engage in transactions with us and our affiliates, which relationships and transactions may create conflicts of interest between the underwriters, on the one hand, and the investors in this offering, on the other hand. For example, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Deutsche Bank Securities Inc. acted as the placement agents for the mezzanine portion of the 2012 CMBS Loans, and may have ongoing relationships with these lenders. The underwriters also assisted us in arranging the Sale-Leaseback Transaction. These restaurant properties do not secure the 2012 CMBS Loan but include restaurants of the same brand and/or concept as those that do secure the 2012 CMBS Loan. In light of such activities and the ongoing relationships of the underwriters with us, for purposes of your assessment of potential conflicts of interest involving the underwriters as it relates to their placement of these securities, you should assume that the underwriters will be, or would like to become, involved as arrangers, placement agents, underwriters or in other roles in other transactions for such parties.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Notice to Prospective Investors in the European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date"), no offer of shares may be made to the public in that Relevant Member State other than:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of shares shall require the company or the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

Each person in a Relevant Member State (other than a Relevant Member State where there is a Permitted Public Offer) who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed that (i) it is a "qualified investor" within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive, and (ii) in the case of any shares acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, the shares acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than "qualified investors" as defined in the Prospectus Directive, or in circumstances in which the prior consent of the representatives has been given to the offer or resale. In the case of any shares being offered to a financial intermediary as that term is used in Article 3(2) of the Prospectus Directive, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Relevant Member State to qualified investors as so defined or in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The company, the representatives and their affiliates will rely upon the truth and accuracy of the foregoing representation, acknowledgement and agreement.

This prospectus has been prepared on the basis that any offer of shares in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of shares. Accordingly, any person making or intending to make an offer in that Relevant Member State of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for the company or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither the company nor the

underwriters have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for the company or the underwriters to publish a prospectus for such offer.

For the purpose of the above provisions, the expression "an offer to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in the Relevant Member State, and the expression "Prospectus Directive" means Directive 2003/71/EC (including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member States) and includes any relevant implementing measure in the Relevant Member State, and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

Notice to Prospective Investors in the United Kingdom

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order") and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

Notice to Prospective Investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the company, or the shares has been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA (FINMA), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to Prospective Investors in the Dubai International Financial Centre

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

Notice to Prospective Investors in Hong Kong

The shares may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (i) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (ii) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for six months after that corporation or that trust has acquired the shares under Section 275 except: (i) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (ii) where no consideration is given for the transfer; or (iii) by operation of law.

Notice to Prospective Investors in Japan

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

LEGAL MATTERS

Baker & Hostetler LLP, Cleveland, Ohio, has passed upon the validity of the common stock offered hereby on our behalf. The underwriters are being represented by Ropes & Gray LLP, Boston, Massachusetts.

EXPERTS

The financial statements as of December 31, 2011 and 2010 and for each of the three years in the period ended December 31, 2011 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered certified public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of PGS Consultoria e Serviços Ltda. at December 31, 2010, and for the year then ended, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young Terco Auditores Independentes S.S., independent auditors, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act that registers the shares of our common stock to be sold in this offering. This prospectus does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. For further information with respect to us and our common stock, you should refer to the registration statement and the exhibits and schedules filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit.

We are not currently subject to the informational requirements of the Securities Exchange Act of 1934. As a result of this offering, we will become subject to the informational requirements of the Exchange Act and, in accordance therewith, will file reports and other information with the SEC. The registration statement, reports and other information we file with the SEC can be read and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington D.C. 20549. You may obtain information regarding the operation of the public reference room by calling 1-800-SEC-0330. The SEC also maintains a website (http://www.sec.gov) that contains reports, proxy and information statements and other information that we file electronically with the SEC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Certified Public Accounting Firm

To the Board of Directors and Shareholders of
Bloomin' Brands, Inc.

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, changes in shareholders' equity (deficit), and cash flows present fairly, in all material respects, the financial position of Bloomin' Brands, Inc. and its subsidiaries at December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2011 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 16(b) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These consolidated financial statements and the financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and the financial statement schedule based on our audits. We conducted our audits of these statements and the financial statement schedule in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements and the financial statement schedule are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements and the financial statement schedule, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP
Tampa, Florida
April 6, 2012

BLOOMIN' BRANDS, INC.

CONSOLIDATED BALANCE SHEETS
(In Thousands, Except Share and Per Share Data)

	December 31, 2011	December 31, 2010
ASSETS		
Current Assets		
Cash and cash equivalents	$ 482,084	$ 365,536
Current portion of restricted cash	20,640	8,145
Inventories	69,223	58,974
Deferred income tax assets	31,959	26,418
Other current assets, net	104,373	71,820
Total current assets	708,279	530,893
Restricted cash	3,641	19,527
Property, fixtures and equipment, net	1,635,898	1,673,281
Investments in and advances to unconsolidated affiliates, net	35,033	31,673
Goodwill	268,772	269,901
Intangible assets, net	566,148	572,066
Other assets, net	136,165	146,070
Total assets	$ 3,353,936	$ 3,243,411
LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)		
Current Liabilities		
Accounts payable	$ 97,393	$ 78,254
Accrued and other current liabilities	211,486	194,431
Current portion of partner deposits and accrued partner obligations	15,044	14,001
Unearned revenue	299,596	269,058
Current portion of long-term debt	332,905	95,284
Total current liabilities	956,424	651,028
Partner deposits and accrued partner obligations	98,681	109,906
Deferred rent	70,135	57,743
Deferred income tax liabilities	193,262	187,843
Long-term debt, net	1,751,885	2,051,740
Guaranteed debt	24,500	24,500
Other long-term liabilities, net	218,752	216,562
Total liabilities	3,313,639	3,299,322
Commitments and contingencies (see Note 16)		
Shareholders' Equity (Deficit)		
Bloomin' Brands, Inc. Shareholders' Equity (Deficit)		
Common stock, $.01 par value, 120,000,000 shares authorized; 106,573,193 shares issued and outstanding at December 31, 2011; and 120,000,000 shares authorized; 106,573,193 shares issued and outstanding at December 31, 2010	1,066	1,066
Additional paid-in capital	874,753	871,963
Accumulated deficit	(822,625)	(922,630)
Accumulated other comprehensive loss	(22,344)	(19,633)
Total Bloomin' Brands, Inc. shareholders' equity (deficit)	30,850	(69,234)
Noncontrolling interests	9,447	13,323
Total shareholders' equity (deficit)	40,297	(55,911)
Total liabilities and shareholders' equity (deficit)	$ 3,353,936	$ 3,243,411

The accompanying notes are an integral part of these Consolidated Financial Statements.

BLOOMIN' BRANDS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(In Thousands, Except Per Share Data)

	Years Ended December 31,		
	2011	2010	2009
Revenues			
Restaurant sales	$ 3,803,252	$3,594,681	$ 3,573,760
Other revenues	38,012	33,606	27,896
Total revenues	3,841,264	3,628,287	3,601,656
Costs and expenses			
Cost of sales	1,226,098	1,152,028	1,184,074
Labor and other related	1,094,117	1,034,393	1,024,063
Other restaurant operating	890,004	864,183	849,696
Depreciation and amortization	153,689	156,267	186,074
General and administrative	291,124	252,793	252,298
Recovery of note receivable from affiliated entity	(33,150)	—	—
Loss on contingent debt guarantee	—	—	24,500
Goodwill impairment	—	—	58,149
Provision for impaired assets and restaurant closings	14,039	5,204	134,285
Income from operations of unconsolidated affiliates	(8,109)	(5,492)	(2,196)
Total costs and expenses	3,627,812	3,459,376	3,710,943
Income (loss) from operations	213,452	168,911	(109,287)
Gain on extinguishment of debt	—	—	158,061
Other income (expense), net	830	2,993	(199)
Interest expense, net	(83,387)	(91,428)	(115,880)
Income (loss) before provision (benefit) for income taxes	130,895	80,476	(67,305)
Provision (benefit) for income taxes	21,716	21,300	(2,462)
Net income (loss)	109,179	59,176	(64,843)
Less: net income (loss) attributable to noncontrolling interests	9,174	6,208	(380)
Net income (loss) attributable to Bloomin' Brands, Inc.	$ 100,005	$ 52,968	$ (64,463)
Net income (loss) per common share:			
Basic	$ 0.94	$ 0.50	$ (0.62)
Diluted	$ 0.94	$ 0.50	$ (0.62)
Weighted average common shares outstanding:			
Basic	106,224	105,968	104,442
Diluted	106,689	105,968	104,442

The accompanying notes are an integral part of these Consolidated Financial Statements.

BLOOMIN' BRANDS, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY (DEFICIT)
(In Thousands)

	Bloomin' Brands, Inc.						
	Common Stock	Common Stock Amount	Additional Paid-in Capital	Accum-ulated Deficit	Accumulated Other Comprehensive Loss	Noncontrolling Interests	Total
Balance, December 31, 2008	106,573	$ 1,066	$857,088	$ (917,213)	$ (34,462)	$ 26,707	$ (66,814)
Net loss	—	—	—	(64,463)	—	(380)	(64,843)
Foreign currency translation adjustment	—	—	—	—	10,273	(19)	10,254
Total comprehensive loss	—	—	—	—	—	(399)	(54,589)
Stock-based compensation	—	—	15,503	—	—	—	15,503
Issuance of notes receivable due from shareholders	—	—	(3,389)	—	—	—	(3,389)
Distributions to noncontrolling interests	—	—	—	—	—	(9,083)	(9,083)
Contributions from noncontrolling interests	—	—	—	—	—	1,747	1,747
Balance, December 31, 2009	106,573	$ 1,066	$ 869,202	$ (981,676)	$ (24,189)	$ 18,972	$(116,625)
Net income	—	—	—	52,968	—	6,208	59,176
Foreign currency translation adjustment	—	—	—	—	4,556	—	4,556
Total comprehensive income	—	—	—	—	—	6,208	63,732
Cumulative effect from adoption of variable interest entity guidance	—	—	—	6,078	—	(386)	5,692
Stock-based compensation	—	—	3,411	—	—	—	3,411
Issuance of notes receivable due from shareholders	—	—	(747)	—	—	—	(747)
Repayments of notes receivable due from shareholders	—	—	97	—	—	—	97
Distributions to noncontrolling interests	—	—	—	—	—	(11,596)	(11,596)
Contributions from noncontrolling interests	—	—	—	—	—	125	125
Balance, December 31, 2010	106,573	$ 1,066	$ 871,963	$ (922,630)	$ (19,633)	$ 13,323	$ (55,911)
Net income	—	—	—	100,005	—	9,174	109,179
Foreign currency translation adjustment	—	—	—	—	(2,711)	—	(2,711)
Total comprehensive income	—	—	—	—	—	9,174	106,468
Stock-based compensation	—	—	3,907	—	—	—	3,907
Issuance of notes receivable due from shareholders	—	—	(1,082)	—	—	—	(1,082)
Repayments of notes receivable due from shareholders	—	—	3	—	—	—	3
Distributions to noncontrolling interests	—	—	(38)	—	—	(13,472)	(13,510)
Contributions from noncontrolling interests	—	—	—	—	—	422	422
Balance, December 31, 2011	106,573	$ 1,066	$ 874,753	$(822,625)	$ (22,344)	$ 9,447	$ 40,297

The accompanying notes are an integral part of these Consolidated Financial Statements.

BLOOMIN' BRANDS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Years Ended December 31,		
	2011	2010	2009
Cash flows provided by operating activities:			
Net income (loss)	$ 109,179	$ 59,176	$ (64,843)
Adjustments to reconcile net income (loss) to cash provided by operating activities:			
Depreciation and amortization	153,689	156,267	186,074
Amortization of deferred financing fees	12,297	13,435	14,315
Amortization of capitalized gift card sales commissions	18,058	15,046	10,884
Goodwill impairment	—	—	58,149
Provision for impaired assets and restaurant closings	14,039	5,204	134,285
Accretion on debt discounts	663	616	566
Stock-based and other non-cash compensation expense	39,228	39,512	47,604
Income from operations of unconsolidated affiliates	(8,109)	(5,492)	(2,196)
Change in deferred income taxes	(189)	5,149	(15,145)
Loss on disposal of property, fixtures and equipment	1,987	4,050	5,575
Unrealized loss (gain) on derivative financial instruments	723	(18,267)	(6,998)
Gain on life insurance and restricted cash investments	(126)	(2,821)	(8,550)
Loss on contingent debt guarantee	—	—	24,500
Gain on extinguishment of debt	—	—	(158,061)
Loss (gain) on disposal of business	4,331	—	(2,491)
Provision for bad debt expense	117	768	1,870
Recovery of note receivable from affiliated entity	(33,150)	—	—
Change in assets and liabilities:			
(Increase) decrease in inventories	(10,525)	(2,599)	27,471
Increase in other current assets	(59,570)	(13,891)	(11,409)
Decrease in other assets	8,209	10,721	8,305
Decrease in accrued interest payable	(27)	(181)	(2,227)
Increase (decrease) in accounts payable and accrued and other current liabilities	32,179	(28,420)	(66,175)
Increase in deferred rent	12,510	10,677	14,193
Increase in unearned revenue	30,623	31,964	24,847
Decrease in other long-term liabilities	(3,686)	(5,760)	(25,006)
Net cash provided by operating activities	322,450	275,154	195,537
Cash flows used in investing activities:			
Purchases of Company-owned life insurance	(2,027)	(2,405)	(6,571)
Proceeds from sale of Company-owned life insurance	2,638	6,411	16,886
Proceeds from sale of property, fixtures and equipment	1,190	462	3,070
De-consolidation of subsidiary	—	(4,398)	—
Acquisition of business	—	—	(450)
Proceeds from sale of a business	10,119	—	1,653
Capital expenditures	(120,906)	(60,476)	(57,528)
Restricted cash received for capital expenditures, property taxes and certain deferred compensation plans	86,579	18,545	27,386

BLOOMIN' BRANDS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS—(Continued)
(In Thousands)

	Years Ended December 31,		
	2011	2010	2009
Restricted cash used to fund capital expenditures, property taxes and certain deferred compensation plans	(83,148)	(29,860)	(23,782)
Royalty termination fee	(8,547)	—	—
Payments from unconsolidated affiliates	960	—	165
Net cash used in investing activities	(113,142)	(71,721)	(39,171)
Cash flows used in financing activities:			
Repayments of long-term debt	(25,189)	(140,853)	(24,506)
Proceeds from borrowings on revolving credit facilities	33,000	61,000	23,700
Repayments of borrowings on revolving credit facilities	(78,072)	(55,928)	(12,700)
Collection of note receivable from affiliated entity	33,300	—	—
Extinguishment of senior notes	—	—	(75,967)
Deferred financing fees	(2,222)	(1,391)	(183)
Purchase of note related to guaranteed debt of affiliated entity	—	—	(33,283)
Contributions from noncontrolling interests	422	125	1,747
Distributions to noncontrolling interests	(13,510)	(11,596)	(9,083)
Repayments of partner deposits and accrued partner obligations	(37,286)	(20,936)	(7,124)
Receipts of partner deposits and other contributions	1,336	2,914	3,391
Issuance of notes receivable due from shareholders	(1,082)	(747)	(3,389)
Repayments of notes receivable due from shareholders	3	97	—
Net cash used in financing activities	(89,300)	(167,315)	(137,397)
Effect of exchange rate changes on cash and cash equivalents	(3,460)	(1,539)	870
Net increase in cash and cash equivalents	116,548	34,579	19,839
Cash and cash equivalents at the beginning of the period	365,536	330,957	311,118
Cash and cash equivalents at the end of the period	$ 482,084	$ 365,536	$ 330,957
Supplemental disclosures of cash flow information:			
Cash paid for interest	$ 72,099	$ 96,718	$ 109,023
Cash paid for income taxes, net of refunds	27,699	10,779	21,342
Supplemental disclosures of non-cash investing and financing activities:			
Conversion of partner deposits and accrued partner obligations to notes payable	$ 5,764	$ 5,685	$ 1,204
Decrease in guaranteed debt	—	—	(24,500)
Acquisitions of property, fixtures and equipment through accounts payable or capital lease liabilities	8,683	2,506	5,021

The accompanying notes are an integral part of these Consolidated Financial Statements.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation

Bloomin' Brands, Inc. ("Bloomin' Brands" or the "Company"), formerly known as Kangaroo Holdings, Inc. was formed by an investor group comprised of funds advised by Bain Capital Partners, LLC ("Bain Capital"), Catterton Management Company, LLC ("Catterton"), Chris T. Sullivan, Robert D. Basham and J. Timothy Gannon (the "Founders") and certain members of our management. On June 14, 2007, Bloomin' Brands acquired OSI Restaurant Partners, Inc. by means of a merger and related transactions (the "Merger"). At the time of the Merger, OSI Restaurant Partners, Inc. was converted into a Delaware limited liability company named OSI Restaurant Partners, LLC ("OSI"). In connection with the Merger, Bloomin' Brands implemented a new ownership and financing arrangement for some of our restaurant properties, pursuant to which Private Restaurant Properties, LLC ("PRP"), a wholly-owned subsidiary of Bloomin' Brands, acquired 343 restaurant properties from OSI and leased them back to subsidiaries of OSI. OSI remains our primary operating entity and a wholly-owned subsidiary of Bloomin' Brands continues to lease certain of our owned restaurant properties to OSI's subsidiaries.

The total purchase price for the Merger was approximately $3.1 billion, and it was financed by borrowings under senior secured credit facilities and a commercial mortgage-backed securities loan (see Note 11), proceeds from the issuance of senior notes (see Note 11), an investment made by Bain Capital and Catterton, rollover equity from the Founders and investments made by certain members of management.

The Company owns and operates casual, upscale casual and fine dining restaurants primarily in the United States. The Company's restaurant portfolio has five concepts: Outback Steakhouse, Carrabba's Italian Grill, Bonefish Grill, Fleming's Prime Steakhouse and Wine Bar and Roy's. Additional Outback Steakhouse, Carrabba's Italian Grill and Bonefish Grill restaurants in which the Company has no direct investment are operated under franchise agreements.

In the opinion of the Company, all adjustments necessary for the fair presentation of the Company's results of operations, financial position and cash flows for the periods presented have been included.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The Company's consolidated financial statements include the accounts and operations of Bloomin' Brands, Inc. and its wholly-owned subsidiaries, including OSI and PRP. All intercompany accounts and transactions have been eliminated in consolidation. The Company consolidates variable interest entities in which the Company is deemed to have a controlling financial interest as a result of the Company having: (1) the power to direct the activities that most significantly impact the entity's economic performance and (2) the obligation to absorb the losses or the right to receive the benefits that could potentially be significant to the variable interest entity. If the Company has a controlling financial interest in a variable interest entity, the assets, liabilities, and results of the operations of the variable interest entity are included in the consolidated financial statements (see Note 18).

The Company is a franchisor of 161 restaurants as of December 31, 2011, but does not possess any ownership interests in its franchisees and generally does not provide financial support to franchisees in its typical franchise relationship. These franchise relationships are not deemed variable interest entities and are not consolidated.

The equity method of accounting is used for investments in affiliated companies in which the Company is not in control, the Company's interest is generally between 20% and 50% and the Company has the ability to exercise significant influence over the entity. The Company's share of earnings or losses of affiliated companies

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

accounted for under the equity method is recorded in "Income from operations of unconsolidated affiliates" in its Consolidated Statements of Operations. Through a joint venture arrangement with PGS Participacoes Ltda., the Company holds a 50% ownership interest in PGS Consultoria e Serviços Ltda. (the "Brazilian Joint Venture"). The Brazilian Joint Venture was formed in 1998 for the purpose of operating Outback Steakhouse franchise restaurants in Brazil. The Company accounts for the Brazilian Joint Venture under the equity method of accounting (see Note 17).

Use of Estimates

The preparation of the accompanying consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimated.

Cash and Cash Equivalents

Cash equivalents consist of investments that are readily convertible to cash with an original maturity date of three months or less. Cash and cash equivalents include $44.3 million and $31.5 million as of December 31, 2011 and 2010, respectively, for amounts in transit from credit card companies since settlement is reasonably assured.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk are cash and cash equivalents and restricted cash. The Company attempts to limit its credit risk by utilizing outside investment managers with major financial institutions that, in turn, invest in United States treasury security funds, certificates of deposit, money market funds, noninterest-bearing accounts and other highly rated investments and marketable securities. At times, cash balances may be in excess of FDIC insurance limits.

Financial Instruments

Disclosure of fair value information about financial instruments, whether or not recognized in the Consolidated Balance Sheets, is required for those instruments for which it is practical to estimate that value. Fair value is a market-based measurement.

The Company's non-derivative financial instruments at December 31, 2011 and 2010 consist of cash equivalents, restricted cash, accounts receivable, accounts payable and current and long-term debt. The fair values of cash equivalents, accounts receivable and accounts payable approximate their carrying amounts reported in the Consolidated Balance Sheets due to their short duration. The carrying amounts of restricted cash, PRP's commercial mortgage-backed securities loan and OSI's other notes payable, sale-leaseback obligations and guaranteed debt approximate fair value. The fair value of OSI's senior secured credit facilities and senior notes is determined based on quoted market prices. The following table includes the carrying value and fair value of OSI's senior secured credit facilities and senior notes at December 31, 2011 and 2010 (in thousands):

	December 31,			
	2011		2010	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Senior secured term loan facility	$ 1,014,400	$ 953,536	$ 1,035,000	$ 985,838
Senior secured pre-funded revolving credit facility	33,000	31,020	78,072	74,364
Senior notes	248,075	254,277	248,075	257,998

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Derivatives

The Company is highly leveraged and exposed to interest rate risk to the extent of its variable-rate debt. The Company manages its interest rate risk by offsetting some of its variable-rate debt with fixed-rate debt, through normal operating and financing activities and, when deemed appropriate, through the use of derivative financial instruments. The Company uses an interest rate cap as a method to limit the volatility of PRP's variable-rate commercial mortgage-backed securities loan. Under this interest rate cap, which renews annually, interest rate payments have a ceiling of 6.31%. If the market rate exceeds the ceiling, the counterparty must pay the Company an amount sufficient to reduce the interest payment to 6.31%. The interest rate cap did not have any market value at December 31, 2011 and 2010. From September 2007 to September 2010, the Company used an interest rate collar as part of its interest rate risk management strategy to manage its exposure to interest rate movements related to OSI's senior secured credit facilities. Given the interest rate environment, the Company did not enter into another derivative financial instrument upon the maturity of its interest rate collar on September 30, 2010.

The Company's restaurants are dependent upon energy to operate and are impacted by changes in energy prices, including natural gas. The Company uses derivative instruments to mitigate some of its overall exposure to material increases in natural gas prices. The Company records mark-to-market changes in the fair value of derivative instruments in earnings in the period of change. The Company does not enter into financial instruments for trading or speculative purposes.

Inventories

Inventories consist of food and beverages, and are stated at the lower of cost (first-in, first-out) or market. The Company periodically makes advance purchases of various inventory items to ensure adequate supply or to obtain favorable pricing. At December 31, 2011 and 2010, inventories included advance purchases of approximately $23.4 million and $10.7 million, respectively.

Consideration Received from Vendors

The Company receives consideration for a variety of vendor-sponsored programs, such as volume rebates, promotions and advertising allowances. Vendor consideration is recorded as a reduction of Cost of sales or Other restaurant operating expenses when recognized in the Company's Consolidated Statements of Operations. Advertising allowances are intended to offset the Company's costs of promoting and selling menu items in its restaurants and are recorded as a reduction to Other restaurant operating expenses when earned.

Restricted Cash

At December 31, 2011 and 2010, the current portion of restricted cash of $20.6 million and $8.1 million, respectively, was restricted for the payment of property taxes, the settlement of obligations in a rabbi trust for the Partner Equity Plan (the "PEP") and the settlement of other deferred compensation plans and bonus arrangements. The current portion of restricted cash at December 31, 2011 also included the fulfillment of certain provisions in PRP's commercial mortgage-backed securities loan. Long-term restricted cash at December 31, 2011 and 2010 of $3.6 million and $19.5 million, respectively, was restricted for the settlement of other deferred compensation plans and bonus arrangements. Long-term restricted cash at December 31, 2010 also included amounts restricted for the fulfillment of certain provisions in PRP's commercial mortgage-backed securities loan.

Property, Fixtures and Equipment

Property, fixtures and equipment are stated at cost, net of accumulated depreciation. At the time property, fixtures and equipment are retired, or otherwise disposed of, the asset and accumulated depreciation are

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

removed from the accounts and any resulting gain or loss is included in earnings. The Company expenses repair and maintenance costs that maintain the appearance and functionality of the restaurant but do not extend the useful life of any restaurant asset. Improvements to leased properties are depreciated over the shorter of their useful life or the lease term, which includes renewal periods that are reasonably assured. Depreciation is computed on the straight-line method over the following estimated useful lives:

Buildings and building improvements	20 to 30 years
Furniture and fixtures	5 to 7 years
Equipment	2 to 7 years
Leasehold improvements	5 to 20 years
Capitalized software	3 to 5 years

The Company's accounting policies regarding property, fixtures and equipment include certain management judgments and projections regarding the estimated useful lives of these assets, the residual values to which the assets are depreciated or amortized, the determination of expected lease terms and the determination of what constitutes increasing the value and useful life of existing assets. These estimates, judgments and projections may produce materially different amounts of depreciation and amortization expense than would be reported if different assumptions were used.

Operating Leases

Rent expense for the Company's operating leases, which generally have escalating rentals over the term of the lease and may include potential rent holidays, is recorded on a straight-line basis over the initial lease term and those renewal periods that are reasonably assured. The initial lease term includes the "build-out" period of the Company's leases, which is typically before rent payments are due under the terms of the lease. The difference between rent expense and rent paid is recorded as deferred rent and is included in the Consolidated Balance Sheets. Payments received from landlords as incentives for leasehold improvements are recorded as deferred rent and are amortized on a straight-line basis over the term of the lease as a reduction of rent expense. Lease termination fees, if any, and future obligated lease payments for closed locations are recorded as an expense in the period that they are incurred. Exit-related lease obligations of $0.8 million and $1.1 million are recorded in "Accrued and other current liabilities" and $0.4 million and $0.4 million are recorded in "Other long-term liabilities, net" in the Company's Consolidated Balance Sheets as of December 31, 2011 and 2010, respectively. Assets and liabilities resulting from the Merger relating to favorable and unfavorable lease amounts are amortized on a straight-line basis to rent expense over the remaining lease term.

Pre-Opening Expenses

Non-capital expenditures associated with opening new restaurants are expensed as incurred.

Impairment or Disposal of Long-Lived Assets

The Company assesses the potential impairment of amortizable intangibles, including trademarks, franchise agreements and net favorable leases, and other long-lived assets whenever events or changes in circumstances indicate that the carrying value may not be recoverable. In evaluating long-lived restaurant assets for impairment, the Company considers a number of factors such as:

- A significant change in market price;
- A significant adverse change in the manner in which a long-lived asset is being used;

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

- New laws and government regulations or a significant adverse change in business climate that adversely affect the value of a long-lived asset;
- A current expectation that, more likely than not, a long-lived asset will be sold or otherwise disposed of significantly before the end of its previously estimated useful life; and
- A current period operating or cash flow loss combined with a history of operating or cash flow losses or a projection that demonstrates continuing losses associated with the use of the underlying long-lived asset.

If the aforementioned factors indicate that the Company should review the carrying value of the restaurant's long-lived assets, the Company performs a two-step impairment analysis. Each Company-owned restaurant is evaluated individually for impairment since that is the lowest level at which identifiable cash flows can be measured independently from cash flows of other asset groups. If the total future undiscounted cash flows expected to be generated by the assets are less than its carrying amount, as prescribed by step one testing, recoverability is measured in step two by comparing the fair value of the assets to its carrying amount. Should the carrying amount exceed the asset's estimated fair value, an impairment loss is charged to earnings. Restaurant fair value is determined based on estimates of discounted future cash flows; and impairment charges primarily occur as a result of the carrying value of a restaurant's assets exceeding its estimated fair market value, primarily due to anticipated closures or declining future cash flows from lower projected future sales at existing locations.

The Company incurred total long-lived asset impairment charges and restaurant closing expense of $14.0 million, $5.2 million and $95.4 million for the years ended December 31, 2011, 2010 and 2009, respectively (see Note 7). All impairment charges are recorded in the line item "Provision for impaired assets and restaurant closings" in the Company's Consolidated Statements of Operations.

The Company's judgments and estimates related to the expected useful lives of long-lived assets are affected by factors such as changes in economic conditions and changes in operating performance and expected use. As the Company assesses the ongoing expected cash flows and carrying amounts of its long-lived assets, these factors could cause it to realize a material impairment charge. The Company uses the straight-line method to amortize definite-lived intangible assets.

Restaurant sites and certain other assets to be sold are included in assets held for sale when certain criteria are met, including the requirement that the likelihood of selling the assets within one year is probable. For assets that meet the held for sale criteria, the Company separately evaluates whether the assets also meet the requirements to be reported as discontinued operations. If the Company no longer had any significant continuing involvement with respect to the operations of the assets and cash flows were discontinued, it would classify the assets and related results of operations as discontinued. Assets whose sale is not probable within one year remain in property, fixtures and equipment until their sale is probable within one year. The Company had $1.3 million of assets held for sale as of December 31, 2011 and did not have any assets classified as held for sale as of December 31, 2010.

Generally, restaurant closure costs are expensed as incurred. When it is probable that the Company will cease using the property rights under a non-cancelable operating lease, it records a liability for the net present value of any remaining lease obligations net of estimated sublease income that can reasonably be obtained for the property. The associated expense is recorded in "Provision for impaired assets and restaurant closings." Any subsequent adjustments to the liability from changes in estimates are recorded in the period incurred.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Goodwill and Indefinite-Lived Intangible Assets

The Company's indefinite-lived intangible assets consist only of goodwill and trade names. Goodwill represents the residual after allocation of the purchase price to the individual fair values and carryover basis of assets acquired. On an annual basis (during the second quarter of the fiscal year) or whenever events or changes in circumstances indicate that the carrying amounts may not be recoverable, the Company reviews the recoverability of goodwill and indefinite-lived intangible assets. The impairment test for goodwill involves comparing the fair value of the reporting units to their carrying amounts. If the carrying amount of a reporting unit exceeds its fair value, a second step is required to measure a goodwill impairment loss, if any. This step revalues all assets and liabilities of the reporting unit to their current fair values and then compares the implied fair value of the reporting unit's goodwill to the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds the implied fair value of the goodwill, an impairment loss is recognized in an amount equal to the excess. The impairment test for trade names involves comparing fair value of the trade name, as determined through a discounted cash flow approach, to its carrying value.

Impairment indicators that may necessitate goodwill impairment testing in between the Company's annual impairment tests include the following:

- A significant adverse change in legal factors or in the business climate;
- An adverse action or assessment by a regulator;
- Unanticipated competition;
- A loss of key personnel;
- A more-likely-than-not expectation that a reporting unit or a significant portion of a reporting unit will be sold or otherwise disposed of; and
- The testing for recoverability of a significant asset group within a reporting unit.

Impairment indicators that may necessitate indefinite-lived intangible asset impairment testing in between the Company's annual impairment tests are consistent with those of its long-lived assets.

The Company performed its annual impairment test in the second quarter of 2011 and determined at that time that none of its four reporting units with remaining goodwill were at risk for material goodwill impairment since the fair value of each reporting unit was substantially in excess of its carrying amount. The Company did not record any goodwill or indefinite-lived intangible asset impairment charges during the years ended December 31, 2011 and 2010. As a result of the Company's annual impairment test in the second quarter of 2009, it recorded goodwill and indefinite-lived intangible asset impairment charges of $58.1 million and $36.0 million, respectively (see Note 8).

Sales declines at the Company's restaurants, unplanned increases in health insurance, commodity or labor costs, deterioration in overall economic conditions and challenges in the restaurant industry may result in future impairment charges. It is possible that changes in circumstances or changes in management's judgments, assumptions and estimates could result in an impairment charge of a portion or all of its goodwill or other intangible assets.

Construction in Progress

The Company capitalizes all direct restaurant construction costs. Upon restaurant opening, these costs are depreciated and charged to expense based upon their classification within property, fixtures and equipment. The amount of interest capitalized in connection with restaurant construction was immaterial in all periods.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Deferred Financing Fees

The Company capitalizes deferred financing fees related to the issuance of debt obligations. The Company amortizes deferred financing fees to interest expense over the terms of the respective financing arrangements using the effective interest method or the straight-line method.

Liquor Licenses

The costs of obtaining non-transferable liquor licenses directly issued by local government agencies for nominal fees are expensed as incurred. The costs of purchasing transferable liquor licenses through open markets in jurisdictions with a limited number of authorized liquor licenses are capitalized as indefinite-lived intangible assets and included in "Other assets, net." Annual liquor license renewal fees are expensed over the renewal term.

Revenue Recognition

The Company records food and beverage revenues upon sale. Initial and developmental franchise fees are recognized as income once the Company has substantially performed all of its material obligations under the franchise agreement, which is generally upon the opening of the franchised restaurant. Continuing royalties, which are a percentage of net sales of the franchisee, are recognized as income when earned. Franchise-related revenues are included in the line "Other revenues" in the Consolidated Statements of Operations.

The Company defers revenue for gift cards, which do not have expiration dates, until redemption by the customer. The Company also recognizes gift card "breakage" revenue for gift cards when the likelihood of redemption by the customer is remote, which the Company determined are those gift cards issued on or before three years prior to the balance sheet date. The Company recorded breakage revenue of $11.1 million, $11.0 million and $9.3 million for the years ended December 31, 2011, 2010 and 2009, respectively. Breakage revenue is recorded as a component of "Restaurant sales" in the Consolidated Statements of Operations.

Gift cards sold at a discount are recorded as revenue upon redemption of the associated gift cards at an amount net of the related discount. Gift card sales commissions paid to third-party providers are initially capitalized and subsequently recognized as "Other restaurant operating" expenses upon redemption of the associated gift card. Deferred expenses are $9.7 million and $8.1 million as of December 31, 2011 and 2010, respectively, and are reflected in "Other current assets, net" in the Company's Consolidated Balance Sheets. Gift card sales that are accompanied by a bonus gift card to be used by the customer at a future visit result in a separate deferral of a portion of the original gift card sale. Revenue is recorded when the bonus card is redeemed at a value based on the estimated fair market value of the bonus card.

The Company collects and remits sales, food and beverage, alcoholic beverage and hospitality taxes on transactions with customers and reports such amounts under the net method in its Consolidated Statements of Operations. Accordingly, these taxes are not included in gross revenue.

Advertising Costs

Advertising production costs are expensed in the period when the advertising first occurs. All other advertising costs are expensed in the period in which the costs are incurred. The total amounts charged to advertising expense were $161.4 million, $146.1 million and $140.0 million, for the years ended December 31, 2011, 2010 and 2009, respectively, and were recorded in "Other restaurant operating" expenses in the Consolidated Statements of Operations.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Foreign Currency Translation and Comprehensive Income (Loss)

For all significant non-U.S. operations, the functional currency is the local currency. Assets and liabilities of those operations are translated into U.S. dollars using the exchange rates in effect at the balance sheet date. Results of operations are translated using the average exchange rates for the reporting period. Translation gains and losses are reported as a separate component of Accumulated other comprehensive loss in shareholders' equity (deficit).

Foreign currency transactions may produce receivables or payables that are fixed in terms of the amount of foreign currency that will be received or paid. A change in exchange rates between the U.S dollar and the currency in which a transaction is denominated increases or decreases the expected amount of cash flows in U.S. dollars upon settlement of the transaction. This increase or decrease is a foreign currency transaction gain or loss that generally will be included in determining net income (loss) for the period in which the exchange rate changes. Similarly, a transaction gain or loss, measured from the transaction date or the most recent intervening balance sheet date, whichever is later, realized upon settlement of a foreign currency transaction generally will be included in determining net income (loss) for the period in which the transaction is settled.

Income Taxes

Deferred income tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred income tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in the tax rate is recognized in income in the period that includes the enactment date of the rate change. The Company recorded a valuation allowance to reduce its deferred income tax assets to the amount that is more likely than not to be realized. The Company has considered future taxable income and ongoing feasible tax planning strategies in assessing the need for the valuation allowance. Judgments made regarding future taxable income may change due to changes in market conditions, changes in tax laws or other factors. If the assumptions and estimates change in the future, the valuation allowance established may be increased or decreased, resulting in a respective increase or decrease in income tax expense.

The noncontrolling interest in domestic affiliated entities includes no provision or liability for income taxes, as any tax liability related thereto is the responsibility of the holder of the noncontrolling interest.

Employee Partner Payments and Buyouts

The managing partner of each Company-owned domestic restaurant and the chef partner of each Fleming's and Roy's Company-owned domestic restaurant, as well as area operating partners, generally receive distributions or payments for providing management and supervisory services to their restaurants based on a percentage of their associated restaurants' monthly cash flows. The expense associated with the monthly payments for managing and chef partners is included in "Labor and other related" expenses, and the expense associated with the monthly payments for area operating partners is included in "General and administrative" expenses in the Consolidated Statements of Operations.

Managing and chef partners that are eligible to participate in a deferred compensation program receive an unsecured promise of a cash contribution (see Note 3). An area operating partner's interest in the partnership (the "Management Partnership") that provides management and supervisory services to his or her restaurant may

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

be purchased, at the Company's option, after the restaurant has been open for a five-year period based on the terms specified in the agreement. The Company estimates future purchases of area operating partners' interests, as well as deferred compensation obligations to managing and chef partners, using current and historical information on restaurant performance and records the partner obligations in the line item "Partner deposits and accrued partner obligations" in its Consolidated Balance Sheets. In the period the Company purchases the area operating partner's interests, an adjustment is recorded to recognize any remaining expense associated with the purchase and reduce the related accrued buyout liability. Deferred compensation expenses for managing and chef partners are included in "Labor and other related" expenses and buyout expenses for area operating partners are included in "General and administrative" expenses in the Consolidated Statements of Operations.

Stock-based Compensation

The Company's 2007 Equity Incentive Plan (the "Equity Plan") permits the grant of stock options and restricted stock to Company management and other key employees. The Company accounts for its stock-based employee compensation using a fair value based method of accounting.

Generally, stock options vest and become nominally exercisable in 20% increments over a period of five years contingent on continued employee service. Shares acquired upon the exercise of stock options under the Equity Plan are generally subject to a stockholder's agreement that contains a management call option that allows the Company to repurchase all shares purchased through exercise of stock options upon termination of employment at any time prior to the earlier of an initial public offering or a change of control. If an employee's termination of employment is a result of death or disability, by the Company other than for cause or by the employee for good reason, the Company may repurchase exercised stock under this call option at fair market value. If an employee's termination of employment is by the Company for cause or by the employee without good reason, the Company may repurchase the stock under this call provision for the lesser of the exercise price or fair market value. Additionally, the holder of shares acquired upon the exercise of stock options is prohibited from transferring the shares to any person, subject to narrow exceptions, and should a permitted transfer occur, the transferred shares remain subject to the management call option. As a result of the transfer restrictions and call option, the Company does not record compensation expense for stock options that contain the call option since employees cannot realize monetary benefit from the options or any shares acquired upon the exercise of the options unless the employee is employed at the time of an initial public offering or change of control. There have not been any exercises of stock options by any employee to date, and all stock options of terminated employees with a call provision have been forfeited.

The Company uses the Black-Scholes option pricing model to estimate the weighted-average grant date fair value of stock options granted. Expected volatilities are based on historical volatilities of the stock of comparable companies. The expected term of options granted represents the period of time that options granted are expected to be outstanding. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. Results may vary depending on the assumptions applied within the model. The benefits of tax deductions in excess of recognized compensation cost, if any, are reported as a financing cash flow.

Net Income (Loss) per Share

Basic net income (loss) per share is computed on the basis of the weighted average number of common shares that were outstanding during the period. Diluted net income (loss) per share includes the dilutive effect of common stock equivalents consisting of restricted stock and stock options, using the treasury stock method. Performance-based restricted stock and stock options are considered dilutive when the related performance criterion has been met.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The computation of basic and diluted net income (loss) per common share is as follows (in thousands, except share and per share amounts):

	Years Ended December 31,		
	2011	2010	2009
Net income (loss) attributable to Bloomin' Brands, Inc.	$ 100,005	$ 52,968	$ (64,463)
Basic weighted average common shares outstanding	106,224,241	105,968,069	104,441,533
Effect of diluted securities:			
Employee stock options	399,103	—	—
Unvested restricted stock	66,003	—	—
Diluted weighted average common shares outstanding	106,689,347	105,968,069	104,441,533
Basic net income (loss) per common share	$ 0.94	$ 0.50	$ (0.62)
Diluted net income (loss) per common share	$ 0.94	$ 0.50	$ (0.62)

As of the year ended December 31, 2011 and 2010, the Company excluded 550,000 and 2,575,500 outstanding stock options, respectively, in the diluted net income per share calculation because the options were out of the money and to do so would have been antidilutive. As of the year ended December 31, 2009, the Company excluded 2,888,476 and 775,266 outstanding stock options and unvested restricted stock, respectively, in the diluted net loss per share calculation because the inclusion of these share based awards would have been antidilutive.

3. Stock-based and Deferred Compensation Plans

Stock-based and Deferred Compensation Plans

Managing and Chef Partners

Historically, the managing partner of each Company-owned domestic restaurant and the chef partner of each Fleming's and Roy's restaurant were required, as a condition of employment, to sign a five-year employment agreement and to purchase a non-transferable ownership interest in the Management Partnership that provided management and supervisory services to his or her restaurant. The purchase price for a managing partner's ownership interest was fixed at $25,000, and the purchase price for a chef partner's ownership interest ranged from $10,000 to $15,000. Managing and chef partners had the right to receive monthly distributions from the Management Partnership based on a percentage of their restaurant's monthly cash flows for the duration of the agreement, which varied by concept from 6% to 10% for managing partners and 2% to 5% for chef partners. Further, managing and chef partners were eligible to participate in the Partner Equity Plan ("PEP"), a deferred compensation program, upon completion of their five-year employment agreement.

In April 2011, the Company implemented modifications to its managing and chef partner compensation structure to provide greater incentives for sales and profit growth. Under the revised program, managing and chef partners continue to sign five-year employment agreements and receive monthly distributions of the same percentage of their restaurant's cash flow as under the prior program. However, under the revised program, in lieu of participation in the PEP, managing partners and chef partners are eligible to receive deferred compensation payments under a new Partner Ownership Account Plan (the "POA"). The POA places greater

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

emphasis on year-over-year growth in cash flow than the PEP. Managing and chef partners will receive a greater value under the POA than they would have received under the PEP if certain levels of year-over-year cash flow growth are achieved and a lesser value than under the PEP if these levels are not achieved.

The POA requires, managing and chef partners to make an initial deposit of up to $10,000 into their "Partner Investment Account," and the Company will make a bookkeeping contribution to each partner's "Company Contributions Account" no later than the end of February of each year following the completion of each year (or partial year where applicable) under the partner's employment agreement. The value of each Company contribution will be equal to a percentage of the partner's restaurant's positive distributable cash flow plus, if the restaurant has been open at least 18 calendar months, a percentage of the year-over-year increase in the restaurant's positive distributable cash flow in accordance with the terms described in the partner's employment agreement.

The revised program also provides an annual bonus known as the President's Club, paid in addition to the monthly distributions of cash flow, designed to reward increases in their restaurant's annual sales above the concept sales plan with a required flow-through percentage of the incremental sales to cash flow. Managing and chef partners whose restaurants achieve certain annual sales targets (and the required flow through percentage) receive a bonus equal to a percentage of the incremental sales, such percentage determined by the sales target achieved.

Amounts credited to each partner's account under the POA may be allocated by the partner among benchmark funds offered under the POA, and the account balances of the partner will increase or decrease based on the performance of the benchmark funds. Upon termination of employment, all remaining balances in the Company Contributions Account in the POA are forfeited unless the partner has been with the Company for twenty years or more. Unless previously forfeited under the terms of the POA, 50% of the partner's total account balances generally will be distributed in the March following the completion of the initial five-year contract term with subsequent distributions varying based on the length of continued employment as a partner. The deferred compensation obligations under the POA are unsecured obligations of the Company.

All managing and chef partners who execute new employment agreements after May 1, 2011 are required to participate in the new partner program, including the POA. Managing and chef partners with a current employment agreement scheduled to expire December 1, 2011 or later had the opportunity (from April 27, 2011 through July 27, 2011) to amend their employment agreements to convert their existing partner program to participation in the new partner program, including the POA, effective June 1, 2011. As a result of this conversion, $2.7 million of the Company's total partner deposit liability was accelerated for the return of partners' capital that was required under the old program. As of December 31, 2011, the Company's POA liability was $8.0 million which was recorded in the line item "Partner deposits and accrued partner obligations" in its Consolidated Balance Sheet.

Upon the closing of the Merger, certain stock options that had been granted to managing and chef partners under a pre-merger managing partner stock plan (the "MP Stock Plan") upon completion of a previous employment contract were converted into the right to receive cash in the form of a "Supplemental PEP" contribution. Additionally, all outstanding, unvested partner employment grants of restricted stock under the MP Stock Plan were converted into the right to receive cash on a deferred basis. Additionally, certain members of management were given the option to either convert some or all of their restricted stock granted under the pre-merger stock plan in the same manner as managing partners or convert some or all of it into restricted stock of Kangaroo Holdings, Inc., now known as Bloomin' Brands, Inc. In accordance with the terms of the Employee Rollover Agreement adopted by the Company on June 14, 2007, those shares converted into restricted stock, now Bloomin' Brands restricted stock, vest 20% annually over five years, and grants are fully vested upon an

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

initial public offering or a change of control. Grants of restricted stock under the pre-merger stock plan that converted into the right to receive cash are referred to as "Restricted Stock Contributions."

As of December 31, 2011, the Company's total vested liability with respect to obligations primarily under the PEP, Supplemental PEP and Restricted Stock Contributions was approximately $107.8 million, of which $11.8 million and $96.0 million was included in the line items "Accrued and other current liabilities" and "Other long-term liabilities, net," respectively, in its Consolidated Balance Sheet. As of December 31, 2010, the Company's total vested liability with respect to obligations primarily under the PEP, Supplemental PEP and Restricted Stock Contributions was approximately $101.4 million, of which $14.0 million and $87.5 million was included in the line items "Accrued and other current liabilities" and "Other long-term liabilities, net," respectively, in its Consolidated Balance Sheet. Partners and management may allocate the contributions into benchmark investment funds, and these amounts due to participants will fluctuate according to the performance of their allocated investments and may differ materially from the initial contribution and current obligation.

Prior to the Merger, certain partners participating in the PEP were to receive common stock ("Partner Shares") upon completion of their employment contract. Upon closing of the Merger, these partners are entitled to receive a deferred payment of cash instead of common stock upon completion of their current employment term. Partners will not receive the deferred cash payment if they resign or are terminated for cause prior to completing their current employment terms. There will not be any future earnings or losses on these amounts prior to payment to the partners. The amount accrued for the Partner Shares obligation was approximately $0.7 million as of December 31, 2011 and was included in the line item "Accrued and other current liabilities" in the Company's Consolidated Balance Sheet. The amount accrued for the Partner Shares obligation was approximately $6.6 million as of December 31, 2010, of which $6.5 million and $0.1 million was included in the line items "Accrued and other current liabilities" and "Other long-term liabilities, net," respectively, in the Company's Consolidated Balance Sheet.

As of December 31, 2011 and 2010, the Company had approximately $56.9 million and $58.0 million, respectively, in various corporate owned life insurance policies and another $0.3 million and $1.0 million, respectively, of restricted cash, both of which are held within an irrevocable grantor or "rabbi" trust account for settlement of the Company's obligations under the PEP, Supplemental PEP, Restricted Stock Contributions and POA. The Company is the sole owner of any assets within the rabbi trust and participants are considered general creditors of the Company with respect to assets within the rabbi trust.

As of December 31, 2011 and 2010, there were $55.6 million and $49.0 million, respectively, of unfunded obligations related to the PEP, Supplemental PEP, Restricted Stock Contributions, Partner Shares liabilities and POA, excluding amounts not yet contributed to the partners' investment funds, which may require the use of cash resources in the future.

Amounts credited to partners' PEP accounts are fully vested at all times and participants have no discretion with respect to the form of benefit payments under the PEP. Effective January 1, 2009, the Company accelerated the distribution of PEP and Supplemental PEP benefits to certain active participants. Active managing and chef partners who complete an employment contract on or after January 1, 2009 and remain employed with the Company until their PEP accounts are fully distributed will receive their PEP distributions at certain payment dates throughout a seven-year period after completion of their employment contracts (previously each account was generally distributed to the participant over a ten-year period). Managing and chef partners who complete an employment contract on or after January 1, 2009 and do not remain employed with the Company until their PEP accounts are fully distributed will receive their entire PEP account balance in the seventh year after completion of their employment contract. Their PEP account balance will be determined as of

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

the date of termination of employment, subject to any subsequent increases or decreases based on the performance of their investment elections.

Managing and chef partners whose PEP accounts relate to an employment contract completed before January 1, 2009 and those with Supplemental PEP accounts from the Merger, who in either case were employed with the Company through December 31, 2008, were permitted to keep the original ten-year distribution schedule or elect a new distribution schedule. Approximately 75% of participants elected the new distribution schedule, which results in distribution of their account balance at certain payment dates throughout a seven-year period.

If participants do not remain employed by the Company through 2015, then their remaining PEP account balance will be distributed in one payment in 2015. Their account balance will be determined as of the date of termination of employment, subject to any subsequent increases or decreases based on the performance of their investment choices.

Participants with PEP or Supplemental PEP accounts who were not employed with the Company through December 31, 2008 were required to keep the original ten-year distribution schedule.

Area Operating Partners

Area operating partners are required, as a condition of employment and within 30 days of the opening of his or her first restaurant, to make an initial investment of $50,000 in the Management Partnership that provides supervisory services to the restaurants that the area operating partner oversees within 30 days of the opening of his or her first restaurant. This interest gives the area operating partner the right to distributions from the Management Partnership based on a percentage of his or her restaurants' monthly cash flows for the duration of the agreement, typically ranging from 4% to 9%. The Company has the option to purchase an area operating partner's interest in the Management Partnership after the restaurant has been open for a five-year period on the terms specified in the agreement.

For restaurants opened on or after January 1, 2007, the area operating partner's percentage of cash distributions and buyout percentage is calculated based on the associated restaurant's return on investment compared to the Company's targeted return on investment and may range from 3.0% to 12.0%. This percentage is determined after the first five full calendar quarters from the date of the associated restaurant's opening and is adjusted each quarter thereafter based on a trailing 12-month restaurant return on investment. The buy-out percentage is the area operating partner's average distribution percentage for the 24 months immediately preceding the buy-out. Buyouts are paid in cash within 90 days or paid over a two-year period.

Management and Other Key Employees

During the years ended December 31, 2011 and 2009, 1,350,000 and 4,727,680 additional shares, respectively, were approved for stock option and restricted stock grants under the Equity Plan by the Board of Directors. During the year ended December 31, 2010, no additional shares were approved. A total of 12,350,000 shares were approved for stock options and restricted stock grants under the Equity Plan by the Board of Directors as of December 31, 2011. The maximum term of stock options and restricted stock granted under the Equity Plan is ten years.

Other Benefit Plans

The Company has a qualified defined contribution 401(k) plan (the OSI Restaurant Partners, LLC Salaried Employees 401(k) Plan and Trust, or the "401(k) Plan") covering substantially all full-time employees,

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

except officers and certain highly compensated employees. Assets of the 401(k) Plan are held in trust for the sole benefit of the employees. The Company contributed $2.0 million, $1.9 million, and $2.0 million to the 401(k) Plan for the plan years ended December 31, 2011, 2010 and 2009, respectively.

The Company provides a deferred compensation plan for its highly compensated employees who are not eligible to participate in the 401(k) Plan. The deferred compensation plan allows these employees to contribute from 5% to 90% of their base salary and up to 100% of their cash bonus on a pre-tax basis to an investment account consisting of various investment fund options. The Company does not currently intend to provide any matching or profit-sharing contributions, and participants are fully vested in their deferrals and their related returns. Participants are considered unsecured general creditors in the event of Company bankruptcy or insolvency.

Stock Options

The following table presents a summary of the Company's stock option activity for the year ended December 31, 2011 (in thousands, except exercise price and contractual life):

	Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (years)	Aggregate Intrinsic Value
Outstanding at December 31, 2010	10,338	$ 7.00	8.1	$ 29,011
Granted	2,037	9.80		
Forfeited	(432)	6.50		
Outstanding at December 31, 2011	11,943	$ 7.50	7.5	$53,989
Exercisable at December 31, 2011	5,704	$ 7.42	6.7	$ 26,222

The weighted-average grant date fair value of stock options granted during the years ended December 31, 2011, 2010 and 2009 was $6.02, $3.18, and $3.65, respectively, and was estimated using the Black-Scholes option pricing model. The following assumptions were used to calculate the fair value of options granted during the years ended December 31, 2011, 2010 and 2009: (1) weighted-average risk-free interest rates of 2.09%, 1.95%, and 2.27%, respectively; (2) dividend yield of 0.0%; (3) expected term of six and a half years, six and a half years, and five years, respectively; and (4) weighted-average volatilities of 54.8%, 73.9% and 65.3%, respectively. The Company did not have any stock options exercised in the years ended December 31, 2011, 2010 and 2009 and therefore did not have any tax benefits realized from the exercise of stock options in these periods.

Generally, stock options vest and become nominally exercisable in 20% increments over a period of five years contingent on continued employee service. Shares acquired upon the exercise of stock options under the Equity Plan are generally subject to a stockholder's agreement that contains a management call option that allows the Company to repurchase all shares purchased through exercise of stock options upon termination of employment at any time prior to the earlier of an initial public offering or a change of control. If an employee's termination of employment is a result of death or disability, by the Company other than for cause or by the employee for good reason, the Company may repurchase exercised stock under this call option at fair market value. If an employee's termination of employment is by the Company for cause or by the employee without good reason, the Company may repurchase the stock under this call provision for the lesser of the exercise price or fair market value. Additionally, the holder of shares acquired upon the exercise of stock options is prohibited from transferring the shares to any person, subject to narrow exceptions, and should a permitted transfer occur,

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

the transferred shares remain subject to the management call option. As a result of the transfer restrictions and call option, the Company does not record compensation expense for stock options that contain the call option since employees cannot realize monetary benefit from the options or any shares acquired upon the exercise of the options unless the employee is employed at the time of an initial public offering or change of control. There have not been any exercises of stock options by any employee to date, and all stock options of terminated employees with a call provision have been forfeited.

During the second quarter of 2009, the stock option agreements between the Company and certain of the Company's then named executive officers were amended to eliminate the call option, resulting in the recording of stock option compensation expense. Their amended stock option agreements also contain provisions that extend the stock option exercise period for each of these officers under certain circumstances. Further, the amendments add a provision that upon retirement, the number of options to be fully vested and exercisable shall be the greater of (i) the amount of options that are vested and exercisable as of the officer's separation date or (ii) 40% or 100% of the officer's options, depending on the officer.

In November 2009, the Company's chief executive officer ("CEO") received a stock option grant that contained a modified form of the call option. In accordance with accounting for stock-based compensation, this modified form of the call option does not preclude the Company from recording compensation expense during the service period for one quarter of her option shares. Compensation expense is not recorded for the remaining three quarters of her option shares since they are not considered vested from an accounting standpoint until the occurrence of a Qualifying Liquidity Event, as defined in the CEO's stock option agreement. On July 1, 2011, the CEO was granted an option to purchase 550,000 shares of common stock under the Equity Plan in accordance with the terms of her employment agreement. This option has an exercise price of $10.03 per share and is subject to the modified form of the management call option that applied to one quarter of her 2009 grant described above. These options will vest and compensation expense will be recorded equally over a five-year period on each anniversary of the grant date, contingent upon her continued employment with the Company.

In March 2010, the Company offered all then active employees the opportunity to exchange outstanding stock options with an exercise price of $10.00 per share for the same number of replacement stock options with an exercise price of $6.50 per share. Under the exchange program, the vested portion of the eligible stock options as of the grant date of the replacement stock options were exchanged for stock options that were fully vested. The unvested portion of the exchanged stock options were exchanged for unvested replacement stock options that vest and become exercisable over a period of time that is equal to the remaining vesting period of the exchanged stock options, plus one year, subject to the participant's continued employment through the new vesting date. For exchanged stock options that contained both performance-based and time-based vesting conditions, the replacement stock options contain only time-based vesting conditions and vest in accordance with the above terms. All eligible stock options were exchanged pursuant to the exchange program. The original stock options were cancelled, and the issuance of the replacement stock options occurred on April 6, 2010. As a result of the management call option, the stock options exchange did not have a material effect on the Company's consolidated financial statements.

The Company recorded compensation expense of $2.2 million, $1.1 million and $0.6 million and total recognized tax benefit of $0.8 million, $0.4 million and $0.2 million during the years ended December 31, 2011, 2010, and 2009 respectively, for vested stock options. The Company did not capitalize any stock-based compensation costs during any periods presented. As of December 31, 2011, there is $5.7 million of total unrecognized compensation expense related to non-vested stock options, which is expected to be recognized over a weighted-average period of approximately 3.7 years.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Restricted Stock

	Number of Restricted Share Awards (in thousands)	Weighted-Average Grant Date Fair Value Per Award
Restricted stock outstanding at December 31, 2010	481	$ 10.00
Vested	242	10.00
Restricted stock outstanding at December 31, 2011	239	$ 10.00

During the second quarter of 2009, the restricted stock agreements between the Company and certain of the Company's then named executive officers were amended. These amendments accelerated the vesting of these officers' shares of restricted stock such that they were fully vested on June 14, 2009. Of the total compensation expense recorded for the vesting of restricted stock during the year ended December 31, 2009, $10.3 million (2,036,925 shares) related to the accelerated vesting of the restricted stock held by these officers.

Compensation expense recognized in net income (loss) for the years ended December 31, 2011, 2010 and 2009 was $1.7 million, $2.0 million and $14.6 million, respectively, for restricted stock awards. The total tax benefit recognized related to the compensation expense recorded for restricted stock awards was $0.7 million, $0.8 million and $5.7 million for the years ended December 31, 2011, 2010 and 2009, respectively. As measured on the vesting date, the total fair value of restricted stock that vested during the years ended December 31, 2011, 2010 and 2009 was $2.3 million, $1.8 million and $8.9 million, respectively. Unrecognized pre-tax compensation expense related to non-vested restricted stock awards was approximately $0.8 million at December 31, 2011 and will be recognized over a weighted-average period of 0.5 years.

Shares of restricted stock issued to certain of the Company's current and former executive officers and other members of management vest each June 14 through 2012. In accordance with the terms of their applicable agreements, the Company loaned an aggregate of $0.9 million, $0.7 million and $3.3 million to these individuals in June and July of 2011 and 2010 and 2009, respectively, for their personal income tax obligations that resulted from vesting. As of December 31, 2011, a total of $7.2 million of loans and associated interest obligations to current and former executive officers and other members of management was outstanding and was recorded in the line item "Additional paid-in capital" in the Company's Consolidated Balance Sheet. The loans are full recourse and are collateralized by the vested shares of restricted stock. Although these loans are permitted in accordance with the terms of the agreements, the Company is not required to issue them in the future. During the first quarter of 2012, the Company's current executive officers repaid their entire loan balances.

4. Fair Value Measurements

Fair value is the price that would be received upon sale of an asset or paid upon transfer of a liability in an orderly transaction between market participants at the measurement date (exit price) and is a market-based measurement, not an entity-specific measurement. To measure fair value, the Company incorporates assumptions that market participants would use in pricing the asset or liability, and utilizes market data to the maximum extent possible. Measurement of fair value incorporates nonperformance risk (i.e., the risk that an obligation will not be fulfilled). In measuring fair value, the Company reflects the impact of its own credit risk on its liabilities, as well as any collateral. The Company also considers the credit standing of its counterparties in measuring the fair value of its assets.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As a basis for considering market participant assumptions in fair value measurements, a three-tier fair value hierarchy prioritizes the inputs used in measuring fair value as follows:

- Level 1—Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access;
- Level 2—Inputs, other than the quoted market prices included in Level 1, which are observable for the asset or liability, either directly or indirectly; and
- Level 3—Unobservable inputs for the asset or liability, which are typically based on an entity's own assumptions, as there is little, if any, related market data available.

In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

Fair Value Measurements on a Recurring Basis

The Company invested $37.7 million and $51.4 million of its excess cash in money market funds classified as Cash and cash equivalents or restricted cash in its Consolidated Balance Sheet as of December 31, 2011 and 2010, at a net value of 1:1 for each dollar invested. The fair value of the investment in the money market funds is determined by using quoted prices for identical assets in an active market. As a result, the Company has determined that the inputs used to value this investment fall within Level 1 of the fair value hierarchy.

The Company is highly leveraged and exposed to interest rate risk to the extent of its variable-rate debt. The Company uses an interest rate cap with a notional amount of $775.7 million as a method to limit the volatility of PRP's variable-rate commercial mortgage-backed securities loan. As this interest rate cap did not have any fair market value at December 31, 2011 and 2010, it has been excluded from the applicable tables within this footnote.

The following tables present the Company's money market funds measured at fair value on a recurring basis as of December 31, 2011 and 2010, aggregated by the level in the fair value hierarchy within which those measurements fall (in thousands):

	Total December 31, 2011	Level 1	Level 2	Level 3
Assets:				
Money market funds	$ 37,707	$37,707	$ —	$ —

	Total December 31, 2010	Level 1	Level 2	Level 3
Assets:				
Money market funds	$ 51,441	$51,441	$ —	$ —

Fair Value Measurements on a Nonrecurring Basis

The Company performs its annual goodwill and other indefinite-lived intangible assets impairment test during the second quarter. During the year ended December 31, 2011, the Company did not have any goodwill

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

and other indefinite-lived intangible asset impairment charges, but it did incur impairment charges on long-lived assets held and used as a result of fair value measurements on a nonrecurring basis.

The following table presents losses related to the Company's assets and liabilities that were measured at fair value on a nonrecurring basis during the year ended December 31, 2011 aggregated by the level in the fair value hierarchy within which those measurements fall (in thousands):

	Year Ended December 31, 2011	Level 1	Level 2	Level 3	Total Losses
Long-lived assets held and used	$ 30,840	$29,455	$—	$1,385	$11,593

The Company recorded $11.6 million of impairment charges as a result of the fair value measurement on a nonrecurring basis of its long-lived assets held and used during the year ended December 31, 2011. The impaired long-lived assets had $30.8 million of remaining fair value at December 31, 2011. The Company used a discounted cash flow model (Level 3) and quoted prices from brokers (Level 1) to estimate the fair value of the long-lived assets included in the table above. Discount rate and growth rate assumptions are derived from current economic conditions, expectations of management and projected trends of current operating results.

During the year ended December 31, 2010, the Company did not incur any goodwill and other indefinite-lived intangible asset impairment charges or any other material impairment charges as a result of fair value measurements on a nonrecurring basis.

During the year ended December 31, 2009, the Company incurred goodwill and other indefinite-lived intangible asset impairment charges as well as other impairment charges as a result of fair value measurements on a nonrecurring basis. The following table presents losses related to the Company's assets and liabilities that were measured at fair value on a nonrecurring basis during the year ended December 31, 2009 aggregated by the level in the fair value hierarchy within which those measurements fall (in thousands):

	Year Ended December 31, 2009	Level 1	Level 2	Level 3	Total Losses
Long-lived assets held and used	$ 9,277	$—	$3,500	$ 5,777	$91,388
Investments in and advances to unconsolidated affiliates	—	—	—	—	2,876
Goodwill(1)	124,440	—	—	124,440	58,149
Indefinite-lived intangible assets(1)	356,000	—	—	356,000	36,000

(1) Amounts from the Company's annual impairment test.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company recorded $91.4 million of impairment charges as a result of the fair value measurement on a nonrecurring basis of its long-lived assets held and used during the year ended December 31, 2009. The impaired long-lived assets had $9.3 million of remaining fair value at December 31, 2009.

The Company performed a separate valuation for five of its closed restaurant sites that collateralize PRP's commercial mortgage-backed securities loan using quoted prices from brokers for similar properties. The restaurant sites were written down to fair value resulting in impairment charges of $7.3 million (included in the total above) during the year ended December 31, 2009. The Company determined that the majority of these inputs are observable inputs that fall within Level 2 of the fair value hierarchy.

Due to the third quarter of 2009 sale of its Cheeseburger in Paradise concept, the Company recorded a $46.0 million impairment charge (included in the total above) during the second quarter of 2009 to reduce the carrying value of this concept's long-lived assets to their estimated fair market value. The Company used a weighted-average probability analysis and estimates of expected future cash flows to determine the fair value of this concept. The Company has determined that the majority of the inputs used to value this concept are unobservable inputs that fall within Level 3 of the fair value hierarchy.

The Company used a discounted cash flow model to estimate the fair value of the remaining long-lived assets held and used in the table above. Discount rate and growth rate assumptions are derived from current economic conditions, expectations of management and projected trends of current operating results. The Company has determined that the majority of these inputs are unobservable inputs that fall within Level 3 of the fair value hierarchy. The long-lived assets were written down to fair value, resulting in impairment charges of $38.1 million (included in the total above) during the year ended December 31, 2009.

The Company recorded goodwill impairment charges of $58.1 million and indefinite-lived intangible asset impairment charges of $36.0 million during the year ended December 31, 2009 as a result of its annual impairment test. The Company tests both its goodwill and its indefinite-lived intangible assets, which are trade names, for impairment by utilizing discounted cash flow models to estimate their fair values. These cash flow models involve several assumptions. Changes in the Company's assumptions could materially impact its fair value estimates. Assumptions critical to its fair value estimates are: (i) weighted-average cost of capital rates used to derive the present value factors used in determining the fair value of the reporting units and trade names; (ii) projected annual revenue growth rates used in the reporting unit and trade name models; and (iii) projected long-term growth rates used in the derivation of terminal year values. Other assumptions include estimates of projected capital expenditures and working capital requirements. These and other assumptions are impacted by economic conditions and expectations of management and will change in the future based on period-specific facts and circumstances. As a result, the Company has determined that the majority of the inputs used to value its goodwill and indefinite-lived intangible assets are unobservable inputs that fall within Level 3 of the fair value hierarchy.

The following table presents the range of assumptions the Company used to derive its fair value estimates among its reporting units, which vary between goodwill and trade names, during the annual impairment test conducted in the second quarter of 2009:

	Assumptions	
	Goodwill	Trade Names
Weighted-average cost of capital	12.5% - 15.0%	13.0% - 14.0%
Long-term growth rates	3%	3%
Annual revenue growth rates	(6.9)% - 12.0%	(3.9)% - 5.0%

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

5. Derivative Instruments and Hedging Activities

The Company is exposed to market risk from changes in interest rates on debt, changes in commodity prices and changes in foreign currency exchange rates.

Interest rate changes associated with the Company's variable-rate debt generally impact its earnings and cash flows, assuming other factors are held constant. The Company's exposure to interest rate fluctuations includes OSI's borrowings under its senior secured credit facilities and PRP's commercial mortgage-backed securities loan that bear interest at floating rates based on the Eurocurrency Rate or the Base Rate and the one-month London Interbank Offered Rate ("LIBOR"), respectively, plus an applicable borrowing margin (see Note 11). The Company manages its interest rate risk by offsetting some of its variable-rate debt with fixed-rate debt, through normal operating and financing activities and, when deemed appropriate, through the use of derivative financial instruments.

The Company uses an interest rate cap as a method to limit the volatility of PRP's variable-rate commercial mortgage-backed securities loan. Under the $775.7 million notional interest rate cap that terminates on June 15, 2012, interest rate payments have a ceiling of 6.31%. If the market rate exceeds the ceiling, the counterparty must pay the Company an amount sufficient to reduce the interest payment to 6.31%. The interest rate cap did not have any fair market value at December 31, 2011 and 2010. In connection with the refinancing of PRP's commercial mortgage-backed securities loan, the Company entered into a replacement interest rate cap effective March 27, 2012 with a notional amount of $48.7 million, a cap rate of 7.00% and a termination date of April 13, 2014. If necessary, the Company would record mark-to-market changes in the fair value of this derivative instrument in earnings in the period of change. The effects of this interest rate cap were immaterial to the Company's consolidated financial statements for all periods presented and have been excluded from any tables within this footnote.

From September 2007 to September 2010, the Company used an interest rate collar as part of its interest rate risk management strategy to manage its exposure to interest rate movements related to OSI's senior secured credit facilities. Given the interest rate environment, the Company did not enter into another derivative financial instrument upon the maturity of this interest rate collar on September 30, 2010. The Company does not enter into financial instruments for trading or speculative purposes.

Many of the ingredients used in the products sold in the Company's restaurants are commodities that are subject to unpredictable price volatility. Although the Company attempts to minimize the effect of price volatility by negotiating fixed price contracts for the supply of key ingredients, there are no established fixed price markets for certain commodities such as produce and wild fish, and the Company is subject to prevailing market conditions when purchasing those types of commodities. Other commodities are purchased based upon negotiated price ranges established with vendors with reference to the fluctuating market prices. The Company attempts to offset the impact of fluctuating commodity prices with other strategic purchasing initiatives. The Company does not use derivative financial instruments to manage its commodity price risk, except for natural gas as described below.

The Company's restaurants are dependent upon energy to operate and are impacted by changes in energy prices, including natural gas. The Company utilizes derivative instruments to mitigate some of its overall exposure to material increases in natural gas prices. The Company records mark-to-market changes in the fair value of these derivative instruments in earnings in the period of change. The effects of these natural gas swaps were immaterial to the Company's consolidated financial statements for all periods presented and have been excluded from any tables within this footnote.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's exposure to foreign currency exchange fluctuations relates primarily to its direct investment in restaurants in South Korea, Hong Kong and Brazil and to its royalties from international franchisees. The Company has not used financial instruments to hedge foreign currency exchange rate changes.

In addition to the market risks identified above, the Company is subject to business risk as its beef supply is highly dependent upon a limited number of vendors. In 2011, the Company purchased more than 90% of its domestic beef raw materials from four beef suppliers who represent approximately 75% of the total beef marketplace in the United States.

Non-designated Hedges of Interest Rate Risk

In September 2007, the Company entered into an interest rate collar with a notional amount of $1.0 billion as a method to limit the variability of OSI's senior secured credit facilities. The collar consisted of a LIBOR cap of 5.75% and a LIBOR floor of 2.99%. The collar's first variable-rate set date was December 31, 2007, and the option pairs expired at the end of each calendar quarter beginning March 31, 2008 and ending September 30, 2010, which was the maturity date of the collar. The quarterly expiration dates corresponded to the scheduled amortization payments of OSI's term loan.

The Company's interest rate collar was a non-designated hedge of the Company's exposure to interest rate risk. The Company recorded mark-to-market changes in the fair value of the derivative instrument in earnings in the period of change.

The following table presents the location and effect of the Company's interest rate collar on its Consolidated Statement of Operations for the years ended December 31, 2011, 2010, and 2009 (in thousands):

Derivatives Not Designated as Hedging Instruments	Location of Loss Recognized In Income on Derivative	Amount of Loss Recognized In Income on Derivative Years Ended December 31,		
		2011	2010	2009
Interest rate collar	Interest expense, net	$—	$(1,436)	$(15,568)

6. Other Current Assets, Net

Other current assets, net, consisted of the following (in thousands):

	December 31,	
	2011	2010
Prepaid expenses	$ 18,113	$ 17,495
Accounts receivable—vendors, net	48,568	13,432
Accounts receivable—franchisees, net	2,396	6,137
Accounts receivable—other, net	11,869	10,109
Other current assets, net	23,427	24,647
	$ 104,373	$ 71,820

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Property, Fixtures and Equipment, Net

Property, fixtures and equipment, net, consisted of the following (in thousands):

	December 31,	
	2011	2010
Land	$ 329,143	$ 333,599
Buildings and building improvements	1,013,618	1,005,466
Furniture and fixtures	263,266	232,255
Equipment	362,649	336,175
Leasehold improvements	369,726	365,970
Construction in progress	22,011	5,459
Less: accumulated depreciation	(724,515)	(605,643)
	$ 1,635,898	$ 1,673,281

As of December 31, 2011, the Company had certain land and buildings, with carrying amounts of $14.1 million and $20.3 million, respectively, that have been leased to third parties under operating leases. Accumulated depreciation related to these leased assets of $3.4 million is included in Property, fixtures and equipment at December 31, 2011.

The Company expensed repair and maintenance costs of approximately $97.3 million, $94.3 million and $93.8 million for the years ended December 31, 2011, 2010 and 2009, respectively. Depreciation expense for the years ended December 31, 2011, 2010 and 2009 was $147.4 million, $150.4 million and $180.2 million, respectively.

During the years ended December 31, 2011 and 2010 and 2009, the Company recorded property, fixtures and equipment impairment charges of $11.5 million, $2.0 million and $82.9 million, respectively, for certain of the Company's restaurants in the line item "Provision for impaired assets and restaurant closings" in its Consolidated Statements of Operations (see Note 4).

Due to the third quarter of 2009 sale of the Company's Cheeseburger in Paradise concept, the Company recorded a $46.0 million impairment charge ($39.2 million of which is included in the 2009 total above) during the second quarter of 2009 to reduce the carrying value of this concept's long-lived assets to their estimated fair market value. This impairment included $39.2 million of charges to property, fixtures and equipment, $5.9 million of charges to intangible assets and $0.9 million of charges to other assets.

The fixed asset impairment charges described above primarily occurred as a result of the carrying value of a restaurant's assets exceeding its estimated fair market value, primarily due to anticipated closures or declining future cash flows from lower projected future sales at existing locations.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Goodwill and Intangible Assets, Net

The change in goodwill for the years ended December 31, 2011 and 2010 is as follows (in thousands):

	2011	2010
Balance as of January 1:		
Goodwill	$ 1,059,051	$ 1,059,051
Accumulated purchase accounting adjustments	3,604	3,604
Accumulated impairment losses	(784,636)	(784,636)
Cumulative translation adjustments	(8,118)	(9,560)
	269,901	268,459
Translation adjustments	(79)	1,442
Disposal adjustment	(1,050)	—
Balance as of December 31:		
Goodwill	1,059,051	1,059,051
Accumulated purchase accounting adjustments	3,604	3,604
Accumulated impairment losses	(784,636)	(784,636)
Cumulative translation adjustments	(8,197)	(8,118)
Accumulated disposal adjustments	(1,050)	—
	$ 268,772	$ 269,901

The Company performs its annual assessment for impairment of goodwill and other indefinite-lived intangible assets each year during the second quarter. The Company's review of the recoverability of goodwill is based primarily upon an analysis of the discounted cash flows of the related reporting units as compared to their carrying values (see Note 4). The Company also uses the discounted cash flow method to determine the fair value of its intangible assets.

The Company did not record any goodwill or indefinite-lived intangible asset impairment charges or any material definite-lived intangible asset impairment charges during 2011 and 2010. In October 2011, the Company sold its nine Company-owned Outback Steakhouse restaurants in Japan to a subsidiary of S Foods, Inc., one of the Company's beef supplier's in Japan, for $9.4 million. The buyer will have the right for future development of Outback Steakhouse franchise restaurants in Japan and will pay the Company a royalty in the range of 2.75% to 4.0% based on sales volumes. The Company used the net cash proceeds from this sale to pay down $7.5 million of OSI's outstanding term loans in accordance with the terms of the credit agreement amended in January 2010. The Company recorded a $1.1 million adjustment to reduce goodwill related to the disposal of these assets and recorded a loss of $4.3 million from this sale in General and administrative expenses in its Consolidated Statement of Operations for the year ended December 31, 2011.

Due to poor overall economic conditions, declining sales at Company-owned restaurants, reductions in the Company's projected results for future periods and a challenging environment for the restaurant industry, the Company recorded a goodwill impairment loss of $58.1 million for the domestic Outback Steakhouse concept and impairment charges of $36.0 million for the domestic Outback Steakhouse and Carrabba's Italian Grill trade names during the year ended December 31, 2009. The Company also recorded impairment charges of $7.7 million for other intangible assets for the year ended December 31, 2009.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The accumulated purchase accounting adjustments to goodwill of $3.6 million were the result of adjustments to appraised fair values of acquired tangible assets.

Goodwill impairment charges are included in the line item "Goodwill impairment" and intangible asset impairment charges are included in the line item "Provision for impaired assets and restaurant closings" in the Company's Consolidated Statements of Operations.

Intangible assets, net, consisted of the following (in thousands):

	Weighted Average Remaining Amortization Period (years)	December 31, 2011	December 31, 2010
Trade names (gross)	Indefinite	$ 413,000	$ 413,000
Trademarks (gross)	19	87,531	87,531
Less: accumulated amortization		(18,454)	(14,392)
Net trademarks		69,077	73,139
Favorable leases (gross, lives ranging from 0.8 to 25 years)	15	99,391	102,460
Less: accumulated amortization		(34,752)	(29,182)
Net favorable leases		64,639	73,278
Franchise agreements (gross)	9	17,385	17,385
Less: accumulated amortization		(6,073)	(4,736)
Net franchise agreements		11,312	12,649
Other intangibles (gross)	5	8,547	—
Less: accumulated amortization		(427)	—
Net other intangibles		8,120	—
Intangible assets, less total accumulated amortization of $59,706 and $48,310 at December 31, 2011 and 2010, respectively	16	$566,148	$572,066

Definite-lived intangible assets are amortized on a straight-line basis. The aggregate expense related to the amortization of the Company's trademarks, favorable leases, franchise agreements and other intangibles was $13.9 million, $14.0 million and $14.6 million for the years ended December 31, 2011, 2010 and 2009, respectively. Annual expense related to the amortization of intangible assets is anticipated to be approximately $14.4 million in 2012, $13.8 million in 2013, $13.2 million in 2014, $12.7 million in 2015 and $11.8 million in 2016.

In accordance with the terms of an asset purchase agreement that was amended in December 2004, the Company was obligated to pay a royalty to its Bonefish Grill founder and joint venture partner during his employment term with the Company. The Company had the option to terminate this royalty within 45 days of his termination of employment by making an aggregate payment equal to five times the amount of the royalty payable during the twelve full calendar months immediately preceding the month of his termination. As his employment terminated on October 1, 2011, the Company paid the approximately $8.5 million royalty termination fee in October 2011 and recorded this payment as an intangible asset in its Consolidated Balance Sheet in the fourth quarter of 2011. The intangible asset will be amortized over a five-year useful life.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Other Assets, Net

Other assets, net, consisted of the following (in thousands):

	December 31,	
	2011	2010
Company-owned life insurance	$ 51,955	$ 48,538
Deferred financing fees, net of accumulated amortization of $66,275 and $54,052 at December 31, 2011 and 2010, respectively	19,988	30,063
Liquor licenses	25,545	25,387
Other assets	38,677	42,082
	$ 136,165	$ 146,070

The Company amortizes deferred financing fees to interest expense over the terms of the respective financing arrangements using the effective interest method or the straight-line method, and it amortized $12.3 million, $13.4 million and $14.3 million for the years ended December 31, 2011, 2010 and 2009, respectively.

10. Accrued and Other Current Liabilities

Accrued and other current liabilities consisted of the following (in thousands):

	December 31,	
	2011	2010
Accrued payroll and other compensation	$ 117,013	$ 109,443
Accrued insurance	19,284	20,541
Other	75,189	64,447
	$ 211,486	$ 194,431

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

11. Long-term Debt, net

Long-term debt, net consisted of the following (in thousands):

	December 31,	
	2011	2010
Senior secured term loan facility, interest rate of 2.63% at December 31, 2011 and 2010(1)(2)	$ 1,014,400	$ 1,035,000
Senior secured pre-funded revolving credit facility, interest rates of 2.63% and 2.56% at December 31, 2011 and 2010, respectively(2)	33,000	78,072
Note payable, weighted average interest rates of 0.98% and 0.97% at December 31, 2011 and 2010, respectively(3)	466,319	466,353
First mezzanine note, interest rates of 3.28% and 3.27% at December 31, 2011 and 2010, respectively(3)	88,900	88,900
Second mezzanine note, interest rates of 3.53% and 3.52% at December 31, 2011 and 2010, respectively(3)	123,190	123,190
Third mezzanine note, interest rates of 3.54% and 3.53% at December 31, 2011 and 2010, respectively(3)	49,095	49,095
Fourth mezzanine note, interest rates of 4.53% and 4.52% at December 31, 2011 and 2010, respectively(3)	48,113	48,113
Senior notes, interest rate of 10.00% at December 31, 2011 and 2010(2)	248,075	248,075
Other notes payable, uncollateralized, interest rates ranging from 0.76% to 7.00% and from 1.07% to 7.00% at December 31, 2011 and 2010, respectively(2)	9,094	7,628
Sale-leaseback obligations(2)	2,375	2,375
Capital lease obligations(2)	2,520	1,177
Guaranteed debt, interest rates of 2.65% and 2.75% at December 31, 2011 and 2010, respectively(2)	24,500	24,500
	2,109,581	2,172,478
Less: current portion of long-term debt	(332,905)	(95,284)
Less: guaranteed debt	(24,500)	(24,500)
Less: debt discount	(291)	(954)
Long-term debt, net	$1,751,885	$2,051,740

(1) At December 31, 2011, $61.9 million of OSI's outstanding senior secured term loan facility was at 4.50%.
(2) Represents obligations of OSI.
(3) Represents obligations of PRP.

Bloomin' Brands, Inc. is a holding company and conducts its operations through its subsidiaries, certain of which have incurred their own indebtedness as described below.

On June 14, 2007, in connection with the Merger, OSI entered into senior secured credit facilities with a syndicate of institutional lenders and financial institutions. These senior secured credit facilities provide for senior secured financing of up to $1.6 billion, consisting of a $1.3 billion term loan facility, a $150.0 million working capital revolving credit facility, including letter of credit and swing-line loan sub-facilities, and a $100.0 million pre-funded revolving credit facility that provides financing for capital expenditures only.

The senior secured term loan facility matures June 14, 2014. At each rate adjustment, OSI has the option to select a Base Rate plus 125 basis points or a Eurocurrency Rate plus 225 basis points for the borrowings under

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

this facility. The Base Rate option is the higher of the prime rate of Deutsche Bank AG New York Branch and the federal funds effective rate plus 0.5 of 1% ("Base Rate") (3.25% at December 31, 2011 and 2010). The Eurocurrency Rate option is the 30, 60, 90 or 180-day Eurocurrency Rate ("Eurocurrency Rate") (ranging from 0.38% to 0.88% and from 0.31% to 0.50% at December 31, 2011 and 2010, respectively). The Eurocurrency Rate may have a nine- or twelve-month interest period if agreed upon by the applicable lenders. With either the Base Rate or the Eurocurrency Rate, the interest rate is reduced by 25 basis points if the associated Moody's Applicable Corporate Rating then most recently published is B1 or higher (the rating was Caa1 at December 31, 2011 and 2010).

OSI is required to prepay outstanding term loans, subject to certain exceptions, with:

- 50% of its "annual excess cash flow" (with step-downs to 25% and 0% based upon its rent-adjusted leverage ratio), as defined in the credit agreement and subject to certain exceptions;
- 100% of its "annual minimum free cash flow," as defined in the credit agreement, not to exceed $75.0 million for each fiscal year, if its rent-adjusted leverage ratio exceeds a certain minimum threshold;
- 100% of the net proceeds of certain assets sales and insurance and condemnation events, subject to reinvestment rights and certain other exceptions; and
- 100% of the net proceeds of any debt incurred, excluding permitted debt issuances.

Additionally, OSI is required, on an annual basis, to first, repay outstanding loans under the pre-funded revolving credit facility and second, fund a capital expenditure account to the extent amounts on deposit are less than $100.0 million, in both cases with 100% of OSI's "annual true cash flow," as defined in the credit agreement. In accordance with these requirements, in April 2012, OSI is required to repay its pre-funded revolving credit facility outstanding loan balance of $33.0 million and fund $37.6 million to its capital expenditure account using its "annual true cash flow." In April 2011, OSI repaid its pre-funded revolving credit facility outstanding loan balance of $78.1 million and funded $60.5 million to its capital expenditure account.

OSI's senior secured credit facilities require scheduled quarterly payments on the term loans equal to 0.25% of the original principal amount of the term loans for the first six years and three quarters following June 14, 2007. These payments are reduced by the application of any prepayments, and any remaining balance will be paid at maturity. The outstanding balance on the term loans was $1.0 billion at December 31, 2011 and 2010. OSI has classified $13.1 million of its term loans as current at December 31, 2011 and 2010 due to its required quarterly payments and the results of its covenant calculations, which indicate the additional term loan prepayments, as described above, will not be required. In October 2011, the Company sold its nine Company-owned Outback Steakhouse restaurants in Japan to a subsidiary of S Foods, Inc. and used the net cash proceeds from this sale to pay down $7.5 million of OSI's outstanding term loans in accordance with the terms of the OSI credit agreement amended in January 2010 (see Note 8).

Proceeds of loans and letters of credit under OSI's $150.0 million working capital revolving credit facility, which matures June 14, 2013, provide financing for working capital and general corporate purposes and, subject to a rent-adjusted leverage condition, for capital expenditures for new restaurant growth. This revolving credit facility bears interest at rates ranging from 100 to 150 basis points over the Base Rate or 200 to 250 basis points over the Eurocurrency Rate. There were no loans outstanding under the revolving credit facility at December 31, 2011 and 2010; however, $67.6 million and $70.3 million, respectively, of the credit facility was

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

not available for borrowing as: (i) $35.1 million and $36.5 million, respectively, of the credit facility was committed for the issuance of letters of credit as required by insurance companies that underwrite the Company's workers' compensation insurance and also, where required, for construction of new restaurants, (ii) $24.5 million of the credit facility was committed for the issuance of a letter of credit for OSI's guarantee of an uncollateralized line of credit for its joint venture partner, RY-8, Inc. ("RY-8"), in the development of Roy's restaurants, (iii) $6.0 million of the credit facility was committed for the issuance of a letter of credit to the insurance company that underwrites the Company's bonds for liquor licenses, utilities, liens and construction and (iv) $2.0 million and $3.2 million, respectively, of the credit facility was committed for the issuance of other letters of credit. OSI's total outstanding letters of credit issued under its working capital revolving credit facility may not exceed $75.0 million. Fees for the letters of credit range from 2.00% to 2.25% and the commitment fees for unused working capital revolving credit commitments range from 0.38% to 0.50%.

Proceeds of loans under OSI's $100.0 million pre-funded revolving credit facility, which expires June 14, 2013, are available to provide financing for capital expenditures, if the capital expenditure account described above has a zero balance. As of December 31, 2011 and 2010, OSI had $33.0 million and $78.1 million, respectively, outstanding on its pre-funded revolving credit facility. These borrowings were recorded in "Current portion of long-term debt" in the Company's Consolidated Balance Sheets, as OSI is required to repay any outstanding borrowings in April following each fiscal year using its "annual true cash flow," as defined in the credit agreement. At each rate adjustment, OSI has the option to select the Base Rate plus 125 basis points or a Eurocurrency Rate plus 225 basis points for the borrowings under this facility. In either case, the interest rate is reduced by 25 basis points if the associated Moody's Applicable Corporate Rating then most recently published is B1 or higher. Fees for the unused portion of the pre-funded revolving credit facility are 2.43%.

OSI's senior secured credit facilities require it to comply with certain financial covenants, including a quarterly Total Leverage Ratio ("TLR") test and an annual Minimum Free Cash Flow ("MFCF") test. The TLR is the ratio of OSI's Consolidated Total Debt to OSI's Consolidated EBITDA (earnings before interest, taxes, depreciation and amortization and certain other adjustments as defined in the senior secured credit facilities) and may not exceed 6.00 to 1.00. On an annual basis, if the Rent Adjusted Leverage Ratio ("RALR"), as defined, is greater than or equal to 5.25 to 1.00, OSI's MFCF cannot be less than $75.0 million. MFCF is calculated as OSI's Consolidated EBITDA plus decreases in OSI's Consolidated Working Capital less OSI's Consolidated Interest Expense, OSI's Capital Expenditures (except for that funded by OSI's senior secured pre-funded revolving credit facility), increases in OSI's Consolidated Working Capital and OSI's cash paid for taxes. (All of the above capitalized terms are as defined in the credit agreement). The credit agreement governing OSI's senior secured credit facilities, as amended on January 28, 2010, also includes negative covenants that, subject to significant exceptions, limit its ability and the ability of its restricted subsidiaries to: incur liens, make investments and loans, make capital expenditures (as described below), incur indebtedness or guarantees, engage in mergers, acquisitions and assets sales, declare dividends, make payments or redeem or repurchase equity interests, alter its business, engage in certain transactions with affiliates, enter into agreements limiting subsidiary distributions and prepay, redeem or purchase certain indebtedness. OSI's senior secured credit facilities contain customary representations and warranties, affirmative covenants and events of default. At December 31, 2011 and 2010, OSI was in compliance with its debt covenants.

OSI's capital expenditures are limited by the credit agreement. The annual capital expenditure limits range from $200.0 million to $250.0 million with various carry-forward and carry-back allowances. OSI's annual expenditure limits may increase after an acquisition. However, if (i) the RALR at the end of a fiscal year is greater than 5.25 to 1.00, (ii) OSI's "annual true cash flow" is insufficient to repay fully its pre-funded revolving credit facility and (iii) the capital expenditure account has a zero balance, its capital expenditures will be limited to $100.0 million for the succeeding fiscal year. This limitation will remain until there are no pre-funded

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

revolving credit facility loans outstanding and the amount on deposit in the capital expenditures account is greater than zero or until the RALR is less than 5.25 to 1.00. In 2010, OSI's capital expenditures were limited to $100.0 million as a result of the conditions described above. In 2011, OSI was not subject to this limitation and will not be subject to it in 2012.

The obligations under OSI's senior secured credit facilities are guaranteed by each of its current and future domestic 100% owned restricted subsidiaries in its Outback Steakhouse and Carrabba's Italian Grill concepts and certain non-restaurant subsidiaries (the "Guarantors") and by OSI HoldCo, Inc. ("OSI HoldCo"), the Company's indirect, wholly-owned subsidiary and OSI's direct owner. Subject to the conditions described below, the obligations are secured by a perfected security interest in substantially all of OSI's assets and the assets of the Guarantors and OSI HoldCo, in each case, now owned or later acquired, including a pledge of all of OSI's capital stock, the capital stock of substantially all of OSI's domestic wholly-owned subsidiaries and 65% of the capital stock of certain of OSI's material foreign subsidiaries that are directly owned by OSI, OSI HoldCo, or a Guarantor. Also, OSI is required to provide additional guarantees of the senior secured credit facilities in the future from other domestic wholly-owned restricted subsidiaries if the Consolidated EBITDA attributable to OSI's non-guarantor domestic wholly-owned restricted subsidiaries as a group exceeds 10% of OSI's Consolidated EBITDA as determined on an OSI company-wide basis. If this occurs, guarantees would be required from additional domestic wholly-owned restricted subsidiaries in such number that would be sufficient to lower the aggregate Consolidated EBITDA of the non-guarantor domestic wholly-owned restricted subsidiaries as a group to an amount not in excess of 10% of the OSI company-wide Consolidated EBITDA.

On June 14, 2007, PRP entered into first mortgage and mezzanine loans (together, the commercial mortgage-backed securities loan, or the "CMBS Loan") totaling $790.0 million. As part of the CMBS Loan, the lenders, German American Capital Corporation and Bank of America, N.A., have a security interest in PRP's properties and related improvements located throughout the United States and direct and indirect equity interests in PRP.

The CMBS Loan comprised a note payable and four mezzanine notes. The CMBS Loan had a maturity date of June 9, 2011, subject to one additional one-year extension by PRP to a maximum maturity date of June 9, 2012. During 2011, PRP elected to exercise the one-year extension.

All notes bore interest at the one-month LIBOR which was 0.28% and 0.27% at December 31, 2011 and 2010, respectively, plus an applicable spread which ranged from 0.51% to 4.25%. Interest-only payments were made on the ninth calendar day of each month and interest accrues beginning on the fifteenth calendar day of the preceding month.

The CMBS Loan required PRP to comply with certain financial covenants, including a lease coverage ratio and a loan to value ratio as defined in the CMBS Loan agreement. The CMBS Loan also contained customary representations, warranties, affirmative covenants and events of default. Upon disposal of any location that collateralized the CMBS Loan, PRP was required to pay the portion of the CMBS Loan principal that related to each disposed location. During the years ended December 31, 2011 and 2010, PRP did not dispose of any locations and therefore did not pay any principal on the CMBS loan for disposed location.

Subsequent to December 31, 2011, PRP repaid its CMBS Loan and New Private Restaurant Properties, LLC ("New PRP"), the Company's wholly-owned, indirect subsidiary, entered into a new commercial mortgage-backed securities loan (the "2012 CMBS Loan"). As a result of the 2012 CMBS Loan refinancing, the net amount repaid along with scheduled maturities within one year, $281.3 million, was classified as current at December 31, 2011 (see Note 20).

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

On June 14, 2007, OSI issued senior notes in an original aggregate principal amount of $550.0 million under an indenture among OSI, as issuer, OSI Co-Issuer, Inc., as co-issuer ("Co-Issuer"), a third-party trustee and the Guarantors. The senior notes mature on June 15, 2015. Interest is payable semiannually in arrears, at 10% per annum, in cash on each June 15 and December 15. Interest payments to the holders of record of the senior notes occur on the immediately preceding June 1 and December 1. Interest is computed on the basis of a 360-day year consisting of twelve 30-day months. The principal balance of senior notes outstanding at December 31, 2011 and 2010 was $248.1 million.

The senior notes are guaranteed on a senior unsecured basis by each restricted subsidiary that guarantees the senior secured credit facility. Under the terms of the indenture, the restricted subsidiaries shall be automatically and unconditionally released and discharged as guarantors of the senior notes if: (i) the subsidiary is sold or sells all of its fixed assets; (ii) the subsidiary is declared "unrestricted" for covenant purposes; (iii) the subsidiary's guarantee of other indebtedness is terminated or released; or (iv) the requirement for legal defeasance or covenant defeasance or to discharge the indenture have been satisfied.

The senior notes are general, unsecured senior obligations of OSI, Co-Issuer and the Guarantors and are equal in right of payment to all existing and future senior indebtedness, including the senior secured credit facility. The senior notes are effectively subordinated to all of OSI's, Co-Issuer's and the Guarantors' secured indebtedness, including the senior secured credit facility, to the extent of the value of the assets securing such indebtedness. The senior notes are senior in right of payment to all of OSI's, Co-Issuer's and the Guarantors' existing and future subordinated indebtedness.

The indenture governing the senior notes limits, under certain circumstances, OSI's ability and the ability of Co-Issuer and OSI's restricted subsidiaries to: incur liens, make investments and loans, incur indebtedness or guarantees, engage in mergers, acquisitions and assets sales, declare dividends, make payments or redeem or repurchase equity interests, alter its business, engage in certain transactions with affiliates, enter into agreements limiting subsidiary distributions and prepay, redeem or purchase certain indebtedness.

In accordance with the terms of the senior notes and the senior secured credit facility, OSI's restricted subsidiaries are also subject to restrictive covenants. Under certain circumstances, OSI is permitted to designate subsidiaries as unrestricted subsidiaries, which would cause them not to be subject to the restrictive covenants of the indenture or the credit agreement. As of December 31, 2011 and 2010, all but one of OSI's consolidated subsidiaries were restricted subsidiaries, as a subsidiary that operated six restaurants in Canada was designated as an unrestricted subsidiary in April 2009.

Additional senior notes may be issued under the indenture from time to time, subject to certain limitations. Initial and additional senior notes issued under the indenture will be treated as a single class for all purposes under the indenture, including waivers, amendments, redemptions and offers to purchase.

OSI may redeem some or all of the senior notes at the redemption prices (expressed as percentages of principal amount of the senior notes to be redeemed) listed below, plus accrued and unpaid interest thereon and additional interest, if any, to the applicable redemption date. The redemption prices are effective for a twelve-month period beginning on June 15 of each of the years indicated below.

After June 15th	Percentage
2011	105.0%
2012	102.5%
2013 and thereafter	100.0%

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Upon a change in control as defined in the indenture, OSI would be required to make an offer to purchase all of the senior notes at a price in cash equal to 101% of the aggregate principal amount thereof plus accrued interest and unpaid interest and additional interest, if any, to the date of purchase.

During the first quarter of 2009, OSI purchased $240.1 million in aggregate principal amount of its senior notes in a cash tender offer. OSI paid $73.0 million for the senior notes purchased and $6.7 million of accrued interest. The Company recorded a gain from the extinguishment of debt of $158.1 million in the line item "Gain on extinguishment of debt" in its Consolidated Statement of Operations for the year ended December 31, 2009. The gain was reduced by $6.1 million for the pro rata portion of unamortized deferred financing fees that related to the extinguished senior notes and by $3.0 million for fees related to the tender offer. The purpose of the tender offer was to reduce the principal amount of debt outstanding, reduce the related debt service obligations and improve OSI's financial covenant position under its senior secured credit facilities.

As of December 31, 2011 and 2010, OSI had approximately $9.1 million and $7.6 million, respectively, of notes payable at interest rates ranging from 0.76% to 7.00% and from 1.07% to 7.00%, respectively. These notes have been primarily issued for buyouts of managing and area operating partner interests in the cash flows of their restaurants and generally are payable over a period of two through five years.

Debt Guarantees

OSI is the guarantor of an uncollateralized line of credit that permits borrowing of up to a maximum of $24.5 million for its joint venture partner, RY-8, in the development of Roy's restaurants. The line of credit originally expired in December 2004 and was amended for a fourth time on April 1, 2009 to a revised termination date of April 15, 2013. According to the terms of the credit agreement, RY-8 may borrow, repay, re-borrow or prepay advances at any time before the termination date of the agreement. On the termination date of the agreement, the entire outstanding principal amount of the loan then outstanding and any accrued interest is due. At December 31, 2011 and 2010, the outstanding balance on the line of credit was $24.5 million.

RY-8's obligations under the line of credit are unconditionally guaranteed by OSI and Roy's Holdings, Inc. ("RHI"). If an event of default occurs, as defined in the agreement, the total outstanding balance, including any accrued interest, is immediately due from the guarantors. At December 31, 2011 and 2010, $24.5 million of OSI's $150.0 million working capital revolving credit facility was committed for the issuance of a letter of credit for this guarantee.

If an event of default occurs and RY-8 is unable to pay the outstanding balance owed, OSI would, as one of the two guarantors, be liable for this balance. However, in conjunction with the credit agreement, RY-8 and RHI have entered into an Indemnity Agreement and a Pledge of Interest and Security Agreement in OSI's favor. These agreements provide that if OSI is required to perform under its obligation as guarantor pursuant to the credit agreement, then RY-8 and RHI will indemnify OSI against all losses, claims, damages or liabilities which arise out of or are based upon its guarantee of the credit agreement. RY-8's and RHI's obligations under these agreements are collateralized by a first priority lien upon and a continuing security interest in any and all of RY-8's interests in the joint venture.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The aggregate mandatory principal payments of total consolidated debt outstanding at December 31, 2011 (excluding guaranteed debt), for the next five years, are summarized as follows (in thousands):

2012	$ 332,905
2013	87,695
2014	937,662
2015	259,300
2016	11,446
Thereafter	455,782
Total	$ 2,084,790

The following table includes the maturity of the Company's debt and debt guarantees (in thousands):

	Total	Payable During 2012	Payable During 2013-2016	Payable After 2016
Debt	$ 2,084,790	$ 332,905	$ 1,296,103	$ 455,782
Debt guarantees:				
Maximum availability of debt guarantees	$ 25,957	$ —	$ 24,500	$ 1,457
Amount outstanding under debt guarantees	25,957	—	24,500	1,457
Carrying amount of liabilities	24,500	—	24,500	—

12. Other Long-term Liabilities, Net

Other long-term liabilities, net, consisted of the following (in thousands):

	December 31,	
	2011	2010
Accrued insurance liability	$ 39,575	$ 40,181
Unfavorable leases, net of accumulated amortization of $18,891 and $15,034 at December 31, 2011 and 2010, respectively	62,012	66,660
PEP obligation	77,642	65,880
Supplemental PEP obligation	16,235	20,055
Other liabilities	23,288	23,786
	$218,752	$216,562

The Company maintains endorsement split dollar insurance policies with a death benefit ranging from $5.0 million to $10.0 million for certain of its current and former executive officers. The Company is the beneficiary of the policies to the extent of premiums paid or the cash value, whichever is greater, with the balance being paid to personal beneficiaries designated by the executive officers. The Company has agreed not to terminate the policies regardless of continued employment except that the Company may terminate one executive officer's policy prior to his completion of seven years of employment with the Company commencing January 1, 2006. As of December 31, 2011 and 2010, the Company has $13.4 million and $12.4 million recorded in Other long-term liabilities for the endorsement split dollar insurance policies.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Comprehensive Income (Loss) and Foreign Currency Translation and Transactions

Comprehensive income (loss) includes net income (loss) and foreign currency translation adjustments. Total comprehensive income (loss) for the years ended December 31, 2011, 2010 and 2009 was $106.5 million, $63.7 million and ($54.6) million, respectively, which included the effect of (losses) and gains from translation adjustments of approximately ($2.7) million, $4.6 million and $10.3 million, respectively.

Accumulated other comprehensive loss contained only foreign currency translation adjustments as of December 31, 2011 and 2010.

Foreign currency transaction gains and losses are recorded in "Other income (expense), net" in the Company's Consolidated Statements of Operations and was a net gain (loss) of $0.8 million, $3.0 million and $(0.2) million for the years ended December 31, 2011, 2010 and 2009, respectively.

14. Income Taxes

The following table presents the domestic and foreign components of income (loss) before provision (benefit) for income taxes (in thousands):

	Years Ended December 31,		
	2011	2010	2009
Domestic	$105,620	$58,346	$ (80,202)
Foreign	25,275	22,130	12,897
	$130,895	$80,476	$(67,305)

Provision (benefit) for income taxes consisted of the following (in thousands):

	Years Ended December 31,		
	2011	2010	2009
Current provision (benefit):			
Federal	$ 382	$ (4,324)	$ (75)
State	10,556	12,430	6,794
Foreign	10,953	8,012	6,858
	21,891	16,118	13,577
Deferred (benefit) provision:			
Federal	(127)	1,215	(12,345)
State	(179)	10	(2,467)
Foreign	131	3,957	(1,227)
	(175)	5,182	(16,039)
Provision (benefit) for income taxes	$21,716	$ 21,300	$ (2,462)

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The reconciliation of income taxes calculated at the United States federal tax statutory rate to the Company's effective income tax rate is as follows:

	Years Ended December 31,		
	2011	2010	2009
Income taxes at federal statutory rate	35.0%	35.0%	35.0%
State and local income taxes, net of federal benefit	4.1	4.8	(3.8)
Provision for goodwill impairment	—	—	(30.3)
Valuation allowance on deferred income tax assets	7.6	13.2	(15.0)
Employment related credits, net	(19.1)	(22.4)	26.9
Net officers life insurance expense	0.9	(1.3)	3.7
Noncontrolling interests	(4.3)	(5.1)	1.0
Tax settlements and related adjustments	1.3	3.8	(7.2)
Excess tax benefits from stock-based compensation arrangements	—	—	(9.0)
Loss on investments	(5.6)	—	—
Foreign rate differential	(2.4)	(2.1)	1.9
Other, net	(0.9)	0.6	0.5
Total	16.6%	26.5%	3.7%

The effective income tax rate for the year ended December 31, 2011 was 16.6% compared to 26.5% for the year ended December 31, 2010. The net decrease in the effective income tax rate in 2011 as compared to the previous year was primarily due to the increase in the domestic pretax book income in which the deferred income tax assets are subject to a valuation allowance and the state and foreign income tax provision being a lower percentage of consolidated pretax income as compared to the prior year. The effective income tax rate for the year ended December 31, 2010 was 26.5% compared to 3.7% for the year ended December 31, 2009. The net increase in the effective income tax rate in 2010 as compared to the previous year was primarily due to the effect of the change in the valuation allowance against deferred income tax assets.

The effective income tax rate for the year ended December 31, 2011 was lower than the combined federal and state statutory rate of 38.7% primarily due to the benefit of the tax credit for excess FICA tax on employee-reported tips and loss on investments as a result of the sale of assets in Japan together being such a large percentage of pretax income. The effective income tax rate for the year ended December 31, 2010 was lower than the combined federal and state statutory rate of 38.9% primarily due to the benefit of the tax credit for excess FICA tax on employee-reported tips, which was partially offset by the valuation allowance and income taxes in states that only have limited deductions in computing the state current income tax provision. The effective income tax rate for the year ended December 31, 2009 was significantly lower than the combined federal and state statutory rate of 38.9% primarily due to an increase in the valuation allowance on deferred income tax assets, which was partially offset by the benefit of the tax credit for excess FICA tax on employee-reported tips being such a large percentage of pretax loss.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The income tax effects of temporary differences that give rise to significant portions of deferred income tax assets and liabilities are as follows (in thousands):

	December 31,	
	2011	2010
Deferred income tax assets:		
Deferred rent	$ 26,421	$ 21,879
Insurance reserves	21,740	22,849
Unearned revenue	9,375	8,716
Deferred compensation	78,351	67,710
Allowance for receivables	762	13,696
Net operating loss carryforward	19,397	35,356
Federal tax credit carryforward	146,991	105,802
Deferred loss on contingent debt guarantee	9,493	9,538
Other, net	105	5,348
Gross deferred income tax assets	312,635	290,894
Less: valuation allowance	(35,837)	(25,886)
Net deferred income tax assets	276,798	265,008
Deferred income tax liabilities:		
Less: property, fixtures and equipment basis differences	(232,604)	(225,631)
Less: intangible asset basis differences	(148,433)	(143,702)
Less: deferred gain on extinguishment of debt	(57,064)	(57,100)
Net deferred income tax liabilities	$ (161,303)	$ (161,425)

The changes in the valuation allowance account for the deferred income tax assets are as follows (in thousands):

Balance at January 1, 2009	$ 4,992
Change in assessments about the realization of deferred income tax assets	16,985
Balance at December 31, 2009	21,977
Change in assessments about the realization of deferred income tax assets	3,909
Balance at December 31, 2010	25,886
Change in assessments about the realization of deferred income tax assets	9,951
Balance at December 31, 2011	$ 35,837

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

A valuation allowance reduces the deferred income tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred income tax assets will not be realized. After consideration of all of the evidence, the Company has determined that a valuation allowance of $35.8 million and $25.9 million is necessary at December 31, 2011 and 2010, respectively.

A provision (benefit) for income taxes has not been recorded for any United States or additional foreign taxes on undistributed earnings related to the Company's foreign affiliates as these earnings were and are expected to continue to be permanently reinvested. If the Company identifies an exception to its general reinvestment policy of undistributed earnings, additional taxes will be posted. It is not practical to determine the amount of unrecognized deferred income tax liabilities on the undistributed earnings.

The Company has a federal net operating loss carryforward for tax purposes of approximately $49.4 million. This loss can be carried forward for 20 years from the tax year in which it is was generated and will expire in the years 2027 and 2029. The Company has state net operating loss carryforwards of approximately $46.2 million. These state net operating loss carryforwards will expire between 2012 and 2029. The Company has foreign net operating loss carryforwards of approximately $5.5 million. These foreign net operating loss carryforwards will expire between 2015 and 2018.

The Company has general business tax credits of approximately $138.8 million. These credits can be carried forward for 20 years and will expire between 2027 and 2031. The Company has foreign tax credits available to utilize against federal income taxes of approximately $15.6 million. These credits can be carried forward for ten years and will expire between 2017 and 2021.

As of December 31, 2011 and December 31, 2010, the Company had $14.0 million and $16.4 million, respectively, of unrecognized tax benefits ($1.5 million and $1.3 million, respectively, in "Other long-term liabilities, net," $2.5 million and $6.3 million, respectively, in "Accrued and other current liabilities" and $10.0 million and $8.8 million, respectively, in "Deferred income tax liabilities"). Additionally, the Company accrued $4.1 million and $6.1 million of interest and penalties related to uncertain tax positions as of December 31, 2011 and December 31, 2010, respectively. Of the total amount of unrecognized tax benefits, including accrued interest and penalties, $15.2 million and $18.0 million, respectively, if recognized, would impact the Company's effective tax rate. The difference between the total amount of unrecognized tax benefits and the amount that would impact the effective tax rate consists of items that are offset by deferred income tax assets and the federal tax benefit of state income tax items.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes the activity related to the Company's unrecognized tax benefits (in thousands):

Balance at January 1, 2009	$16,537
Increases for tax positions taken during a prior period	2,920
Increases for tax positions taken during the current period	2,536
Settlements with taxing authorities	(5,189)
Lapses in the applicable statutes of limitations	(2,393)
Balance at December 31, 2009	$ 14,411
Increases for tax positions taken during a prior period	1,889
Decreases for tax positions taken during a prior period	(676)
Increases for tax positions taken during the current period	3,801
Settlements with taxing authorities	58
Lapses in the applicable statutes of limitations	(3,096)
Balance at December 31, 2010	$ 16,387
Increases for tax positions taken during a prior period	472
Decreases for tax positions taken during a prior period	(708)
Increases for tax positions taken during the current period	2,136
Settlements with taxing authorities	(4,190)
Lapses in the applicable statutes of limitations	(58)
Balance at December 31, 2011	$ 14,039

In many cases, the Company's uncertain tax positions are related to tax years that remain subject to examination by relevant taxable authorities. Based on the outcome of these examinations, or as a result of the expiration of the statute of limitations for specific jurisdictions, it is reasonably possible that the related recorded unrecognized tax benefits for tax positions taken on previously filed tax returns will decrease by approximately $5.0 million to $6.0 million within the next twelve months after December 31, 2011.

The Company is currently open to audit under the statute of limitations by the Internal Revenue Service for the years ended December 31, 2007 through 2010. The Company and its subsidiaries' state and foreign income tax returns are also open to audit under the statute of limitations for the years ended December 31, 2000 through 2010.

The Company accounts for interest and penalties related to uncertain tax positions as part of its Provision for income taxes and recognized expense of $0.9 million, $2.1 million and $1.3 million for the years ended December 31, 2011, 2010 and 2009, respectively.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Recently Issued Financial Accounting Standards

In May 2011, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") No. 2011-04, "Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs," ("ASU No. 2011-04") that establishes a number of new requirements for fair value measurements. These include: (i) a prohibition on grouping financial instruments for purposes of determining fair value, except when an entity manages market and credit risks on the basis of the entity's net exposure to the group; (ii) an extension of the prohibition against the use of a blockage factor to all fair value measurements (that prohibition currently applies only to financial instruments with quoted prices in active markets); and (iii) a requirement that for recurring Level 3 fair value measurements, entities disclose quantitative information about unobservable inputs, a description of the valuation process used and qualitative details about the sensitivity of the measurements. Additionally, for items not carried at fair value but for which fair value is disclosed, entities will be required to disclose the level within the fair value hierarchy that applies to the fair value measurement disclosed. ASU No. 2011-04 is effective for interim and annual periods beginning after December 15, 2011. While the provisions of ASU No. 2011-04 will increase the Company's fair value disclosures, this guidance will not have an impact on the Company's financial position, results of operations or cash flows.

In June 2011, the FASB issued ASU No. 2011-05, "Comprehensive Income (Topic 220): Presentation of Comprehensive Income," ("ASU No. 2011-05") that eliminates the option to report other comprehensive income and its components in the statement of changes in equity. Instead, the new guidance requires the Company to present the components of net income and other comprehensive income in one continuous statement, referred to as the statement of comprehensive income, or in two separate, but consecutive statements. While the new guidance changes the presentation of comprehensive income, there are no changes to the components that are recognized in net income or other comprehensive income under current accounting guidance. ASU No. 2011-05 must be applied retrospectively and is effective for public companies during the interim and annual periods beginning after December 15, 2011, with early adoption permitted. Additionally, in December 2011, the FASB issued ASU No. 2011-12, "Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05" ("ASU No. 2011-12"), which indefinitely defers the requirement in ASU No. 2011-05 to present reclassification adjustments out of accumulated other comprehensive income by component in both the statement in which net income is presented and the statement in which other comprehensive income is presented. The deferral of the presentation requirements does not impact the effective date of the other requirements in ASU 2011-05. During the deferral period, the existing requirements in generally accepted accounting principles in the United States ("U.S. GAAP") for the presentation of reclassification adjustments must continue to be followed. ASU No. 2011-12 is effective for public companies during the interim and annual periods beginning after December 15, 2011. ASU No. 2011-05 and ASU No. 2011-12 will not have an impact on the Company's financial position, results of operations or cash flows as the guidance only requires a presentation change to comprehensive income.

In September 2011, the FASB issued ASU No. 2011-08, "Intangibles—Goodwill and Other (Topic 350)—Testing Goodwill for Impairment," ("ASU No. 2011-08") which permits an entity to make a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying value before applying the two-step quantitative goodwill impairment test. If it is determined through the qualitative assessment that a reporting unit's fair value is more likely than not greater than its carrying value, the remaining impairment steps would be unnecessary. The qualitative assessment is optional, allowing entities to go directly to the quantitative assessment. ASU No. 2011-08 is effective for annual and interim goodwill impairment tests performed in fiscal years beginning after December 15, 2011, with early adoption permitted. This guidance will not have a material impact on the Company's financial position, results of operations or cash flows.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In December 2011, the FASB issued ASU No. 2011-10, "Property, Plant, and Equipment (Topic 360): Derecognition of in Substance Real Estate —a Scope Clarification," ("ASU No. 2011-10") which applies to a parent company that ceases to have a controlling financial interest in a subsidiary, that is in substance real estate, as a result of a default on the subsidiary's nonrecourse debt. The new guidance emphasizes that the parent should only deconsolidate the real estate subsidiary when legal title to the real estate is transferred to the lender and the related nonrecourse debt has been extinguished. If the reporting entity ceases to have a controlling financial interest under subtopic 810-10, the reporting entity would continue to include the real estate, debt, and the results of the subsidiary's operations in its consolidated financial statements until legal title to the real estate is transferred to legally satisfy the debt. This standard takes effect for public companies during the annual and interim periods beginning on or after June 15, 2012. The adoption of this guidance is not expected to have a material impact on the Company's financial statements.

In December 2011, the FASB issued ASU No. 2011-11, "Balance Sheet (Topic 210) -Disclosures about Offsetting Assets and Liabilities," ("ASU 2011-11") which enhances current disclosures about financial instruments and derivative instruments that are either offset on the statement of financial position or subject to an enforceable master netting arrangement or similar agreement, irrespective of whether they are offset on the statement of financial position. The guidance requires the Company to provide both net and gross information for these assets and liabilities. ASU No. 2011-11 is effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods with retrospective application required. This guidance will not have an impact on the Company's financial position, results of operations or cash flows as it only requires a presentation change to offsetting (netting) assets and liabilities.

16. Commitments and Contingencies

Operating Leases

The Company leases restaurant and office facilities and certain equipment under operating leases having initial terms expiring between 2012 and 2024. The restaurant facility leases have renewal clauses primarily from five to 30 years exercisable at the option of the Company. Rent expense for the Company's operating leases, which generally have escalating rentals over the term of the lease and may include potential rent holidays, is recorded on a straight-line basis over the initial lease term and those renewal periods that are reasonably assured. Certain of these leases require the payment of contingent rentals leased on a percentage of gross revenues, as defined by the terms of the applicable lease agreement. Total rental expense for the years ended December 31, 2011, 2010 and 2009 was approximately $132.9 million, $128.1 million and $132.0 million, respectively, and included contingent rentals of approximately $5.6 million, $4.5 million and $3.8 million, respectively.

As of December 31, 2011, future minimum rental payments under non-cancelable operating leases (including leases for restaurants scheduled to open in 2012) are as follows (in thousands):

2012	$ 106,258
2013	98,174
2014	81,771
2015	64,053
2016	45,993
Thereafter	107,130
Total minimum lease payments(1)	$ 503,379

(1) Total minimum lease payments have not been reduced by minimum sublease rentals of $3.0 million due in future periods under non-cancelable subleases. On March 14, 2012, the Company entered into a sale-

leaseback transaction with two third-party real estate institutional investors in which the Company sold 67 restaurant properties and then simultaneously leased these properties back under nine master leases with initial terms of 20 years each. As a result, the Company will have an additional $362.6 million of operating lease payments over the initial terms of these lease agreements (see Note 20).

Purchase Obligations

The Company has minimum purchase commitments with various vendors through June 2016. Outstanding commitments consist primarily of minimum purchase commitments of beef, cheese, potatoes and other food and beverage products related to normal business operations and contracts for advertising, marketing, sports sponsorships, printing and technology. In 2011, the Company purchased more than 90% of its beef raw materials from four beef suppliers who represented approximately 75% of the total beef marketplace in the United States.

Litigation and Other Matters

The Company is subject to legal proceedings, claims and liabilities, such as liquor liability, sexual harassment and slip and fall cases, which arise in the ordinary course of business and are generally covered by insurance. In the opinion of management, the amount of ultimate liability with respect to those actions will not have a material adverse impact on the Company's financial position or results of operations and cash flows. The Company accrues for loss contingencies that are probable and reasonably estimable. The Company generally does not accrue for legal costs expected to be incurred with a loss contingency until those services are provided.

Guarantees and RY-8, Inc.

OSI guarantees debt owed to banks by one of its joint venture partners and by landlords of one of its Outback Steakhouse restaurants in South Korea. The maximum amount guaranteed and the outstanding guaranteed amount were each approximately $26.0 million at December 31, 2011. OSI would have to perform under the guarantees if the borrowers default under their respective loan agreements. A default would cause OSI to exercise all available rights and remedies.

Pursuant to the Company's joint venture agreement for the development of Roy's restaurants, RY-8, its joint venture partner, has the right to require the Company to purchase up to 50% of RY-8's interest in the joint venture at any time after June 17, 2009. The purchase price would be equal to the fair market value of the joint venture as of the date that RY-8 exercised its put option multiplied by the percentage purchased.

As of December 31, 2011, the Company is due $2.8 million from RY-8 for interest and line of credit renewal fees and capital expenditures for additional restaurant development made on behalf of RY-8 because the joint venture partner's $24.5 million line of credit was fully extended. This amount is eliminated in consolidation (see Note 18). Additional payments on behalf of RY-8 may be required in the future.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Insurance

The Company purchased insurance for individual claims that exceed the amounts listed in the following table:

	2011	2010	2009
Workers' Compensation	$ 1,500,000	$ 1,500,000	$ 1,500,000
General Liability(1)	1,500,000	1,500,000	1,500,000
Health(2)	400,000	300,000	300,000
Property Coverage(3)	2,500,000 / 500,000	2,500,000 / 500,000	2,500,000 /500,000
Employment Practices Liability	2,000,000	2,000,000	2,000,000
Directors' and Officers' Liability	250,000	250,000	250,000
Fiduciary Liability	25,000	25,000	25,000

(1) In 2011, claims arising from liquor liability had the same self-insured retention as general liability. For claims in 2010 and 2009, there was an additional $1.0 million self-insured retention per claim until a $2.0 million liquor liability aggregate had been met. At that time, any claims arising from liquor liability reverted to the general liability self-insured retention.

(2) The Company is self-insured for all aggregate health benefits claims, limited to $0.4 million per covered individual in 2011 and $0.3 million per covered individual in 2010 and 2009. The Company retained the first $0.3 million, $0.4 million and $0.2 million of payable losses under the plan as an additional deductible in 2011, 2010 and 2009, respectively. The 2010 and 2009 insurer's liability was limited to $2.0 million per individual per year.

(3) The Company has a $0.5 million deductible per occurrence for those properties that collateralize PRP's CMBS Loan and a $2.5 million deductible per occurrence for all other locations. Property limits are $60.0 million each occurrence, and the Company does not quota share in any loss above either deductible level.

The Company records a liability for all unresolved claims and for an estimate of incurred but not reported claims at the anticipated cost to the Company. In establishing reserves, the Company considers certain actuarial assumptions and judgments regarding economic conditions, the frequency and severity of claims and claim development history and settlement practices. Unanticipated changes in these factors or future adjustments to these estimates may produce materially different amounts of expense that would be reported under these programs. Reserves recorded for worker's compensation and general liability claims are discounted using the average of the 1-year and 5-year risk free rate of monetary assets that have comparable maturities. When recovery from an insurance policy is considered probable, a receivable is recorded.

17. Related Parties

Paradise Restaurant Group, LLC

In September 2009, the Company sold its Cheeseburger in Paradise concept, which included 34 restaurants, to Paradise Restaurant Group, LLC ("PRG"), an entity formed and controlled by the president of the concept. Other investors in PRG include a current development partner in certain Carrabba's Italian Grill restaurants and former Company employees. Based on the terms of the purchase and sale agreement, the Company continued to consolidate PRG after the sale transaction since the Company was considered the primary beneficiary of the entity under the then applicable accounting guidance. However, upon adoption of new accounting guidance for variable interest entities on January 1, 2010, the Company is no longer the primary beneficiary of PRG, and as a result, PRG is no longer considered a related party as of January 1, 2010 (see Note 18).

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company provided the financing for the sale of the Cheeseburger in Paradise concept in the form of a $2.0 million promissory note that bears interest at a rate of 600 basis points over the 90-day LIBOR. The promissory note must be repaid in five annual installments that commence one year from the September 15, 2009 closing date. In accordance with the terms of the promissory note, the annual principal and interest payment amounts are based on the cash flow of PRG, subject to certain maximum payment limits. The promissory note and the payment of the purchase price are secured by a first priority purchase money security interest in the membership interests and assets of PRG. The loan agreement for the promissory note also contains certain protective covenants such as, but not limited to: (i) PRG must obtain the Company's prior written approval before incurring any additional indebtedness or new lease obligations or before extending or renewing any existing obligations, (ii) the Company retains the right to approve PRG's financial capital and development plans, (iii) PRG cannot make any distributions, dividends or other payment of funds other than approved in an annual capital and financial plan and (iv) PRG cannot make any substantial change to its executive or management personnel or change its general character of business without the Company's prior written consent.

The Company also provided PRG a $2.0 million revolving line of credit (reduced to $1.0 million in September 2010) to assist with seasonal cash flow shortages. The revolving line of credit matured on September 15, 2011 and there were no draws on the revolving line of credit prior to maturity.

The Company assigned PRG all restaurant property leases under their current terms, except for three locations that are leased under modified terms as provided in the purchase and sale agreement. For certain of the assigned third-party leases, the Company remains contingently liable. The buyer is responsible for paying common area maintenance, real estate taxes and other expenses on these restaurant properties.

T-Bird Nevada, LLC

On February 19, 2009, the Company filed an action in Florida against T-Bird Nevada, LLC ("T-Bird") and certain of its affiliates (collectively, the "T-Bird Parties"). T-Bird is a limited liability company affiliated with the Company's California franchisees of Outback Steakhouse restaurants. The action sought payment on a promissory note made by T-Bird that the Company purchased from T-Bird's former lender, among other remedies. The principal balance on the promissory note, plus accrued and unpaid interest, was approximately $33.3 million at the time it was purchased. On September 11, 2009, the T-Bird Parties filed an answer and counterclaims against the Company and certain of its officers and affiliates. The answer generally denied T-Bird's liability on the loan, and the counterclaims restated the same claims made by the T-Bird Parties in their California action (as described below).

On February 20, 2009, the T-Bird Parties filed suit against the Company and certain of its officers and affiliates in the Superior Court of the State of California, County of Los Angeles. After certain legal proceedings, the T-Bird Parties filed an amended complaint on November 29, 2010. Like the original complaint, the T-Bird Parties' amended complaint claimed, among other things, that the Company made various misrepresentations and breached certain oral promises allegedly made by the Company and certain of its officers to the T-Bird Parties that the Company would acquire the restaurants owned by the T-Bird Parties and until that time the Company would maintain financing for the restaurants that would be nonrecourse to the T-Bird Parties. The amended complaint sought damages in excess of $100.0 million, exemplary or punitive damages, and other remedies.

On September 26, 2011, the Company entered into a settlement agreement (the "Settlement Agreement") with the T-Bird Parties to settle all outstanding litigation with T-Bird. In accordance with the terms of the Settlement Agreement, T-Bird agreed to pay $33.3 million to the Company to satisfy the T-Bird

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

promissory note that the Company purchased from T-Bird's former lender. This settlement payment was received in November 2011 and recorded as Recovery of note receivable from affiliated entity in the Company's Consolidated Statement of Operations for the year ended December 31, 2011.

Pursuant to the Settlement Agreement, the Company (through its indirect subsidiary, Outback Steakhouse of Florida, LLC) granted to California Steakhouse Developer, LLC, a T-Bird affiliate, for a period of 20 years, the right to develop and operate Outback Steakhouse restaurants as a franchisee in the State of California as set forth in a development agreement dated November 23, 2011 (the "Development Agreement").

Additionally, the Company has granted certain T-Bird affiliates (the "T-Bird Entities") the non-transferable right (the "Put Right") to require the Company to acquire all of the equity interests in the T-Bird Entities that own Outback Steakhouse restaurants and the rights under the Development Agreement for cash. The closing of the Put Right is subject to certain conditions including the negotiation of a transaction agreement reasonably acceptable to the parties, the absence of dissenters rights being exercised by the equity owners above a specified level and compliance with the Company's debt agreements. The Put Right is exercisable for a one-year period beginning on the date of closing of an initial public offering (an "IPO") of at least $100 million worth of shares of the Company's or an affiliate's common stock or if the Company or OSI has not completed an IPO, for a period of 60 days after execution of a definitive agreement to sell only the Outback Steakhouse brand and all of its Company-owned Outback Steakhouse restaurants.

If the Put Right is exercised, the Company will pay a purchase price equal to a multiple of the T-Bird Entities' earnings before interest, taxes, depreciation and amortization, subject to certain adjustments ("Adjusted EBITDA"), for the trailing 12 months, net of liabilities of the T-Bird Entities. The multiple is equal to 75% of the multiple of the Company's or affiliate's Adjusted EBITDA reflected in its stock price in the case of an IPO or, in a sale of the Outback Steakhouse brand, 75% of the multiple of the Adjusted EBITDA that the Company is receiving in the sale. The Company has a one-time right to reject the exercise of the Put Right if the transaction would be dilutive to its consolidated earnings per share. In such event, the Put Right is extended until the first anniversary of the Company's notice to the T-Bird Entities of such rejection. The Company has agreed to waive all rights of first refusal in its franchise arrangements with the T-Bird Entities in connection with a sale of all, and not less than all, of the assets, or at least 75% of the ownership of the T-Bird Entities.

Bain, Catterton, Founders and Board of Directors

Upon completion of the Merger, the Company entered into a management agreement with Kangaroo Management Company I, LLC (the "Management Company"), whose members are the Founders and entities affiliated with Bain Capital and Catterton. In accordance with the terms of the management agreement, the Management Company provides management services to the Company until the tenth anniversary of the consummation of the Merger, with one-year extensions thereafter until terminated. The Management Company receives an aggregate annual management fee equal to $9.1 million and reimbursement for out-of-pocket and other reimbursable expenses incurred by it, its members, or their respective affiliates in connection with the provision of services pursuant to the agreement. Management fees, including out-of-pocket and other reimbursable expenses, of $9.4 million, $11.6 million and $10.7 million for the years ended December 31, 2011, 2010 and 2009, respectively, were included in "General and administrative" expenses in the Company's Consolidated Statements of Operations. The management agreement includes customary exculpation and indemnification provisions in favor of the Management Company, Bain Capital and Catterton and their respective affiliates. The management agreement may be terminated by the Company, Bain Capital and Catterton at any time and will terminate automatically upon an initial public offering or a change of control unless the Company and the counterparty(s) determine otherwise.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company holds an 89.62% interest in OSI/Fleming's, LLC and a minority interest holder in the Fleming's Prime Steakhouse and Wine Bar joint venture holds a 7.88% interest in any Fleming's Prime Steakhouse and Wine Bar restaurants that opened prior to 2009. The remaining 2.50% is owned by AWA III Steakhouses, Inc., which is wholly-owned by a former Chairman of the Board of Directors (through December 31, 2011) and former named executive officer of the Company, through a revocable trust in which he and his wife are the grantors, trustees and sole beneficiaries. The Company assumed the minority interest holder's 7.88% ownership interest in any Fleming's Prime Steakhouse and Wine Bar restaurants that opened in 2009 or later and AWA III Steakhouses, Inc.'s interest remains at 2.50% for these restaurants.

Other

The Company holds a 50% ownership interest in the Brazilian Joint Venture, which was formed in 1998 for the purpose of operating Outback Steakhouse franchise restaurants in Brazil. The Company accounts for the Brazilian Joint Venture under the equity method of accounting. At December 31, 2011 and 2010, the net investment of $34.0 million and $31.0 million, respectively, was recorded in "Investments in and advances to unconsolidated affiliates, net," and a foreign currency translation adjustment of ($3.8) million and $3.5 million, respectively, was recorded in "Accumulated other comprehensive loss" in the Consolidated Balance Sheets and the Company's share of earnings of $6.8 million, $5.5 million and $2.7 million was recorded in "Income from operations of unconsolidated affiliates" in the Consolidated Statements of Operations for the years ended December 31, 2011, 2010 and 2009, respectively.

One of the current and one of the former owners of the Company's primary domestic beef cutting operation have a greater than 50% combined ownership interest in SEA Restaurants, LLC, the Company's franchisee of six Outback Steakhouse restaurants in Southeast Asia. These individuals have not received any distributions related to this ownership interest.

18. Variable Interest Entities

The Company consolidates variable interest entities in which the Company is deemed to have a controlling financial interest as a result of the Company having (1) the power to direct the activities that most significantly impact the entity's economic performance and (2) the obligation to absorb the losses or the right to receive the benefits that could potentially be significant to the variable interest entity. If the Company has a controlling financial interest in a variable interest entity, the assets, liabilities, and results of the operations of the variable interest entity are included in the consolidated financial statements (see Note 2).

Roy's and RY-8, Inc.

The Company's consolidated financial statements include the accounts and operations of its Roy's joint venture although it has less than majority ownership. The Company determined it is the primary beneficiary of the joint venture since the Company has the power to direct or cause the direction of the activities that most significantly impact the entity on a day-to-day basis such as decisions regarding menu development, purchasing, restaurant expansion and closings and the management of employee-related processes. Additionally, the Company has the obligation to absorb losses or the right to receive benefits of the Roy's joint venture that could potentially be significant to the Roy's joint venture. The majority of capital contributions made by the Company's partner in the Roy's joint venture, RY-8, have been funded by loans to RY-8 from a third party where OSI provides a guarantee (see Note 11). The guarantee is secured by a collateral interest in RY-8's membership interest in the joint venture. The carrying amounts of consolidated assets and liabilities included within the Company's Consolidated Balance Sheets for the Roy's joint venture were $26.2 million and $9.6 million, respectively, at December 31, 2011 and $28.7 million and $10.5 million, respectively, at December 31, 2010.

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company is also the primary beneficiary of RY-8 because its implicit variable interest in that entity, which is considered a de facto related party, indirectly receives the variability of the entity through absorption of RY-8's expected losses, and therefore the Company also consolidates RY-8. Since RY-8's $24.5 million line of credit became fully extended in 2007, the Company made interest payments, paid line of credit renewal fees and made capital expenditures for additional restaurant development on behalf of RY-8. The Company is obligated to provide financing, either through OSI's guarantee with a third-party institution or loans, for all required capital contributions and interest payments. Therefore, any additional RY-8 capital requirements in connection with the joint venture likely will be the Company's responsibility. The Company classifies OSI's $24.5 million contingent obligation as guaranteed debt and the portion of income or loss attributable to RY-8 is eliminated in the line item in the Consolidated Statement of Operations entitled "Net income (loss) attributable to noncontrolling interests." All material intercompany balances and transactions have been eliminated.

Paradise Restaurant Group, LLC

In September 2009, the Company sold its Cheeseburger in Paradise concept, which included 34 restaurants, for $2.0 million to PRG, an entity formed and controlled by the president of the concept. Based on the terms of the purchase and sale agreement, the Company determined at that time that it was the primary beneficiary and continued to consolidate PRG after the sale transaction.

Upon adoption of new accounting guidance for variable interest entities on January 1, 2010, the Company determined that it is no longer the primary beneficiary of PRG. As a result, the Company deconsolidated PRG on January 1, 2010. The Company determined that certain rights pursuant to a $2.0 million promissory note, which is fully reserved, owed to the Company by PRG are non-substantive participating rights, and as a result, the Company does not have the power to direct the activities that most significantly impact the entity. At December 31, 2011, the maximum undiscounted exposure to loss as a result of the Company's involvement with PRG is $25.8 million related to lease payments over a period of 11 years in the event that PRG defaults on these leases.

19. Segment Reporting

The Company operates restaurants under five brands that have similar economic characteristics, nature of products and services, class of customer and distribution methods, and the Company believes it meets the criteria for aggregating its six operating segments, which are the five brands and the Company's international Outback Steakhouse operations, into a single reporting segment in accordance with the applicable accounting guidance. Approximately 9% of the Company's total revenues for the year ended December 31, 2011 and 8% of the Company's total revenues for the years ended December 31, 2010 and 2009 were attributable to operations in foreign countries. Approximately 2% and 3% of the Company's total long-lived assets, excluding goodwill and intangible assets, were located in foreign countries where the Company holds assets as of December 31, 2011 and 2010, respectively.

20. Subsequent Events

We have evaluated subsequent events for potential recognition and/or disclosure through April 6, 2012, which is the date the consolidated financial statements included in this prospectus were filed with the Securities and Exchange Commission.

Effective March 14, 2012, the Company entered into a sale-leaseback transaction with two third party real estate institutional investors in which the Company sold 67 restaurant properties at fair market value for

BLOOMIN' BRANDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

$194.9 million. The Company then simultaneously leased these properties under nine master leases (collectively, the "REIT Master Leases"). The initial term of the REIT Master Leases are 20 years with four five-year renewal options. One renewal period is at a fixed rental amount and the last three renewal periods are generally based at the then-current fair market values. The sale at fair market value and subsequent leaseback qualified for sale-leaseback accounting treatment, and the REIT Master Leases are classified as operating leases. The Company will defer the recognition of the $42.7 million gain on the sale of certain of the properties over the initial term of the lease. In accordance with the applicable accounting guidance, the 67 restaurant properties are not classified as held for sale at December 31, 2011 since the Company will be leasing back the properties.

Effective March 27, 2012, New PRP entered into the 2012 CMBS Loan with German American Capital Corporation and Bank of America, N.A. The 2012 CMBS Loan totals $500.0 million and is comprised of a first mortgage loan in the amount of $324.8 million, collateralized by 261 of the Company's properties, and two mezzanine loans totaling $175.2 million. The loans have a maturity date of April 10, 2017. The first mortgage loan has five fixed rate components and a floating rate component. The fixed rate components bear interest at a rate of 2.37% to 6.81% per annum. The floating rate component bears interest at a rate per annum equal to the 30-day LIBOR rate (with a floor of 1%) plus 2.37%. The first mezzanine loan bears interest at a rate of 9.0% per annum, and the second mezzanine loan bears interest at a rate of 11.25% per annum. The proceeds from the 2012 CMBS Loan, together with the proceeds from the sale-leaseback transaction described above and excess cash held in PRP, were used to repay PRP's existing CMBS Loan. As a result of the 2012 CMBS Loan refinancing, the net amount repaid along with scheduled maturities within one year, $281.3 million, was classified as current at December 31, 2011. During the first quarter of 2012, the Company recorded a $2.9 million Loss on extinguishment of debt.

Report of independent auditors

To the Management and Members of
PGS Consultoria e Serviços Ltda.

We have audited the accompanying consolidated balance sheet of PGS Consultoria e Serviços Ltda. as of December 31, 2010, and the related consolidated statement of income, changes in members' equity and cash flows for the year then ended. These financial statements are the responsibility of the Company's Management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of PGS Consultoria e Serviços Ltda. as of December 31, 2010, and the consolidated results of its operations and its cash flows for the year then ended in conformity with accounting practices adopted in Brazil.

The accounting practices adopted in Brazil differ, in certain significant respects, from the accounting principles generally accepted in the United States of America. Information relating to the nature and effect of such differences is presented in Note 18 to the consolidated financial statements.

Rio de Janeiro, Brazil, March 25, 2011

ERNST & YOUNG TERCO
Auditores Independentes S.S.
CRC - 2SP 015.199/O-6 - F - RJ

/s/ Márcio F. Ostwald
Márcio F. Ostwald
Accountant CRC - 1RJ 086.202/O-4

PGS CONSULTORIA E SERVIÇOS LTDA.

Consolidated balance sheets
December 31, 2011 (unaudited), 2010 and 2009 (unaudited)
(In thousands of reais)

	2011 (unaudited)	2010	2009 (unaudited)
Assets			
Current assets			
Cash and cash equivalents (Note 5)	**21,832**	11,032	3,298
Trade accounts receivable (Note 6)	**15,553**	9,856	7,409
Inventories (Note 7)	**10,065**	10,460	9,487
Recoverable taxes	**226**	1,004	2,294
Advances from suppliers	**65**	359	370
Prepaid expenses	**902**	576	272
Other	**1,357**	790	807
Total current assets	**50,000**	34,077	23,937
Noncurrent assets			
Transactions with related parties (Note 10)	**129**	122	537
Judicial deposits (Note 12)	**4,003**	2,787	1,833
Deferred income tax and social contribution (Note 13)	**5,776**	3,129	2,219
	9,908	**6,038**	**4,589**
Property, fixtures and equipment (Note 8)	**101,467**	86,192	72,731
Intangible assets (Note 9)	**6,656**	3,122	3,244
	108,123	89,314	75,975
Total noncurrent assets	**118,031**	95,352	80,564
Total assets	**168,031**	129,429	104,501
Liabilities and members' equity			
Current liabilities			
Loans (Note 11)	**762**	165	283
Transactions with related parties (Note 10)	**577**	822	940
Trade accounts payable	**9,998**	8,743	6,531
Rental payable	**2,376**	2,096	1,430
Payroll, provisions and social charges	**10,866**	8,078	5,560
Income tax and social contribution payable (Note 11)	**2,557**	2,171	2,041
Taxes and contributions payable	**4,680**	3,245	3,364
Royalties payable (Note 10)	**1,867**	1,604	3,865
Franchise fees payable (Note 10)	**375**	205	79
Deferred rent	**114**	—	—
Current portion of accrued buyout liability	**332**	482	283
Accounts payable to minority partners	**1,077**	1,309	1,807
Other	**2,578**	1,716	1,460
Total current liabilities	**38,159**	30,636	27,643
Noncurrent liabilities			
Loans (Note 11)	**1,732**	—	165
Accrued buyout liability	**8,224**	5,271	3,023
Minority partner deposit	**2,591**	2,216	2,009
Transactions with related parties (Note 10)	**203**	528	1,430
Provision for contingency (Note 12)	**2,100**	—	—
CIDE payable (Note 12)	**3,538**	2,389	1,582
Deferred rent	**1,158**	—	—
Other	**345**	601	824
Total noncurrent liabilities	**19,891**	11,005	9,033
Members' equity (Note 14)			
Capital stock	**21,864**	21,864	21,864
Retained earnings	**88,117**	65,924	45,961
	109,981	87,788	67,825
Total liabilities and members' equity	**168,031**	129,429	104,501

See accompanying notes.

PGS CONSULTORIA E SERVIÇOS LTDA.

Consolidated income statements
For the years ended December 31, 2011 (unaudited), 2010 and 2009 (unaudited)
(In thousands of reais)

	2011 (unaudited)	2010	2009 (unaudited)
Gross revenue from sales	**406,455**	313,380	248,245
Gross revenue from services	**—**	1,035	902
	406,455	314,415	249,147
Taxes and deductions from sales	**(36,677)**	(28,466)	(22,991)
Net revenue from sales	**369,778**	285,949	226,156
Cost of sales	**(118,513)**	(86,942)	(71,933)
Gross profit	**251,265**	199,007	154,223
Operating income (expenses)			
Restaurant payroll expenses	**(80,148)**	(59,052)	(47,833)
Operating stores expenses	**(44,445)**	(33,638)	(28,793)
Royalties expenses (Note 10)	**(18,356)**	(14,576)	(11,228)
Administrative fee—credit cards/tickets	**(8,932)**	(6,972)	(5,330)
Depreciation and amortization	**(10,968)**	(9,439)	(7,734)
Loss on impairment of property, fixture and equipment (Note 5)	**(300)**	—	—
Pre-opening expenses	**(1,683)**	(1,597)	(1,430)
Corporate payroll expenses	**(11,943)**	(7,067)	(5,624)
General and administrative expenses	**(8,375)**	(12,662)	(8,252)
Financial income	**1,849**	791	2,694
Financial expense	**(1,086)**	(1,342)	(611)
Other operating expenses, net	**(25,967)**	(20,473)	(16,281)
	(210,354)	(166,027)	(130,422)
Income before income tax and social contribution	**40,911**	32,980	23,801
Current income tax and social contribution (Note 13)	**(21,365)**	(13,927)	(10,653)
Deferred income tax and social contribution (Note 13)	**2,647**	910	243
Net income for the year	**22,193**	19,963	13,391

See accompanying notes.

PGS CONSULTORIA E SERVIÇOS LTDA.

Consolidated statements of changes in members' equity
For the years ended December 31, 2011 (unaudited), 2010 and 2009 (unaudited)
(In thousands of reais)

	Capital stock	Retained earnings	Total
Balances at December 31, 2009 (unaudited)	21,864	45,961	67,825
Net income for the year	—	19,963	19,963
Balances at December 31, 2010	**21,864**	**65,924**	**87,788**
Net income for the year	—	22,193	22,193
Balances at December 31, 2011(unaudited)	**21,864**	**88,117**	**109,981**

See accompanying notes.

PGS CONSULTORIA E SERVIÇOS LTDA.

Consolidated statements of cash flows
For the years ended December 31, 2011 (unaudited), 2010 and 2009 (unaudited)
(In thousands of reais)

	2011 (unaudited)	2010	2009 (unaudited)
Cash flow from operating activities			
Income before income tax and social contribution	**40,911**	32,980	23,801
Adjustments for			
Depreciation and amortization (Note 8,9)	**10,968**	9,439	8,105
Provision for contingency (Note 12)	**2,100**	—	—
Provision for CIDE	**1,149**	807	727
Disposal of property, fixture and equipment and intangibles	**10**	163	40
Loss on impairment of property, fixture and equipment	**300**	—	—
Interest and monetary variation on loans	**—**	150	(642)
	55,438	43,539	32,031
Changes in assets and liabilities			
(Increase) decrease in assets			
Trade accounts receivable	**(5,697)**	(2,447)	(1,501)
Inventories	**395**	(973)	(1,552)
Recoverable taxes	**778**	1,290	(1,794)
Advances from suppliers	**294**	11	1,066
Prepaid expenses	**(326)**	(304)	7
Judicial deposits	**(1,216)**	(954)	(796)
Other assets	**(567)**	17	355
Increase (decrease) in liabilities			
Trade accounts payable	**1,255**	2,212	(465)
Rental payable	**280**	666	176
Payroll, provisions and social charges	**2,788**	2,518	1,368
Taxes and contributions payable	**1,435**	(119)	1,474
Royalties and franchise fees payable	**433**	(2,135)	(2,060)
Deferred rent	**1,272**	—	—
Accounts payable to minority partners	**(232)**	(498)	360
Other liabilities	**606**	33	(240)
Transactions with related parties, net	**(577)**	382	324
Income tax and social contribution paid	**(20,979)**	(13,797)	(9,936)
Net cash provided by operating activities	**35,380**	29,441	18,817
Cash flow from investing activities			
Purchase of property, fixture and equipment (Note 8)	**(26,275)**	(22,441)	(17,624)
Purchase of intangibles (Note 9)	**(3,812)**	(500)	(792)
Net cash used in investing activities	**(30,087)**	(22,941)	(18,416)
Cash flows from financing activities			
Proceeds from loans	**2,494**	—	—
Repayment of loans	**(165)**	(1,255)	(1,766)
Dividends paid to equity holders of the parent	**—**	—	(749)
Receipt of minority partner deposit and accrued buyouts	**3,178**	2,654	860
Interest paid	**—**	(165)	(330)
Net cash provided by (used in) financing activities	**5,507**	1,234	(1,985)
Increase (decrease) in cash and cash equivalents	**10,800**	7,734	(1,584)
Cash and cash equivalents at the end of the year (Note 5)	**21,832**	11,032	3,298
Cash and cash equivalents at the beginning of the year (Note 5)	**11,032**	3,298	4,882
Increase (decrease) in cash and cash equivalents	**10,800**	7,734	(1,584)

See accompanying notes.

PGS CONSULTORIA E SERVIÇOS LTDA.

Notes to consolidated financial statements
December 31, 2011 (unaudited), 2010 and 2009 (unaudited)
(In thousands of reais, except when mentioned otherwise)

1. Corporate information

PGS Consultoria e Serviços Ltda. ("PGS Consultoria" or the "Parent Company") was formed in May 1997 and is headquartered at Av. Dr. Chucri Zaidan, 80, 8th floor, in the City and State of São Paulo.

PGS Consultoria is the holding company of the CLS Companies (collectively referred as the "Group"). The main purpose of the CLS Companies ("CLS"), which is comprised of (i) CLS São Paulo Ltda. ("CLS SP"); (ii) CLS Restaurantes Rio de Janeiro Ltda. ("CLS RJ"); (iii) CLS Restaurantes Brasília Ltda. ("CLS BSB"); and (iv) CLS Restaurantes do Sul Ltda. ("CLS do Sul"), is to explore and manage restaurants under the trade mark "Outback Steakhouse" in Brazil.

"Outback Steakhouse" is an Australian steakhouse concept, open for dinner only in the United States of America, but for both lunch and dinner in some areas of the world, such as in Brazil. Although beef and steak items make up a good portion of the menu, the concept offers a variety of chicken, ribs, seafood, and pasta dishes. The Group's strategy is to differentiate its restaurants by emphasizing consistently high-quality food, concentrated service, generous portions at affordable prices and a casual atmosphere suggestive of the Australian Outback.

CLS operates 34 (thirty four) restaurants altogether, in sixteen different cities, being: (i) 8 (eight) in Rio de Janeiro and 1 (one) in Niterói, State of Rio de Janeiro, and 1 (one) in Vitoria, State of Espirito Santo (CLS RJ); (ii) 10 (ten) in São Paulo, 2 (two) in Campinas, 1(one) in Barueri, 1 (one) in São Bernado do Campo, 1(one) in São Caetano do Sul, 1(one) in São José dos Campos and 1 (one) in Ribeirão Preto, State of São Paulo (CLS SP); (iii) 2 (two) in Brasilia, Federal District, 1 (one) in Belo Horizonte, State of Minas Gerais, 1 (one) in Salvador, State of Bahia, and 1 (one) in Goiânia, State of Goiás (CLS BSB); and (iv) 1 (one) in Porto Alegre, State of Rio Grande do Sul and 1 (one) in Curitiba, State of Paraná (CLS do Sul).

These consolidated financial statements were approved by the Parent Company's management on March 25, 2011.

2. Basis of preparation

The preparation of the accompanying consolidated financial statements requires management to make certain estimates and assumptions that affect the reported amounts. These estimates were determined based on objective and subjective factors, considering management's judgment to determine the adequate amounts to be recorded in the consolidated financial statements.

Significant items subject to such estimates and assumptions include selection of useful lives of property, fixtures and equipment and analysis of their recoverability in operations, credit risk assessment to determine the allowance for doubtful accounts, as well as analysis of other risks to determine other provisions, including those set up for contingencies. Settlement of transactions involving these estimates may result in amounts significantly different from those recorded in the consolidated financial statements due to the uncertainties inherent in the estimation process. The Group reviews its estimates and assumptions at least annually.

The consolidated financial statements were prepared and are presented in accordance with the accounting practices adopted in Brazil, which comprise the pronouncements, interpretations and guidance issued by the Brazilian Accounting Pronouncements Committee (*Comitê de Pronunciamentos Contábeis* ("CPC")), which are converged to the International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board ("IASB").

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2. Basis of preparation (Continued)

The consolidated financial statements presented herein do not include the Parent Company's stand alone financial statements and are not intended to be used for statutory purposes.

Accounting practices adopted in Brazil ("BR GAAP") differ in significant respects from accounting principles generally accepted in the United States of America ("US GAAP"). A description of certain differences on cash flows from BR GAAP to US GAAP is provided in Note 18.

3. Basis of consolidation

The consolidated financial statements include the operations of PGS Consultoria and the "CLS Companies". The details of the participation in CLS Companies, comprised of CLS SP, CLS RJ, CLS BSB and CLS do Sul, are summarized as follow:

	2011 (unaudited)		2010		2009 (unaudited)	
	Capital stock(1)	Retained earnings(2)	Capital stock(1)	Retained earnings(2)	Capital stock(1)	Retained earnings(2)
CLS SP	**89.96%**	**100%**	91.60%	100%	90.78%	100%
CLS RJ	**96.22%**	**100%**	96.08%	100%	96.72%	100%
CLS BSB	**95.51%**	**100%**	95.63%	100%	95.72%	100%
CLS do Sul	**97.17%**	**100%**	97.17%	100%	97.17%	100%

(1) The capital stock of the CLS Companies is shared primarily between PGS Consultoria, proprietors (stores' managing partners) and JVs (operating partners who supervise the Rio de Janeiro, São Paulo, Brasília and South Region stores), in accordance with their respective interests.

(2) According to each individual partners' association document known as "Protocolo de Entendimentos" (Memorandum of Understanding), dividends are distributed to minority partners (proprietors and JV's) based on certain criteria, such as a percentage of the pre-tax income results of their respective restaurants and supervision areas and other, being the remaining undistributed earnings 100% of PGS Consultoria. Such dividends are recognized as compensation expense in the income statement in the period earned by the minority partners.

The financial statements of the CLS Companies are prepared for the same reporting period as the Parent Company. Accounting policies of CLS Companies have been adjusted to ensure consistency with the accounting policies adopted by the Group. All intra-group balances, income and expenses, unrealized gain and losses and dividends resulting from intra-group transactions have been eliminated in consolidation.

Basis of consolidation from January 1, 2010

Capital contributions to the CLS Companies received from the minority partners are recorded as long-term liabilities in the line item "minority partner deposit". Monthly payments made pursuant to the "Protocolo de Entendimentos" (Memorandum of Understanding) are paid as dividends and are recognized as compensation expense in the period earned by the minority partners.

Basis of consolidation prior to January 1, 2010

The above-mentioned requirements were applied on a retrospective basis.

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4. Summary of significant accounting policies

4.1. Revenue recognition

Revenue is recognized to the extent that it is probable that the economic benefits are likely to flow to the Group and the revenue can be reliably measured, regardless of when payment is made.

Revenue is measured at the fair value of the consideration received or receivable, net of discounts and taxes.

Revenue from sale is recognized when the significant risks and rewards have passed to the buyer. No revenue is recognized if there are significant uncertainties regarding its realization.

4.2. Foreign currency translation

The consolidated financial statements are presented in Brazilian Reais, which is also the Parent Company and the CLS Companies' functional currency.

Foreign currency transactions are initially recorded by the Group entities at the functional currency exchange rate prevailing on the date of the transaction.

Monetary assets and liabilities denominated in foreign currency are translated at the functional currency exchange rate on the reporting date. All differences are recorded to the income statement.

4.3. Financial instruments

Financial instruments are only recognized as of the date when the Group becomes a part of the contract provisions of financial instruments. Once recognized, they are initially recorded at their fair value plus transaction costs that are directly attributable to their acquisition or issuance, except in the case of financial assets and liabilities classified in the category at fair value through profit or loss ("P&L"), when such costs are directly charged to P&L for the period. Subsequent measurement of financial assets and liabilities is determined by their classification at each balance sheet.

The Group's most significant financial assets are cash and cash equivalents and accounts receivable, whereas the main financial liabilities are comprised of trade accounts payable and loans.

4.4. Cash and cash equivalents

Cash and cash equivalents include bank account balances and short-term investments redeemable within three months or less from the date of acquisition, subject to insignificant risk of change in their market value. The short-term investments included as cash equivalents are mostly classified as "financial assets at fair value through P&L".

4.5. Trade accounts receivable

Trade accounts receivable are shown at realization amounts, and refer primarily to the amounts to be received from credit cards companies due to the sales in the restaurants. No allowance for doubtful accounts has been recorded due to the remote chances of losses on receivables.

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4. Summary of significant accounting policies (Continued)

4.6. Inventories

Inventories are valued at the lower of cost and net realizable value. Inventories consist of food and beverages and restaurant supplies, and are stated at the average purchase cost.

4.7. Property, fixtures and equipment

Property, fixtures and equipment are stated at acquisition cost, net of accumulated depreciation. Improvements to leased properties are depreciated over the lease term. Depreciation is computed on the straight-line method over the following estimated useful lives:

Furniture and fixtures	10 years
Computers	5 years
Equipment and facilities	10 years
Buildings	25 years
Leasehold improvements	10 to 15 years

The CLS companies capitalize all direct costs incurred to construct its restaurants. Upon restaurant opening, these costs are depreciated and charged to the consolidated statements of income. The amount of interest capitalized in connection with restaurant construction was immaterial in all periods.

An item of property, fixtures and equipment is derecognized upon disposal or when no future economic benefits are expected from its use or disposal. Any gains or losses arising on derecognition of the asset is included in the consolidated statements of income when the asset is derecognized.

The assets' residual value, useful lives and methods of depreciation are reviewed at each financial year end, and adjusted prospectively, if appropriate.

4.8. Intangible assets

Intangible assets consist primarily of software and franchise fees. Intangible assets acquired separately are measured on initial recognition at cost. After the initial recognition, intangible assets are presented at cost, net of accrued amortization and impairment losses.

The useful lives of intangible assets are assessed as either finite or indefinite. Intangible assets with finite lives are amortized over the useful economic life. Both finite and indefinite intangible assets are assessed for impairment whenever there is an indication that the intangible asset may be impaired.

Gains or losses arising from derecognition of an intangible asset are included in the consolidated statements of income when the asset is derecognized.

4.9. Loans

Loans are recognized initially at fair value, plus directly attributable transaction costs. Following the initial recognition, loans subject to interest are measured at the amortized cost using the effective interest rate method. Gains and losses are recognized in the income statement at the time when the liabilities are written off, as well as during the amortization process according to the effective interest rate method.

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4. Summary of significant accounting policies (Continued)

4.10. Other assets and liabilities

Liabilities are recognized in the balance sheet when the Group has a legal or constructive obligation arising from past events, the settlement of which is expected to result in an outflow of economic benefits. Provisions are recorded reflecting the best estimates of the risk involved. An asset is recognized in the balance sheet when it is likely that its economic benefits will flow to the Group and its cost or value may be safely measured.

Assets and liabilities are classified as current when their realization or settlement is likely to occur within the following twelve months. Otherwise they are stated as noncurrent.

4.11. Taxation

Taxes on sales

Revenues from sales and services are subject to the following taxes and contributions, at the rates shown below:

State VAT—ICMS	From 2% to 25%
Social Contribution Tax on Gross Revenue for Social Integration Program—PIS	From 0.65 to 1.65%
Social Contribution Tax on Gross Revenue for Social Security Funding—COFINS	From 3.00 to 7.60%
Service Tax—ISS	5%

The above charges are presented as deductions from sales in the consolidated statements of income.

Income tax and social contribution—current

Taxation on income includes the income tax and the social contribution. CLS SP, CLS RJ and CLS Brasília record the income tax and social contribution based on taxable income (previously based on the presumed profits method). Income tax is calculated at a rate of 15%, plus a surtax of 10% on taxable profit exceeding R$ 240 over 12 months, whereas social contribution tax is computed at a rate of 9% on taxable profit, both recognized on an accrual basis. Therefore, additions to the book profit of expenses, temporarily nondeductible, or exclusions from revenues, temporarily nontaxable, for computation of current taxable profit generate deferred tax credits or debits.

The computation for income tax and social contribution for the CLS Sul was calculated according with the presumed profits method, which basis and rates are set forth in the tax legislation in force. CLS BSB was included in the presumed profits method until December 31, 2010.

Advances or amounts subject to offset are stated in current or non-current assets, according to the estimate of their realization.

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4. Summary of significant accounting policies (Continued)

4.11. Taxation *(Continued)*

Income tax and social contribution—deferred

Deferred income tax and social contribution are generated by tax loss carryforwards and by temporary differences on the balance sheet date between the tax basis of assets and liabilities and their book values.

The book value of deferred tax assets is reviewed at each reporting date and reduced to the extent that it is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred tax asset to be utilized. Unrecognized deferred tax assets are reassessed at each reporting date and are recognized to the extent that it has become probable that future taxable profits will allow the deferred tax asset to be recovered.

Deferred income tax and social contribution assets and liabilities are measured at the tax rates that are expected to apply in the year when the asset is realized or the liability is settled, based on tax rates (and tax laws) that have been enacted at the reporting date.

Deferred tax assets and liabilities are offset if a legally enforceable right to offset exists and the deferred taxes relate to the same taxable entity and the same taxation authority.

4.12. Judgments, estimates and significant accounting assumptions

Judgments

The preparation of the consolidated financial statements requires management to make judgments and estimates, and adopt assumptions that affect the amounts stated for revenues, expenses, assets and liabilities, as well as the disclosures of contingent liabilities on the financial statement date.

However, uncertainties regarding these estimates and assumptions might lead to results that require significant adjustments to the book value of an asset or liability affected in future periods.

Estimates and assumptions

Major assumptions related to sources of uncertainty in future estimates and other relevant sources of uncertainty in estimates on the balance sheet date that entail significant risk of material adjustment to the book value of assets and liabilities in the next financial year are discussed as follows.

Impairment loss on nonfinancial assets

Impairment loss exists when the carrying value of an asset or cash-generating unit exceeds its recoverable amount, which is the higher of fair value less sales costs and value in use. The fair value less sales cost is calculated based on available information about similar asset sales transactions or market-observable prices less additional costs to dispose of the asset item. In 2011 the Company recorded impairment loss in the amount of R$300 related to leasehold improvements located in office spaces that the Company plans to vacate. No other evidence indicating that the asset net book values exceeding their recoverable amounts has been identified.

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4. Summary of significant accounting policies (Continued)

4.12. Judgments, estimates and significant accounting assumptions *(Continued)*

Estimates and assumptions (Continued)

Taxes

Uncertainties exist with respect to the interpretation of complex tax regulations and the amount and timing of future taxable income. The Group establishes provisions, based on reasonable estimates, for possible consequences of audits by the tax authorities. The amount of such provisions is based on several factors, such as experience of previous tax audits and differing interpretations of tax regulations by the taxable entity and the responsible tax authority.

Deferred tax assets are recognized for all unused tax losses to the extent that it is probable that taxable profit will be available against which the losses can be utilized. Significant management judgment is required to determine the amount of deferred tax assets that can be recognized, based upon the likely timing and the level of future taxable profits together with future tax strategies.

The Group has tax loss carryforwards for both income tax and social contribution amounting approximately to R$2,197 at December 31, 2011 (R$2,100 in 2010). These losses, which relate to the Parent Company that has a history of taxable losses, do not expire and may not be used to offset taxable income elsewhere in the Group. Tax-offsettable losses generated in Brazil may be offset against future taxable profit up to 30% of the taxable profit determined in any given year. CLS SP, CLS RJ and CLS Brasília have no tax losses, but taxable temporary differences.

If the Group was able to recognize all unrecognized deferred tax assets, profit would increase by R$1,143 at December 31, 2011 (R$705 in 2010). Further details on deferred taxes are disclosed in Note 13.3.

Provisions

Provisions are recognized when the Group has a present obligation (legal or constructive) as a result of a past event, and it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. The expense relating to any provision is presented in the income statement net of any reimbursement.

Provisions are recorded in an amount considered sufficient by the Group's management, supported by the opinion of their legal advisors, to cover probable losses on lawsuits. Further details on contingencies are disclosed in Note 12.

4.13. Minority partner distributions and buyouts

The proprietors and the JVs are required to sign a five to seven-year agreement ("Protocolo de Entendimentos"—Memorandum of Understanding) and to purchase an ownership interest in the CLS Companies. This ownership interest gives the proprietor and the JVs the right to receive distributions based on a percentage of the after-tax income results of their respective restaurants for the duration of the agreement.

PGS Consultoria has the option to purchase the minority partners' interests after a five to seven-year period based on the terms specified in the agreement.

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4. Summary of significant accounting policies (Continued)

4.13. Minority partner distributions and buyouts (Continued)

The Group estimates future purchases of proprietors' and JVs' interests using current information on restaurant performance and records the minority partner obligations in the line item "accrued buyout liability" in the consolidated balance sheets. In the period the Group purchases the proprietors' and JVs' interests, an adjustment is recorded to recognize any remaining expense associated with the purchase and reduce the related accrued buyout liability.

Distributions made to proprietors and JVs are included in "restaurant payroll expenses" and "general and administrative expenses," respectively, in the consolidated statements of income.

4.14 Operating Leases

Rent expense for the Company's operating leases, which generally have escalating rentals over the term of the lease and may include potential rent holidays, is recorded on a straight-line basis over the initial lease term and those renewal periods that are reasonably assured. The initial lease term includes the "build-out" period of the Company's leases, which is typically before rent payments are due under the terms of the lease. The difference between rent expense and rent paid is recorded as deferred rent and is included in the Consolidated Balance Sheets. Payments received from landlords as incentives for leasehold improvements are recorded as deferred rent and are amortized on a straight-line basis over the term of the lease as a reduction of rent expense. Lease termination fees, if any, and future obligated lease payments for closed locations are recorded as an expense in the period that they are incurred.

4.15. Pre-Opening Expenses

Non-capital expenditures associated with opening new restaurants are expensed as incurred.

5. Cash and cash equivalents

	2011 (unaudited)	2010	2009 (unaudited)
Cash	**60**	50	60
Bank deposits	**8,228**	1,917	3,236
Short term investments	**13,544**	9,065	2
	21,832	11,032	3,298

Cash equivalents consist of investments that are readily convertible to cash with an original maturity date of three months or less.

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6. Trade accounts receivable

Trade accounts receivable consist mainly of amounts receivable from credit card companies, as follows:

	2011 (unaudited)	2010	2009 (unaudited)
Redecard (Mastercard/Diners/Credicard)	**3,884**	2,604	2,012
Visanet (Visa/Visa electron)	**8,722**	5,501	4,355
American express	**729**	366	473
Other	**2,218**	1,385	569
	15,553	9,856	7,409

7. Inventories

	2011 (unaudited)	2010	2009 (unaudited)
Kitchen utensils	**1,768**	1,666	1,551
Meat and Chicken	**1,184**	969	736
Dairy	**251**	245	207
Pagers	**342**	252	282
Distilled	**321**	256	240
Beverage	**324**	309	261
Vegetables	**149**	134	103
Wine	**282**	148	177
Beer	**149**	122	89
Shrimp	**68**	40	37
Fish	**111**	66	48
Inventories held by third-parties	**3,634**	3,530	3,707
Imports in transit	**298**	717	559
Other	**1,184**	2,006	1,490
	10,065	10,460	9,487

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8. Property, fixtures and equipment

	Land	Furniture and fixture	Computers	Equipment and facilities	Buildings	Leasehold improvements	Construction in progress	Total
Cost								
Balances at December 31, 2008 (unaudited)	3,363	11,142	4,224	24,568	33,408	7,729	73	84,507
Additions	—	2,168	999	5,021	7,225	951	1,260	17,624
Write-offs	—	(18)	—	—	—	—	(13)	(31)
Balances at December 31, 2009 (unaudited)	3,363	13,292	5,223	29,589	40,633	8,680	1,320	102,100
Additions	—	2,301	1,153	7,148	8,495	1,778	1,566	22,441
Transfer	—	1,280	90	804	—	712	(2,886)	—
Balances at December 31, 2010	3,363	16,873	6,466	37,541	49,128	11,170	—	124,541
Additions	**—**	**1,156**	**587**	**5,953**	**2,975**	**8,521**	**7,083**	**26,275**
Transfer	**—**	**3,043**	**(41)**	**3,193**	**8,265**	**(7,377)**	**(7,083)**	**—**
Balances at December 31, 2011 (unaudited)	**3,363**	**21,072**	**7,012**	**46,687**	**60,368**	**12,314**	**—**	**150,816**
Depreciation								
Balances at December 31, 2008 (unaudited)	—	(3,445)	(2,041)	(7,977)	(5,583)	(2,424)	—	(21,470)
Additions	—	(1,207)	(759)	(2,750)	(2,466)	(717)	—	(7,899)
Balances at December 31, 2009 (unaudited)	—	(4,652)	(2,800)	(10,727)	(8,049)	(3,141)	—	(29,369)
Additions	—	(1,283)	(825)	(3,109)	(3,098)	(750)	—	(9,065)
Write-offs	—	—	—	—	85	—	—	85
Balances at December 31, 2010	—	(5,935)	(3,625)	(13,836)	(11,062)	(3,891)	—	(38,349)
Additions		**(1,597)**	**(831)**	**(3,592)**	**(3,763)**	**(917)**	**—**	**(10,700)**
Impairment	**—**	**—**	**—**	**—**	**—**	**(300)**	**—**	**(300)**
Balances at December 31, 2011 (unaudited)	**—**	**(7,532)**	**(4,456)**	**(17,428)**	**(14,825)**	**(5,108)**	**—**	**(49,349)**
Residual value								
Balances at December 31, 2009 (unaudited)	3,363	8,640	2,423	18,862	32,584	5,539	1,320	72,731
Balances at December 31, 2010	3,363	10,938	2,841	23,705	38,066	7,279	—	86,192
Balances at December 31, 2011 (unaudited)	**3,363**	**13,540**	**2,556**	**29,259**	**45,543**	**7,206**	**—**	**101,467**
Average annual depreciation rate	**—**	**10%**	**20%**	**10%**	**4%**	**6.7% to 10%**	**—**	**—**

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8. Property, fixtures and equipment (Continued)

In 2011 the Company recorded impairment loss in the amount of R$300 related to leasehold improvements located in office spaces that the Company plans to vacate. No other evidence indicating that the asset net book values exceeding their recoverable amounts has been identified.

9. Intangible assets

	Software	Franchise fees	Other	Total
Cost				
Balances at December 31, 2008 (unaudited)	—	2,215	1,119	3,334
Additions	190	493	109	792
Write-offs	—	—	(9)	(9)
Balances at December 31, 2009 (unaudited)	190	2,708	1,219	4,117
Additions	93	374	33	500
Write-offs	—	(57)	(191)	(248)
Balances at December 31, 2010	283	3,025	1,061	4,369
Additions	**2,416**	**431**	**965**	**3,812**
Write-offs	**—**	**(6)**	**(4)**	**(10)**
Balances at December 31, 2011 (unaudited)	**2,699**	**3,450**	**2,022**	**8,171**
Amortization				
Balances at December 31, 2008 (unaudited)	—	(604)	(63)	(667)
Additions	—	(120)	(86)	(206)
Balances at December 31, 2009 (unaudited)	—	(724)	(149)	(873)
Additions	(148)	(140)	(86)	(374)
Balances at December 31, 2010	(148)	(864)	(235)	(1,247)
Additions	**—**	**(154)**	**(114)**	**(268)**
Balances at December 31, 2011 (unaudited)	**(148)**	**(1,018)**	**(349)**	**(1,515)**
Residual value				
Balances at December 31, 2009 (unaudited)	190	1,984	1,070	3,244
Balances at December 31, 2010	135	2,161	826	3,122
Balances at December 31, 2011 (unaudited)	**2,551**	**2,432**	**1,673**	**6,656**
Average annual amortization rate	20%	5%	20%	

Franchise fee

The Group has a franchise agreement with Outback Steakhouse International ("OSI"), which expires generally 20 years after the date restaurant is opened. The Group has the option to renew the agreement for one consecutive term of 20 years, subject to certain conditions. Pursuant to the Agreement, the Group must operate the restaurant in strict conformity with the methods, standards and specifications prescribed by OSI, regarding training, staff, health standards, suppliers and advertising, among others. The Group is contractually bound to pay franchise fees of US$ 40 at the opening of each restaurant, and monthly royalties of 4% to 5% of net sales after the restaurant is opened. Royalties fees are charged to expenses as incurred.

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10. Transactions with related parties

On December 31, 2011 (unaudited), 2010 and 2009 (unaudited) the balance of transactions with related parties can be summarized as follows:

	Assets			Liabilities		
	2011 (unaudited)	2010	2009 (unaudited)	2011 (unaudited)	2010	2009 (unaudited)
Current						
Loans						
Outback Steakhouse International	**—**	—	—	**577**	822	940
Royalties payable						
Outback Steakhouse International	**—**	—	—	**1,867**	1,604	3,865
Franchise fees						
Outback Steakhouse International	**—**	—	—	**375**	205	79
Total current	**—**	—	—	**2,819**	2,631	4,884
Noncurrent						
Accounts receivable/payable						
Outback Steakhouse International	**19**	18	7	**57**	11	32
Starbucks Brasil Comércio de Cafés Ltda.	**110**	104	530	**—**	—	—
	129	122	537	**57**	11	32
Loans						
Outback Steakhouse International	**—**	—	—	**—**	505	1,374
Other	**—**	—	—	**146**	12	24
Total noncurrent	**129**	122	537	**203**	528	1,430
Total	**129**	122	537	**3,022**	3,159	6,314

Until 2010, PGS Consultoria provided administrative and/or technical services to Starbucks Brasil Comércio de Cafés Ltda., which were billed according to the agreements between the parties. The service revenues were R$ 1,035 in 2010 and R$ 908 in 2009 (unaudited).

	2011 (unaudited)		2010		2009 (unaudited)	
	Royalties (i)	Financial results (ii)	Royalties (i)	Financial results (ii)	Royalties (i)	Financial results (ii)
Outback Steakhouse International	**18,356**	**124**	14,576	(118)	11,228	706
	18,356	**124**	14,576	(118)	11,228	706

(i) Refer to the royalties calculated on the net revenues posted by the stores.
(ii) Refer, basically, to the interest expenses and exchange variation on Outback Steakhouse International loans.

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10. Transactions with related parties (Continued)

Outback Steakhouse International—"OSI"

The transactions between the Group and OSI consist of:

- The Group is contractually bound to pay franchise fees of US$ 40 at the opening of each restaurant and monthly royalties of 4% to 5% of net sales after the restaurant is opened. Monthly royalty fees are charged to expenses as incurred.

- The original principal balance of loans provided by OSI totaled US$ 3,200. The proceeds were substantially used to build the stores in Moema, Center Norte and Market Place, located in the city of São Paulo; Leblon and Norte Shopping, located in the city of Rio de Janeiro; and Flamboyant, located in the city of Goiania. The outstanding balance as of December 31, 2011 (unaudited), 2010 and 2009 (unaudited) can be summarized as follows:

	2011 (unaudited)			2010		
Description	Current	Noncurrent	Total	Current	Noncurrent	Total
Promissory Note—US$ 400—BZ 13	—	—	—	80	5	85
Promissory Note—US$ 400—BZ 14	**83**	—	**83**	133	67	200
Promissory Note—US$ 600—BZ 15	**146**	—	**146**	203	133	336
Promissory Note—US$ 600—BZ 16	**146**	—	**146**	203	133	336
Promissory Note—US$ 600—BZ 18	**202**	—	**202**	203	167	370
Total	**577**	—	**577**	822	505	1,327

	2009 (unaudited)		
Description	Current	Noncurrent	Total
Promissory Note—US$ 600—BZ 11	35	—	35
Promissory Note—US$ 400—BZ 13	139	86	225
Promissory Note—US$ 400—BZ 14	139	209	348
Promissory Note—US$ 600—BZ 15	209	348	557
Promissory Note—US$ 600—BZ 16	209	348	557
Promissory Note—US$ 600—BZ 18	209	383	692
Total	940	1,374	2,314

At December 31, 2011 the main terms of outstanding loans can be summarized as follows:

Description	Amount	Index	Interest rate	Maturity date
Promissory Note	US$ 400	US Dollars	7% p.a	July, 2012
Promissory Note	US$ 600	US Dollars	7% p.a	September, 2012
Promissory Note	US$ 600	US Dollars	7% p.a	September, 2012
Promissory Note	US$ 600	US Dollars	7% p.a	November, 2012

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10. Transactions with related parties (Continued)

Distribution of Profits—CLS Companies

Dividends paid to proprietors (stores' managing partners) and to JVs (operating partners who supervise the Rio de Janeiro, São Paulo, Brasília and South Region stores) are distributed according to the criteria stated within each individual partner's association document referred to as "Protocolo de Entendimento" (Memorandum of Understanding).

Partners are paid dividends according to a percentage of the after-tax income results ("ATI") of their respective restaurants, as per their P&L statements. It is 7.5% of ATI for managing partners and 3.5% to 6% for operating partners. Members of top management have also received dividends based on certain monthly fixed amounts stipulated in the previous year's budget submitted to and approved by OSI.

Based on the above and in accordance with local laws allowing actual distributions to be different than the exact amount owed to a partner, based on his/her members' position, the CLS Companies distributed the following amounts to its partners during 2011 (unaudited), 2010, and 2009 (unaudited):

	2011 (unaudited)	2010	2009 (unaudited)
Proprietors (stores' managing partners)	**2,675**	1,495	1,190
JVs (operating partners)	**1,950**	1,782	1,296
Executives	**2,113**	3,241	2,052
	6,738	6,518	4,538

Dividends paid to the minority partners are recognized as compensation expense in the consolidated statements of income in the period earned.

11. Loans

	2011 (unaudited)			2010		
Description	Current	Noncurrent	Total	Current	Noncurrent	Total
Banco do Brasil S.A. (i)	**—**	**—**	**—**	165	—	165
Banco Nordeste Brasil S.A.(ii)	**762**	**1,732**	**2,494**	—	—	—
Total	**762**	**1,732**	**2,494**	165	—	165

	2009 (unaudited)		
Description	Noncurrent	Noncurrent	Total
Banco do Brasil S.A. (i)	283	165	448
Banco Nordeste Brasil S.A. (ii)	—	—	—
Total	283	165	448

(i) The principal amount was subject to annual interest of 14%. The guarantees pledged in connection with the Banco do Brasil S.A. loan were substantially comprised of properties owned by PGS Consultoria, and improvements made in rented properties financed through this contract, amounting to approximately R$ 1,500. The Banco do Brasil loan matured in 2011.

(ii) On January 10, 2011, CLS Brasília entered into a loan agreement with Banco Nordeste Brasil S.A. The principal amount of the loan on that date was R$ 2,494 and is to be paid in 36 monthly installments of principal and interest beginning on February 10, 2012 and ending on January 10, 2015. Interest charges are waived for the period January 10, 2011 to January 10, 2012. The principal amount is subject to annual interest of 9.5%. The loan is guaranteed by PGS Consultoria.

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12. Contingencies

The Group is involved in tax, civil and labor lawsuits arising in the normal course of operations. These matters are discussed at the administrative and judicial levels. Judicial deposits related to these matters are made, when applicable. The Company accrues for loss contingencies that are probable and reasonably estimable.

The provision amount of R$ 2,100 was recorded as of December 31, 2011 and is related mainly by approximately R$2,000 to uniforms allowance that was not subjected to social contribution and withholding income tax. Such provision covers all CLS companies.

At December 31, 2011 (unaudited), 2010 and 2009 (unaudited), the Group's external legal advisors estimate the chances of a final unfavorable outcome as "possible" in certain matters, primarily related to labor and tax claims. The total possible contingencies that are uncertain at this time and could have a material adverse effect on the Company's financial condition are R$11,600 as of December 31, 2011.

The three most significant cases for the CLS Companies involve amounts totaling approximately R$ 4,600 (CLS SP). These suits were filed by Secretaria de Fazenda do Estado de São Paulo seeking additional payments for ICMS under the taxpayer substitution system in addition to fines for noncompliance with other accessory obligations. The most significant case for PGS Consultoria, involves an amount totaling approximately R$ 2,900. In this matter the tax authorities are questioning the payment of income tax and social contribution.

The Group is questioning a matter related to the validity of the social contribution tax for intervention in the economic order (CIDE), established by law, on the remittance of royalties. Management, supported by preliminary injunctions granted in its favor, is judicially paying this tax. The judicial deposit related to this matter amounts to R$ 4,003 at December 31, 2011 (unaudited), (R$ 2,787 in 2010 and R$ 1,833 in 2009 (unaudited)). The Group maintains a provision related to this tax, which is presented in noncurrent liabilities in accordance with the expected date of outcome of these proceedings.

13. Income tax and social contribution

CLS do Sul has elected to calculate income tax and social contribution using the "presumed profits" method. Under the "presumed profits" method, taxable income is calculated as an amount equal to different percentages of gross revenue based on the activities of the taxpayer.

Under current Brazil tax law, the percentages of the CLS Companies' gross revenues are 8% for calculating income tax, and 12% for social contribution. The Parent Company, CLS SP, CLS RJ, and CLS BSB calculate their income tax and social contribution using the "actual profits" method, which is based on total taxable income.

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13. Income tax and social contribution (Continued)

Tax loss carry forwards through December 31, 2011 (unaudited) and 2010 relating to income tax and social contributions were approximately R$2,764 and R$ 2,100, respectively, comprised entirely of fiscal results of the Parent Company. These tax loss carry forwards can offset future taxable income. Brazilian tax laws restrict the offset of tax losses to 30% of taxable profits on an annual basis. These losses can be used indefinitely and are not impacted by a change in ownership of the Parent Company.

13.1. Components of income tax and social contribution provision

	2011 (unaudited)	2010	2009 (unaudited)
Current income tax and social contribution	**21,365**	13,927	10,653
Deferred income tax and social contribution	**(2,647)**	(910)	(243)
	18,718	13,017	10,410

13.2. Reconciliation income tax and social contribution provision at statutory rate to effective rate

	2011 (unaudited)	2010	2009 (unaudited)
Income before income tax and social contribution	**40,911**	32,980	23,801
Income tax and social contribution at statutory rate of 34%	**13,910**	11,213	8,092
Benefits of utilizing presumed profits method of calculating of income tax and social contribution for CLS do Sul (also for CLS BSB in 2010)	**(738)**	(2,033)	(426)
Non-deductible expenses for minority partner distributions and buyouts	**3,398**	3,354	2,200
Other non-deductible expenses	**1,782**	487	650
Provisions arising from write-down of tax losses	**438**	44	—
Benefit of utilizing previously written-down tax losses	**—**	—	(58)
Benefits of income excluded from income tax surcharge	**(72)**	(48)	(48)
Effective income tax and social contribution provision	**18,718**	13,017	10,410
Effective rate	**45.8%**	39.5%	43.7%

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13. Income tax and social contribution (Continued)

13.3 Components of deferred income tax and social contribution

	2011 (unaudited)	2010	2009 (unaudited)
Tax loss carry forward	**940**	705	661
Temporary differences			
Pre-opening costs	**2,308**	2,135	1,782
Provision for contingency	**571**	—	—
Lease	**413**	—	—
Provision for CIDE	**1,026**	667	437
Provision for bonus	**1,112**	136	—
Other	**449**	191	—
	6,819	3,834	2,880
Unrecognized deferred tax assets	**(1,043)**	(705)	(661)
	5,776	3,129	2,219

Deferred income tax and social contribution assets, resulting from tax loss carry forwards and temporary differences, are recorded taking into consideration the probable realization thereof, based on projected future results of operations considering internal assumptions and future economic scenarios that are subject to change. These projections indicate that future operating results will provide taxable income for CLS SP, CLS RJ and CLS BSB. Therefore the Group's management expects to realize the deferred tax assets. The unused credits reflect the assessment of the likelihood of realizing the deferred tax asset comprised of the tax loss carry forwards attributable to the Parent Company.

14. Members' equity

14.1. Capital stock

At December 31, 2011 (unaudited), 2010, and 2009 (unaudited) the Parent Company's subscribed capital amounted to R$ 21,864, divided into 20,244,048 units of interest with par value of R$ 1.08 each, distributed as follows:

	Numbers of units of interest
PGS Participações Ltda.	10,122,024
Outback Steakhouse International Investments Co. ("OSI")	10,122,024
	20,244,048

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14. Members' equity (Continued)

14.2 Distribution of profits

The Parent Company's management decided to maintain profits for 2011 (unaudited) and 2010 in retained earnings, to be later appropriated in a members meeting. The members approved the distribution of dividends in the amount of R$ 749, relating to profits for 2009, distributed as follow:

	Numbers of units of interest
PGS Participações Ltda.	374.5
Outback Steakhouse International Investments Co. ("OSI")	374.5
	749.0

The Parent Company's management also decided to maintain the remaining profits for 2009 (unaudited) in retained earnings, to be later appropriated in a members meeting.

15. Financial instruments

The Group evaluated its financial assets and liabilities in relation to market value through available information available and appropriate evaluation methodologies. The interpretation of market data and the selection of evaluation methods require extensive judgment and estimates to calculate the most appropriate realization value. Consequently, the estimates presented do not necessarily show the amounts that may be realized in the market. The use of different market assumptions and/or methods may have a material effect on the estimated realization values.

The Group's main financial instruments consist of cash and cash equivalents, trade accounts receivable, trade accounts payable and current and noncurrent loans.

Fair value measurements

Fair value is the price that would be received upon sale of an asset or paid upon transfer of a liability in an orderly transaction between market participants at the measurement date and is a market-based measurement. To measure fair value, the Group incorporates assumptions that market participants would use in pricing the asset or liability, and utilizes market data to the maximum extent possible.

Set out below is a comparison by financial statement class of the book value and fair value of the Group's financial instruments that are carried in the consolidated financial statements.

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15. Financial instruments (Continued)

Fair value measurements *(Continued)*

	Book value			Fair value		
Description	2011 (unaudited)	2010	2009 (unaudited)	2011 (unaudited)	2010	2009 (unaudited)
Financial assets						
Cash and cash equivalents	**21,832**	11,032	3,298	**21,832**	11,032	3,298
Trade accounts receivable	**15,553**	9,856	7,409	**15,553**	9,856	7,409
Recoverable taxes	**226**	1,004	2,294	**226**	1,004	2,294
Credits from related parties	**129**	122	537	**129**	122	537
Other assets	**2,324**	1,725	1,449	**2,324**	1,725	1,449
	40,064	23,739	14,987	**40,064**	23,739	14,987
Financial liabilities						
Loans, including related party	**3,071**	1,492	2,762	**3,071**	1,492	2,762
Trade accounts payable	**9,998**	8,743	6,531	**9,998**	8,743	6,531
Rental payable, including deferred	**3,648**	2,096	1,430	**3,648**	2,096	1,430
Payroll, provisions and social charges	**10,866**	8,078	5,560	**10,866**	8,078	5,560
Taxes and contributions	**7,237**	5,416	5,405	**7,237**	5,416	5,405
Royalties and franchises fee	**2,242**	1,809	3,944	**2,242**	1,809	3,944
Accounts payable to minority partners	**1,077**	1,309	1,807	**1,077**	1,309	1,807
Accrued buyout liability	**8,556**	5,753	3,306	**8,556**	5,753	3,306
Other liabilities	**3,069**	2,340	2,340	**3,069**	2,340	2,340
	49,764	37,036	33,085	**49,764**	37,036	33,085

The fair values of cash and cash equivalents, trade accounts receivable, trade accounts payable and short-term accounts payable approximate their respective book values due to the their short-term maturity. Loans are recognized initially at fair value, plus directly attributable transaction costs. Following the initial recognition, loans subject to interest are measured at the amortized cost using the effective interest rate method.

As a basis for considering the market participant assumptions in fair value measurements, a three-tier fair value hierarchy prioritizes the inputs used in measuring fair values as follows:

- Level 1—observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities that the Group has the ability to access;
- Level 2—inputs, other than the quoted market prices included in Level 1, which are observable for the asset or liability, either directly or indirectly; and
- Level 3—unobservable inputs for the asset or liability, which are typically based on an entity's own assumptions, as there is little, if any, related market data available.

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15. Financial instruments (Continued)

Fair value measurements *(Continued)*

The fair value measurement of short-term investments classified as cash and cash equivalents at December 31, 2011, 2010 and 2009, in the amount of R$13,544 (unaudited), R$ 8,863, and R$ 2 (unaudited), respectively, uses inputs that fall within Level 2 of the fair value hierarchy.

The Group is not engaged in any outstanding hedging instruments, term contracts, swap operations, options, futures, or embedded derivatives operations. Therefore, the Group has no risk related to derivatives utilization policies.

Significant market risk factors affecting the Group's business are as follows:

Exchange rate risk

This risk arises from the possibility of the Group incurring losses because of fluctuations in foreign currency exchange rates. The Group presents liabilities denominated in US dollars, mainly in connection with the loans from the related party OSI.

The Group does not use hedging instruments to protect against exchange rate fluctuations between the Brazilian real and the US dollar.

Credit risk

This risk mainly involves the Groups' cash and cash equivalents and accounts receivable. The Group carries out operations with highly-rated banks, which minimizes risk. Accounts receivable are substantially generated from credit card companies resulting from sales in the restaurants. Management does not anticipate losses in the realization of such receivables.

Liquidity risk

Liquidity risk arises from the possibility that the Group may not have sufficient funds to comply with their financial commitments due to the different currencies and settlement terms of their rights and obligations.

In order to mitigate liquidity risk for the Parent Company and its subsidiaries. the Group's liquidity and cash flow is monitored on a daily basis by Management, assuring that cash flow from operations and available funding, when necessary, is sufficient to meet its commitment schedule.

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15. Financial instruments (Continued)

Liquidity risk *(Continued)*

The tables below summarize the maturity profile of the Group's financial liabilities on contractual and undiscounted payments.

	Year ended December 31, 2011 (unaudited)			
	Up to 1 year	1 to 5 years	> 5 years	Total
Loans, including related party	**1,339**	**1,732**	**—**	**3,071**
Trade accounts payable	**9,998**	**—**	**—**	**9,998**
Rental payable, including deferred	**2,490**	**686**	**472**	**3,648**
Payroll, provisions and social charges	**10,866**	**—**	**—**	**10,866**
Taxes and contributions	**7,237**	**—**	**—**	**7,237**
Royalties and franchises fee	**2,242**	**—**	**—**	**2,242**
Accrued buyout liability	**332**	**8,224**	**—**	**8,556**
Other liabilities	**3,655**	**491**	**—**	**4,146**
	38,159	**11,133**	**472**	**49,764**

	Year ended December 31, 2010			
	Up to 1 year	1 to 5 years	> 5 years	Total
Loans, including related party	987	505	—	1,492
Trade accounts payable	8,743	—	—	8,743
Rental payable	2,096	—	—	2,096
Payroll, provisions and social charges	8,078	—	—	8,078
Taxes and contributions	5,416	—	—	5,416
Royalties and franchises fee	1,809	—	—	1,809
Accrued buyout liability	482	5,271		5,753
Other liabilities	3,649	—	—	3,649
	31,260	5,776	—	37,036

	Year ended December 31, 2009 (unaudited)			
	Up to 1 year	1 to 5 years	> 5 years	Total
Loans, including related party	1,223	1,539	—	2,762
Trade accounts payable	6,531	—	—	6,531
Rental payable	1,430	—	—	1,430
Payroll, provisions and social charges	5,560	—	—	5,560
Taxes and contributions	5,405	—	—	5,405
Royalties and franchises fee	3,944	—	—	3,944
Accrued buyout liability	283	3,023		3,306
Other liabilities	4,147	—	—	4,147
	28,523	4,562	—	33,085

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15. Financial instruments (Continued)

Interest rate risk

Interest rate risk arises from the possibility that the Group incurs losses because of fluctuations in interest rates that could increase certain financial expenses related to loans and financing raised from the market. The Group's exposure to market risks for changes in interest rates relates primarily to the bank debt and loans with related parties. Considering the Group's debt profile, management considers the risk of exposure to interest rate variation to be insignificant.

Capital Management

Capital includes units of interest and equity attributable to the equity holders of the Parent.

The primary objective of the Group's capital management is to ensure that it maintains sufficient capital in order to support its business and maximize member value.

The Group manages its capital structure and makes adjustments to it in light of changes in economic conditions. To maintain or adjust the capital structure, the Group may adjust dividend payments to members, return capital to members, take out new loans, or issue new units of interest. No changes were made to the objectives, policies, or processes for managing capital during the years ended December 31, 2011 (unaudited), 2010, and 2009 (unaudited).

Included within net debt are loans, trade accounts payable, less cash and cash equivalents.

	2011 (unaudited)	2010	2009 (unaudited)
Loans, including related party	**3,071**	1,492	2,762
Trade accounts payable	**9,998**	8,743	6,531
Less: cash and cash equivalents	**(21,832)**	(11,032)	(3,298)
Net debt	**(8,763)**	(797)	5,995
Members' equity	**109,981**	87,788	67,825
Members' equity and net debt	**101,218**	86,991	73,820

16. Operating lease commitments

Minimum rent payments under operating leases are recognized on a straight-line basis over the term of the lease including any periods of free rent. Rental expense for operating leases during 2011 (unaudited), 2010, and 2009 (unaudited) was R$12,255, R$8,448, and R$7,061, respectively.

The Group has entered into operating leases for the restaurants locations. These leases have an average life of between 10 to 15 years. Future minimum rentals payable under non-cancellable operating leases as at December 31 are as follows:

	2011 (unaudited)	2010	2009 (unaudited)
Within one year	**12,802**	6,513	7,660
After one year but not more than five years	**47,444**	45,306	46,408
More than five years	**61,940**	74,862	66,100
	122,186	126,681	120,168

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17. Insurance coverage

The Group maintains insurance coverage primarily for risks of loss relating to property damages, loss of profit, and fixed asset items. Coverage amounts are deemed sufficient by Management to cover any potential losses. At December 31, 2011, the Group had the following main insurance policies contracted with third parties:

Type	Insurance company	Inception date	Expiry date	Maximum indemnity limit
Property damages	Generali Brasil Seguros	30/Sep/2011	30/Jun/2012	R$ 10,000
General civil liability	Chubb do Brasil Cia de Seguros	30/Jun/2011	30/Jun/2012	R$ 3,000
Directors and Officers liability	Ace Seguradora S.A.	11/Jul/2011	11/Jul/2012	R$ 5,000

18. Summary and reconciliation of the differences between the accounting practices adopted in Brazil and accounting principles generally accepted in the United States of America

The consolidated financial statements were prepared and are presented in accordance with BR GAAP, which comprise the pronouncements, interpretations and guidance issued by the Brazilian Accounting Pronouncements Committee ("CPC"). Note 4 to the consolidated financial statements summarizes the principal accounting practices adopted by the Group.

BR GAAP differs, in certain significant respects, from US GAAP. No relevant differences between BR GAAP and US GAAP were identified for the Group's members' equity and net income as of and for the years ended December 31, 2011 (unaudited), 2010, and 2009 (unaudited).

Classification of statement of cash flows

Under BR GAAP, the classification of certain cash flow items is presented differently from US GAAP. Under BR GAAP, interest paid is recorded in financing activities. For US GAAP purposes, interest paid is classified in operating activities.

Recently Issued Accounting Standards

In December 2011, the FASB issued ASU No. 2011-11, Balance Sheet (Topic 210): Disclosures about Offsetting Assets and Liabilities. ASU 2011-11 requires an entity to disclose information about offsetting and related arrangements to enable users of financial statements to understand the effect of those arrangements on its financial position, and to allow investors to better compare financial statements prepared under U.S. GAAP with financial statements prepared under International Financial Reporting Standards (IFRS). The new standards are effective for annual periods beginning January 1, 2013, and interim periods within those annual periods. Retrospective application is required. The Company will implement the provisions of ASU 2011-11 as of January 1, 2013.

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18. Summary and reconciliation of the differences between the accounting practices adopted in Brazil and accounting principles generally accepted in the United States of America (Continued)

In June 2011, the FASB issued ASU 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income. Under this ASU, an entity will have the option to present the components of net income and comprehensive income in either one or two consecutive financial statements. The ASU eliminates the option in U.S. GAAP to present other comprehensive income in the statement of changes in equity. An entity should apply the ASU retrospectively. For a nonpublic entity, the ASU is effective for fiscal years ending after December 15, 2012, and interim and annual periods thereafter. Early adoption is permitted. In December 2011, the FASB decided to defer the effective date of those changes in ASU 2011-05 that relate only to the presentation of reclassification adjustments in the statement of income by issuing ASU 2011-12, Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive income in Accounting Standards Update 2011-05. The Company plans to implement the provisions of ASU 2011-05 by presenting a separate statement of other comprehensive income following the statement of income in 2012.

In May 2011, the FASB issued ASU 2011-04, Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. The new standards do not extend the use of fair value but, rather, provide guidance about how fair value should be applied where it already is required or permitted under IFRS or U.S. GAAP. For U.S. GAAP, most of the changes are clarifications of existing guidance or wording changes to align with IFRS. A nonpublic entity is required to apply the ASU prospectively for annual periods beginning after December 15, 2011. The Company expects that the adoption of ASU 2011-04 in 2012 will not have a material impact on its consolidated financial statements.

In October 2009, the FASB issued Accounting Standards Update (ASU) 2009-13, Revenue Recognition (Topic 605): Multiple Deliverable Revenue Arrangements (EITF Issue No. 08-1, “Revenue Arrangements with Multiple Deliverables”). ASU 2009-13 amends FASB ASC Subtopic 605-25, Revenue Recognition-Multiple-Element Arrangements, to eliminate the requirement that all undelivered elements have vendor specific objective evidence of selling price (VSOE) or third party evidence of selling price (TPE) before an entity can recognize the portion of an overall arrangement fee that is attributable to items that already have been delivered. In the absence of VSOE and TPE for one or more delivered or undelivered elements in a multiple element arrangement, entities will be required to estimate the selling prices of those elements. The overall arrangement fee will be allocated to each element (both delivered and undelivered items) based on their relative selling prices, regardless of whether those selling prices are evidenced by VSOE or TPE or are based on the entity’s estimated selling price. Application of the “residual method” of allocating an overall arrangement fee between delivered and undelivered elements will no longer be permitted upon adoption of ASU 2009-13. Additionally, the new guidance will require entities to disclose more information about their multiple element revenue arrangements. ASU 2009-13 is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption is permitted. The adoption of ASU 2009-13 in 2011 did not have an effect on the Company’s consolidated financial statements.

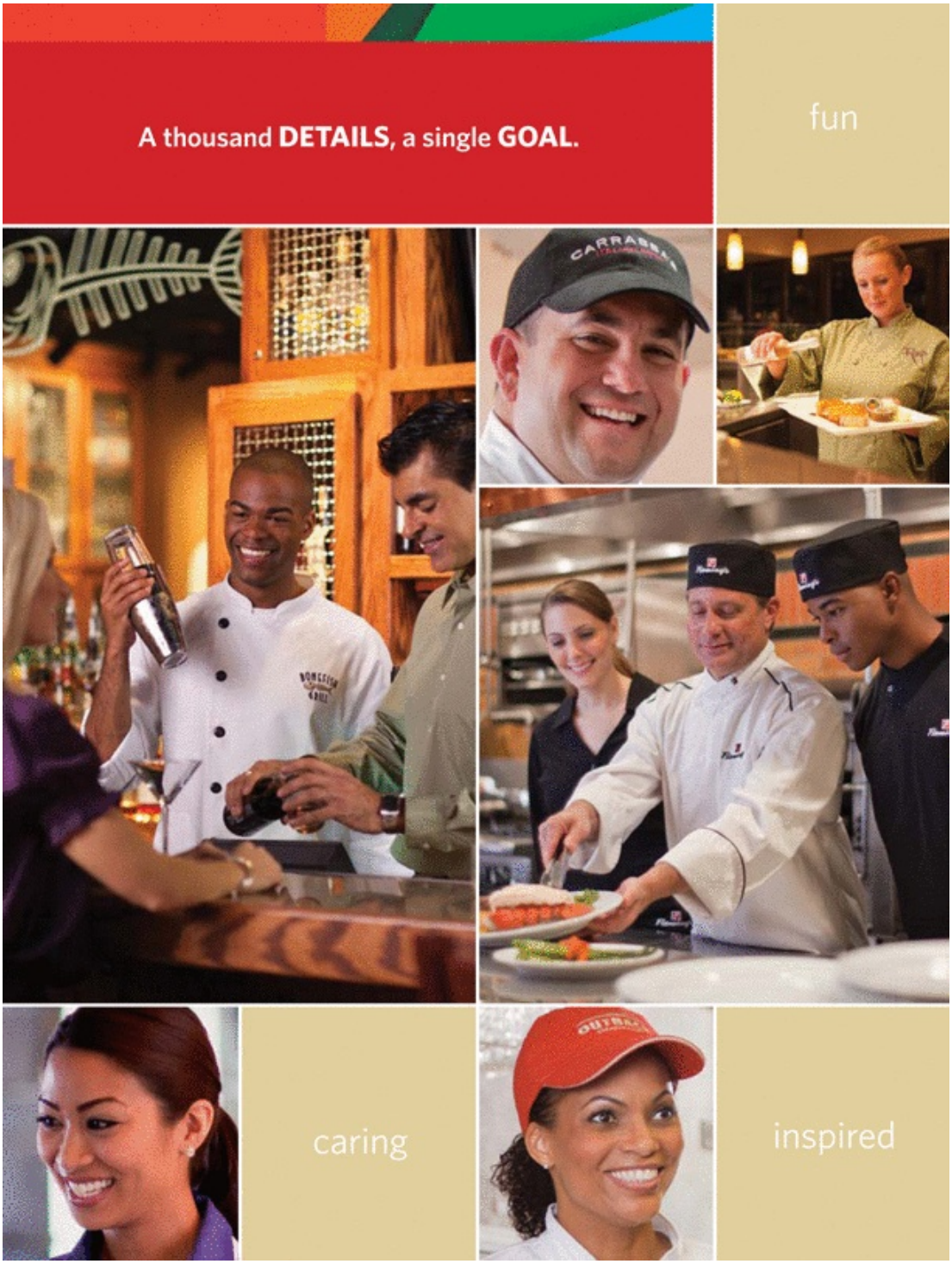
SCHEDULE II

VALUATION AND QUALIFYING ACCOUNTS (in thousands):

	Balance at the Beginning of the Period	Charged to Costs and Expenses	Deductions(1)	Balance at the End of the Period
Year Ended December 31, 2011				
Allowance for note receivable for affiliated entity(2)	$ 33,150	$ (33,150)	$ —	$ —
Allowance for doubtful accounts	2,454	117	(454)	2,117
Valuation allowance on deferred income tax assets	25,886	12,948	(2,997)	35,837
	$ 61,490	$ (20,085)	$ (3,451)	$ 37,954
Year Ended December 31, 2010				
Allowance for note receivable for affiliated entity	$ 33,150	$ —	$ —	$ 33,150
Allowance for doubtful accounts	1,697	2,295	(1,538)	2,454
Valuation allowance on deferred income tax assets	21,977	3,909	—	25,886
	$ 56,824	$ 6,204	$ (1,538)	$ 61,490
Year Ended December 31, 2009				
Allowance for note receivable for affiliated entity	$ 33,150	$ —	$ —	$ 33,150
Allowance for doubtful accounts	3,011	724	(2,038)	1,697
Valuation allowance on deferred income tax assets	4,992	18,743	(1,758)	21,977
	$ 41,153	$ 22,701	$ (7,030)	$ 56,824

(1) Deductions for Allowance for doubtful accounts represent the write off of uncollectible accounts or reductions to allowances previously provided. Deductions for Valuation allowance on deferred income tax assets represent changes in timing differences between periods.

(2) On September 26, 2011, the Company entered into a settlement agreement with the T-Bird Parties to settle all outstanding litigation with T-Bird. In accordance with the terms of the settlement agreement, T-Bird agreed to pay $33.3 million to the Company, which included $33.2 million to satisfy the T-Bird promissory note that the Company purchased from T-Bird's former lender. The settlement payment was received in November 2011, and $33.2 million was recorded as Recovery of note receivable from affiliated entity in the Company's Consolidated Statement of Operations for the year ended December 31, 2011.


A thousand DETAILS, a single GOAL.
fun
caring
inspired


sharing
hospitality
commitment

Total Number of System-wide Restaurants by Brand

System-wide locations include all company-owned, franchise and unconsolidated joint venture restaurants, regardless of ownership.

Outback Steakhouse	Bonefish Grill	Carrabba's Italian Grill	Roy's	Fleming's Prime Steakhouse	Outback International
775	158	232	22	64	192

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Index to Financial Statements

Shares

Bloomin' Brands, Inc.

Common stock

PROSPECTUS

BofA Merrill Lynch

Morgan Stanley

J.P. Morgan

Deutsche Bank Securities

Goldman, Sachs & Co.

, 2012

Part II

Information Not Required in Prospectus

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated expenses payable by us in connection with the sale and distribution of the securities registered hereby, other than underwriting discounts or commissions. All amounts are estimates except for the SEC registration fee and the Financial Industry Regulatory Authority filing fee.

SEC Registration Fee	$ 34,380
Financial Industry Regulatory Authority, Inc. Filing Fee	30,500
Listing Fee	*
Printing and Engraving	*
Legal Fees and Expenses	*
Accounting Fees and Expenses	*
Transfer Agent and Registrar Fees	*
Miscellaneous	*
Total	$ *

* To be completed by amendment.

Item 14. Indemnification of Directors and Officers.

The Registrant is governed by the Delaware General Corporation Law, or DGCL. Section 145 of the DGCL provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was or is an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the corporation's best interest and, for criminal proceedings, had no reasonable cause to believe that such person's conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

The Registrant's amended and restated bylaws will authorize the indemnification of its officers and directors, consistent with Section 145 of the Delaware General Corporation Law, as amended. The Registrant intends to enter into indemnification agreements with each of its directors and executive officers. These agreements, among other things, will require the Registrant to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including advancement of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of the Registrant, arising out of the person's services as a director or executive officer.

Reference is made to Section 102(b)(7) of the DGCL, which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends or unlawful stock purchases or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

The Registrant expects to maintain standard policies of insurance that provide coverage (i) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act and (ii) to the Registrant with respect to indemnification payments that it may make to such directors and officers.

The proposed form of Underwriting Agreement to be filed as Exhibit 1.1 to this Registration Statement provides for indemnification to the Registrant's directors and officers by the underwriters against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

Equity Securities

During the year ended December 31, 2009, we granted to certain eligible participants 4,350,000 options to purchase our common stock with an exercise price of $6.50 and 1,043,124 options to purchase our common stock with an exercise price of $10.00 under our Equity Plan. The options were issued without registration in reliance on the exemption afforded by Section 4(2) of the Securities Act, as a transaction by an issuer not involving a public offering, or Rule 701 promulgated under the Securities Act, as a transaction pursuant to a compensatory benefit plan.

During the year ended December 31, 2010, we granted to certain eligible participants 1,026,110 options to purchase our common stock with an exercise price of $6.50 and 51,249 options to purchase our common stock with an exercise price of $10.00 under our Equity Plan. The options were issued without registration in reliance on the exemption afforded by Section 4(2) of the Securities Act, as a transaction by an issuer not involving a public offering, or Rule 701 promulgated under the Securities Act, as a transaction pursuant to a compensatory benefit plan.

In March 2010, we offered all active employees the opportunity to exchange outstanding stock options with a $10.00 exercise price for the same number of replacement stock options with a $6.50 exercise price. The replacement stock options were awarded on April 6, 2010 following completion of the exchange offer, have an exercise price of $6.50 per share, and have new vesting provisions. In aggregate there were 3,874,949 stock options eligible for exchange, all of which were tendered and accepted for exchange in the exchange offer. The original options were cancelled following the expiration of the offer. No consideration was paid to us by any recipient. The replacement stock options were issued without registration in reliance on the exemptions afforded by Section 3(a)(9) of the Securities Act, as an exchange by the issuer with its existing security holders without commission.

During the year ended December 31, 2011, we granted to certain eligible participants 131,000 options to purchase our common stock with an exercise price of $6.50. These options were later cancelled and reissued with an exercise price of $10.03. In addition, we also granted to such participants 1,775,447 options to purchase our common stock with an exercise price of $10.03 under our Equity Plan. The options were issued without registration in reliance on the exemption afforded by Section 4(2) of the Securities Act, as a transaction by an issuer not involving a public offering, or Rule 701 promulgated under the Securities Act, as a transaction pursuant to a compensatory benefit plan.

During the period beginning January 1, 2012 through March 15, 2012, we granted to certain eligible participants 35,000 options to purchase our common stock with an exercise price of $10.03 under our Equity Plan. The options were issued without registration in reliance on the exemption afforded by Section 4(2) of the Securities Act, as a transaction by an issuer not involving a public offering, or Rule 701 promulgated under the Securities Act, as a transaction pursuant to a compensatory benefit plan.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

Exhibit Number	Description of Exhibits
1.1*	Form of Underwriting Agreement
3.1*	Form of Amended and Restated Certificate of Incorporation of Bloomin' Brands, Inc. (to be in effect prior to the completion of the offering made under this Registration Statement)
3.2*	Form of Amended and Restated Bylaws of Bloomin' Brands, Inc. (to be in effect prior to the completion of the offering being made under this Registration Statement)
4.1*	Form of Common Stock Certificate
4.2	Indenture dated as of June 14, 2007 among OSI Restaurant Partners, LLC, OSI Co-Issuer, Inc., the Guarantors listed on the signature pages thereto and Wells Fargo Bank, National Association, as Trustee
4.3	Form of 10% Senior Notes due 2015 (contained in Exhibit 4.2)
4.4	Agreement of Resignation, Appointment and Acceptance, dated as of February 5, 2009 by and among OSI Restaurant Partners, LLC, a Delaware limited liability company, OSI Co-Issuer, Inc., a Delaware corporation, HSBC Bank USA, National Association, a national banking association and Wells Fargo Bank, National Association, a national banking association
4.5	Registration Rights Agreement dated June 14, 2007 among Kangaroo Holdings, Inc. (now known as Bloomin' Brands, Inc.) and certain stockholders of Kangaroo Holdings, Inc.
5.1*	Opinion of Baker & Hostetler LLP
10.1	Kangaroo Holdings, Inc. 2007 Equity Incentive Plan, as amended
10.2*	Bloomin' Brands, Inc. 2012 Incentive Award Plan
10.3	Unrestricted Stock Rollover Agreement dated June 14, 2007 between Kangaroo Holdings, Inc. and Steven T. Shlemon or his affiliates
10.4	Employee Rollover Agreement for conversion of OSI Restaurant Partners, Inc. restricted stock to Kangaroo Holdings, Inc. restricted stock entered into by the individuals listed on Schedule 1 thereto
10.5	Founder Rollover Agreement dated June 14, 2007 between Kangaroo Holdings, Inc. and certain rollover investors of Kangaroo Holdings, Inc. listed on Schedule 1 thereto

Exhibit Number	Description of Exhibits
10.6	Royalty Agreement dated April 1995 among Carrabba's Italian Grill, Inc., Outback Steakhouse, Inc., Mangia Beve, Inc., Carrabba, Inc., Carrabba Woodway, Inc., John C. Carrabba, III, Damian C. Mandola, and John C. Carrabba, Jr., as amended by First Amendment to Royalty Agreement dated January 1997 and Second Amendment to Royalty Agreement made and entered into effective April 7, 2010 by and among Carrabba's Italian Grill, LLC, OSI Restaurant Partners, LLC, Mangia Beve, Inc., Mangia Beve II, Inc., Original, Inc., Voss, Inc., John C. Carrabba, III, Damian C. Mandola, and John C. Carrabba, Jr.
10.7	Joint Venture Agreement of Roy's/Outback dated June 17, 1999 between OS Pacific, Inc., a wholly-owned subsidiary of Outback Steakhouse, Inc., and Roy's Holdings, Inc., as amended by First Amendment to Joint Venture Agreement dated October 31, 2000, effective for all purposes as of June 17, 1999, between RY-8, Inc., a Hawaii corporation, being a wholly owned subsidiary of Roy's Holding's, Inc., and OS Pacific, Inc., a Florida corporation, being a wholly owned subsidiary of Outback Steakhouse, Inc.
10.8	Amended and Restated Operating Agreement for OSI/Fleming's, LLC made as of June 4, 2010 by and among OS Prime, LLC, a wholly-owned subsidiary of OSI Restaurant Partners, LLC, FPSH Limited Partnership and AWA III Steakhouses, Inc.
10.9	Credit Agreement dated as of June 14, 2007 among OSI Restaurant Partners, LLC, as Borrower, OSI HoldCo, Inc., the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International," New York Branch, LaSalle Bank, N.A., Wachovia Bank, N.A. and Wells Fargo Bank, N.A., as Co-Documentation Agents, as amended by First Amendment to Credit Agreement dated as of January 28, 2010 and entered into by and among OSI Restaurant Partners, LLC, the Borrower, OSI HoldCo, Inc., Deutsche Bank AG New York Branch, as Administrative Agent, the Lenders party thereto, and, for purposes of Section IV, the Guarantors listed on the signature pages
10.10*	Loan and Security Agreement, dated March 27, 2012, between New Private Restaurant Properties, LLC, as borrower, and German American Capital Corporation and Bank of America, N.A., collectively as lender
10.11	Mezzanine Loan and Security Agreement (First Mezzanine), dated March 27, 2012, between New PRP Mezz 1, LLC, as borrower, and German American Capital Corporation and Bank of America, N.A., collectively as lender
10.12	Mezzanine Loan and Security Agreement (Second Mezzanine), dated March 27, 2012, between New PRP Mezz 2, LLC, as borrower, and German American Capital Corporation and Bank of America, N.A., collectively, as lender
10.13	Environmental Indemnity, dated March 27, 2012, by OSI HoldCo I, Inc. for the benefit of German American Capital Corporation and Bank of America, N.A.
10.14	Environmental Indemnity, dated March 27, 2012, by OSI Restaurant Partners, LLC and Private Restaurant Master Lessee, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.15	Environmental Indemnity, dated March 27, 2012, by PRP Holdings, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.16	Environmental Indemnity (First Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. for the benefit of German American Capital Corporation and Bank of America, N.A.
10.17	Environmental Indemnity (First Mezzanine), dated March 27, 2012, by OSI Restaurant Partners, LLC and Private Restaurant Master Lessee, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.

Exhibit Number	Description of Exhibits
10.18	Environmental Indemnity (First Mezzanine), dated March 27, 2012, by PRP Holdings, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.19	Environmental Indemnity (Second Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. for the benefit of German American Capital Corporation and Bank of America, N.A.
10.20	Environmental Indemnity (Second Mezzanine), dated March 27, 2012, by OSI Restaurant Partners, LLC and Private Restaurant Master Lessee, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.21	Environmental Indemnity (Second Mezzanine), dated March 27, 2012, by PRP Holdings, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.22	Guaranty of Recourse Obligations, dated March 27, 2012, by OSI HoldCo I, Inc. to and for the benefit of German American Capital Corporation and Bank of America, N.A.
10.23	Guaranty of Recourse Obligations (First Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. to and for the benefit of German American Capital Corporation and Bank of America, N.A.
10.24	Guaranty of Recourse Obligations (Second Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. to and for the benefit of German American Capital Corporation and Bank of America, N.A.
10.25	Subordination, Non-Disturbance and Attornment Agreement (New Private Restaurant Properties, LLC), dated March 27, 2012, by and between Bank of America, N.A., German American Capital Corporation, Private Restaurant Master Lessee, LLC and New Private Restaurant Properties, LLC, with the acknowledgement, consent and limited agreement of OSI Restaurant Partners, LLC
10.26*	Amended and Restated Master Lease Agreement, dated March 27, 2012, between New Private Restaurant Properties, LLC, as landlord, and Private Restaurant Master Lessee, LLC, as tenant
10.27	Amended and Restated Guaranty, dated March 27, 2012, by OSI Restaurant Partners, LLC to and for the benefit of New Private Restaurant Properties, LLC
10.28	Amended and Restated Employment Agreement dated June 14, 2007, between Dirk A. Montgomery and OSI Restaurant Partners, LLC, as amended on January 1, 2009, December 30, 2010, January 1, 2012 and January 10, 2012
10.29	Amended and Restated Employment Agreement dated June 14, 2007, between Joseph J. Kadow and OSI Restaurant Partners, LLC, as amended on January 1, 2009, June 12, 2009, December 30, 2010 and December 16, 2011
10.30	Employment Agreement dated June 14, 2007, between Robert D. Basham and OSI Restaurant Partners, LLC, as amended on January 1, 2009
10.31	Employment Agreement dated June 14, 2007, between Chris T. Sullivan and OSI Restaurant Partners, LLC, as amended on January 1, 2009
10.32	Officer Employment Agreement dated January 23, 2008 and effective April 12, 2007 by and among Jeffrey S. Smith and Outback Steakhouse of Florida, LLC, as amended on January 1, 2009 and January 1, 2012
10.33	Officer Employment Agreement amended November 1, 2006 and effective April 27, 2000, by and among Steven T. Shlemon and Carrabba's Italian Grill, Inc., as amended on January 1, 2012
10.34	Officer Employment Agreement made and entered into effective August 1, 2001, by and among John W. Cooper and Bonefish Grill, Inc., as amended on January 1, 2012
10.35	Assignment and Amendment and Restatement of Officer Employment Agreement made and entered into March 26, 2009 and effective as of February 5, 2008, by and among Jody Bilney and Outback Steakhouse of Florida, LLC and OSI Restaurant Partners, LLC, as amended on January 1, 2012

Exhibit Number	Description of Exhibits
10.36	Employment Agreement, as amended and restated as of December 31, 2009, by and between Elizabeth A. Smith and OSI Restaurant Partners, LLC, as amended on January 1, 2011 and February 2, 2012
10.37	Officer Employment Agreement made and entered into August 16, 2010 and effective for all purposes as of August 16, 2010 by and among David A. Pace and OSI Restaurant Partners, LLC
10.38	Amended and Restated Officer Employment Agreement, effective September 12, 2011, by and among David Berg, OS Management, Inc. and Outback Steakhouse International, L.P., as amended on January 1, 2012
10.39*	Form of Bloomin' Brands, Inc. Indemnification Agreement by and between Bloomin' Brands, Inc. and each member of its board of directors
10.40	Option Agreement, dated November 16, 2009, by and between Kangaroo Holdings, Inc. and Elizabeth A. Smith, as amended December 31, 2009
10.41	Option Agreement, dated July 1, 2011, by and between Kangaroo Holdings, Inc. and Elizabeth A. Smith
10.42	Form of Option Agreement for Options under the Kangaroo Holdings, Inc. 2007 Equity Incentive Plan
10.43*	Form of Option Agreement for Options under the Bloomin' Brands, Inc. 2012 Incentive Award Plan
10.44	Retention Bonus Agreement, dated November 2, 2009, between Kangaroo Holdings, Inc. and Elizabeth A. Smith
10.45	Bonus Agreement, dated December 31, 2009, between Kangaroo Holdings, Inc. and Elizabeth A. Smith
10.46	OSI Restaurant Partners, LLC HCE Deferred Compensation Plan effective October 1, 2007
10.47	Split Dollar Agreement dated August 12, 2008, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Dirk A. Montgomery, Trustee of the Dirk A. Montgomery Revocable Trust dated April 12, 2001
10.48	Split Dollar Agreement dated August 12, 2008 and effective March 30, 2006, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Joseph J. Kadow
10.49	Split Dollar Agreement dated August 19, 2008 and effective August 2005, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Richard Danker, Trustee of Robert D. Basham Irrevocable Trust Agreement of 1999 dated December 20, 1999
10.50	Split Dollar Agreement dated December 18, 2008 and effective August 18, 2005, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Shamrock PTC, LLC, Trustee of the Chris Sullivan 2008 Insurance Trust dated July 17, 2008 and William T. Sullivan, Trustee of the Chris Sullivan Non-exempt Irrevocable Trust dated January 5, 2000 and the Chris Sullivan Exempt Irrevocable Trust dated January 5, 2000
21.1	Subsidiaries of the Registrant
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Ernst & Young Terco
23.3*	Consent of Baker & Hostetler LLP (included in the opinion to be filed as Exhibit 5.1 hereto)
24.1	Power of Attorney (included on signature page)

* To be filed by amendment

(b) Financial Statement Schedules

The following financial statement schedule is filed as part of this registration statement on page S-1 immediately following the Exhibit Index: Schedule II—Valuation and Qualifying Accounts for the years ended December 31, 2011, 2010 and 2009. All other schedules are omitted because they are not applicable or the required information is included in the financial statements or notes thereto.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tampa, State of Florida, on April 6, 2012.

BLOOMIN' BRANDS, INC.

By: /s/ Elizabeth A. Smith
Name: Elizabeth A. Smith
Title: President and Chief Executive Officer

POWER OF ATTORNEY

We, the undersigned officers and directors of Bloomin' Brands, Inc., hereby severally constitute and appoint Joseph J. Kadow, Dirk A. Montgomery and Amanda Shaw, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him and in his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and any other registration statement for the same offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as full to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Elizabeth A. Smith Elizabeth A. Smith	President, Chief Executive Officer and Director (Principal Executive Officer)	April 6, 2012
/s/ Dirk A. Montgomery Dirk A. Montgomery	Chief Financial Officer (Principal Financial and Accounting Officer)	April 6, 2012
/s/ Chris T. Sullivan Chris T. Sullivan	Director	April 6, 2012
/s/ Robert D. Basham Robert D. Basham	Director	April 6, 2012
/s/ Andrew B. Balson Andrew B. Balson	Director	April 6, 2012
/s/ J. Michael Chu J. Michael Chu	Director	April 6, 2012

Signature	Title	Date
/s/ Philip H. Loughlin Philip H. Loughlin	Director	April 6, 2012
/s/ Mark E. Nunnelly Mark E. Nunnelly	Director	April 6, 2012
/s/ Mark A. Verdi Mark A. Verdi	Director	April 6, 2012

EXHIBIT INDEX

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4.2	Indenture dated as of June 14, 2007 among OSI Restaurant Partners, LLC, OSI Co-Issuer, Inc., the Guarantors listed on the signature pages thereto and Wells Fargo Bank, National Association, as Trustee
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4.5	Registration Rights Agreement dated June 14, 2007 among Kangaroo Holdings, Inc. (now known as Bloomin' Brands, Inc.) and certain stockholders of Kangaroo Holdings, Inc.
5.1*	Opinion of Baker & Hostetler LLP
10.1	Kangaroo Holdings, Inc. 2007 Equity Incentive Plan, as amended
10.2*	Bloomin' Brands, Inc. 2012 Incentive Award Plan
10.3	Unrestricted Stock Rollover Agreement dated June 14, 2007 between Kangaroo Holdings, Inc. and Steven T. Shlemon or his affiliates
10.4	Employee Rollover Agreement for conversion of OSI Restaurant Partners, Inc. restricted stock to Kangaroo Holdings, Inc. restricted stock entered into by the individuals listed on Schedule 1 thereto
10.5	Founder Rollover Agreement dated June 14, 2007 between Kangaroo Holdings, Inc. and certain rollover investors of Kangaroo Holdings, Inc. listed on Schedule I thereto
10.6	Royalty Agreement dated April 1995 among Carrabba's Italian Grill, Inc., Outback Steakhouse, Inc., Mangia Beve, Inc., Carrabba, Inc., Carrabba Woodway, Inc., John C. Carrabba, III, Damian C. Mandola, and John C. Carrabba, Jr., as amended by First Amendment to Royalty Agreement dated January 1997 and Second Amendment to Royalty Agreement made and entered into effective April 7, 2010 by and among Carrabba's Italian Grill, LLC, OSI Restaurant Partners, LLC, Mangia Beve, Inc., Mangia Beve II, Inc., Original, Inc., Voss, Inc., John C. Carrabba, III, Damian C. Mandola, and John C. Carrabba, Jr.
10.7	Joint Venture Agreement of Roy's/Outback dated June 17, 1999 between OS Pacific, Inc., a wholly-owned subsidiary of Outback Steakhouse, Inc., and Roy's Holdings, Inc., as amended by First Amendment to Joint Venture Agreement dated October 31, 2000, effective for all purposes as of June 17, 1999, between RY-8, Inc., a Hawaii corporation, being a wholly owned subsidiary of Roy's Holding's, Inc., and OS Pacific, Inc., a Florida corporation, being a wholly owned subsidiary of Outback Steakhouse, Inc.
10.8	Amended and Restated Operating Agreement for OSI/Fleming's, LLC made as of June 4, 2010 by and among OS Prime, LLC, a wholly-owned subsidiary of OSI Restaurant Partners, LLC, FPSH Limited Partnership and AWA III Steakhouses, Inc.

Exhibit Number	Description of Exhibits
10.9	Credit Agreement dated as of June 14, 2007 among OSI Restaurant Partners, LLC, as Borrower, OSI HoldCo, Inc., the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International," New York Branch, LaSalle Bank, N.A., Wachovia Bank, N.A. and Wells Fargo Bank, N.A., as Co-Documentation Agents, as amended by First Amendment to Credit Agreement dated as of January 28, 2010 and entered into by and among OSI Restaurant Partners, LLC, the Borrower, OSI HoldCo, Inc., Deutsche Bank AG New York Branch, as Administrative Agent, the Lenders party thereto, and, for purposes of Section IV, the Guarantors listed on the signature pages
10.10*	Loan and Security Agreement, dated March 27, 2012, between New Private Restaurant Properties, LLC, as borrower, and German American Capital Corporation and Bank of America, N.A., collectively as lender
10.11	Mezzanine Loan and Security Agreement (First Mezzanine), dated March 27, 2012, between New PRP Mezz 1, LLC, as borrower, and German American Capital Corporation and Bank of America, N.A., collectively as lender
10.12	Mezzanine Loan and Security Agreement (Second Mezzanine), dated March 27, 2012, between New PRP Mezz 2, LLC, as borrower, and German American Capital Corporation and Bank of America, N.A., collectively, as lender
10.13	Environmental Indemnity, dated March 27, 2012, by OSI HoldCo I, Inc. for the benefit of German American Capital Corporation and Bank of America, N.A.
10.14	Environmental Indemnity, dated March 27, 2012, by OSI Restaurant Partners, LLC and Private Restaurant Master Lessee, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.15	Environmental Indemnity, dated March 27, 2012, by PRP Holdings, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.16	Environmental Indemnity (First Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. for the benefit of German American Capital Corporation and Bank of America, N.A.
10.17	Environmental Indemnity (First Mezzanine), dated March 27, 2012, by OSI Restaurant Partners, LLC and Private Restaurant Master Lessee, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.18	Environmental Indemnity (First Mezzanine), dated March 27, 2012, by PRP Holdings, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.19	Environmental Indemnity (Second Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. for the benefit of German American Capital Corporation and Bank of America, N.A.
10.20	Environmental Indemnity (Second Mezzanine), dated March 27, 2012, by OSI Restaurant Partners, LLC and Private Restaurant Master Lessee, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.21	Environmental Indemnity (Second Mezzanine), dated March 27, 2012, by PRP Holdings, LLC for the benefit of German American Capital Corporation and Bank of America, N.A.
10.22	Guaranty of Recourse Obligations, dated March 27, 2012, by OSI HoldCo I, Inc. to and for the benefit of German American Capital Corporation and Bank of America, N.A.
10.23	Guaranty of Recourse Obligations (First Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. to and for the benefit of German American Capital Corporation and Bank of America, N.A.

Exhibit Number	Description of Exhibits
10.24	Guaranty of Recourse Obligations (Second Mezzanine), dated March 27, 2012, by OSI HoldCo I, Inc. to and for the benefit of German American Capital Corporation and Bank of America, N.A.
10.25	Subordination, Non-Disturbance and Attornment Agreement (New Private Restaurant Properties, LLC), dated March 27, 2012, by and between Bank of America, N.A., German American Capital Corporation, Private Restaurant Master Lessee, LLC and New Private Restaurant Properties, LLC, with the acknowledgement, consent and limited agreement of OSI Restaurant Partners, LLC
10.26*	Amended and Restated Master Lease Agreement, dated March 27, 2012, between New Private Restaurant Properties, LLC, as landlord, and Private Restaurant Master Lessee, LLC, as tenant
10.27	Amended and Restated Guaranty, dated March 27, 2012, by OSI Restaurant Partners, LLC to and for the benefit of New Private Restaurant Properties, LLC
10.28	Amended and Restated Employment Agreement dated June 14, 2007, between Dirk A. Montgomery and OSI Restaurant Partners, LLC, as amended on January 1, 2009, December 30, 2010, January 1, 2012 and January 10, 2012
10.29	Amended and Restated Employment Agreement dated June 14, 2007, between Joseph J. Kadow and OSI Restaurant Partners, LLC, as amended on January 1, 2009, June 12, 2009, December 30, 2010 and December 16, 2011
10.30	Employment Agreement dated June 14, 2007, between Robert D. Basham and OSI Restaurant Partners, LLC, as amended on January 1, 2009
10.31	Employment Agreement dated June 14, 2007, between Chris T. Sullivan and OSI Restaurant Partners, LLC, as amended on January 1, 2009
10.32	Officer Employment Agreement dated January 23, 2008 and effective April 12, 2007 by and among Jeffrey S. Smith and Outback Steakhouse of Florida, LLC, as amended on January 1, 2009 and January 1, 2012
10.33	Officer Employment Agreement amended November 1, 2006 and effective April 27, 2000, by and among Steven T. Shlemon and Carrabba's Italian Grill, Inc., as amended on January 1, 2012
10.34	Officer Employment Agreement made and entered into effective August 1, 2001, by and among John W. Cooper and Bonefish Grill, Inc., as amended on January 1, 2012
10.35	Assignment and Amendment and Restatement of Officer Employment Agreement made and entered into March 26, 2009 and effective as of February 5, 2008, by and among Jody Bilney and Outback Steakhouse of Florida, LLC and OSI Restaurant Partners, LLC, as amended on January 1, 2012
10.36	Employment Agreement, as amended and restated as of December 31, 2009, by and between Elizabeth A. Smith and OSI Restaurant Partners, LLC, as amended on January 1, 2011 and February 2, 2012
10.37	Officer Employment Agreement made and entered into August 16, 2010 and effective for all purposes as of August 16, 2010 by and among David A. Pace and OSI Restaurant Partners, LLC
10.38	Amended and Restated Officer Employment Agreement, effective September 12, 2011, by and among David Berg, OS Management, Inc. and Outback Steakhouse International, L.P., as amended on January 1, 2012
10.39*	Form of Bloomin' Brands, Inc. Indemnification Agreement by and between Bloomin' Brands, Inc. and each member of its board of directors
10.40	Option Agreement, dated November 16, 2009, by and between Kangaroo Holdings, Inc. and Elizabeth A. Smith, as amended December 31, 2009
10.41	Option Agreement, dated July 1, 2011, by and between Kangaroo Holdings, Inc. and Elizabeth A. Smith

Exhibit Number	Description of Exhibits
10.42	Form of Option Agreement for Options under the Kangaroo Holdings, Inc. 2007 Equity Incentive Plan
10.43*	Form of Option Agreement for Options under the Bloomin' Brands, Inc. 2012 Incentive Award Plan
10.44	Retention Bonus Agreement, dated November 2, 2009, between Kangaroo Holdings, Inc. and Elizabeth A. Smith
10.45	Bonus Agreement, dated December 31, 2009, between Kangaroo Holdings, Inc. and Elizabeth A. Smith
10.46	OSI Restaurant Partners, LLC HCE Deferred Compensation Plan effective October 1, 2007
10.47	Split Dollar Agreement dated August 12, 2008, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Dirk A. Montgomery, Trustee of the Dirk A. Montgomery Revocable Trust dated April 12, 2001
10.48	Split Dollar Agreement dated August 12, 2008 and effective March 30, 2006, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Joseph J. Kadow
10.49	Split Dollar Agreement dated August 19, 2008 and effective August 2005, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Richard Danker, Trustee of Robert D. Basham Irrevocable Trust Agreement of 1999 dated December 20, 1999
10.50	Split Dollar Agreement dated December 18, 2008 and effective August 18, 2005, by and between OSI Restaurant Partners, LLC (formerly known as Outback Steakhouse, Inc.) and Shamrock PTC, LLC, Trustee of the Chris Sullivan 2008 Insurance Trust dated July 17, 2008 and William T. Sullivan, Trustee of the Chris Sullivan Non-exempt Irrevocable Trust dated January 5, 2000 and the Chris Sullivan Exempt Irrevocable Trust dated January 5, 2000
21.1	Subsidiaries of the Registrant
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Ernst & Young Terco
23.3*	Consent of Baker & Hostetler LLP (included in the opinion to be filed as Exhibit 5.1 hereto)
24.1	Power of Attorney (included on signature page)

* To be filed by amendment

Exhibit 4.2

INDENTURE

Dated as June 14, 2007

Among

OSI RESTAURANT PARTNERS, LLC,

OSI CO-ISSUER, INC.,

THE GUARANTORS NAMED ON THE SIGNATURE PAGES HERETO

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Trustee

10% SENIOR NOTES DUE 2015

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.03; 7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	7.06; 12.03
(c)	12.03
313(a)	2.05; 7.06
(b)(1)	N.A.
(b)(2)	7.06; 7.07
(c)	7.06; 12.02
(d)	7.06
314(a)	4.03; 12.02; 12.05
(b)	N.A.
(c)(1)	12.04
(c)(2)	12.04
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
(f)	N.A.
315(a)	7.01
(b)	7.05; 12.02
(c)	7.01
(d)	7.01
(e)	6.14
316(a)(last sentence)	2.09
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A
(b)	6.07
(c)	2.12; 9.04
317(a)(1)	6.08
(a)(2)	6.12
(b)	2.04
318(a)	12.01
(b)	N.A.
(c)	12.01

N.A. means not applicable.

* This Cross-Reference Table is not part of this Indenture.

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INDENTURE, dated as of June 14, 2007, among OSI Restaurant Partners, LLC, a Delaware limited liability company (" **OSI**"), OSI Co-Issuer, Inc., a Delaware corporation ("**Co-Issuer**"), the Guarantors (as defined herein) listed on the signature pages hereto and Wells Fargo Bank, National Association, as Trustee.

W I T N E S S E T H

WHEREAS, OSI and Co-Issuer have duly authorized the creation of an issue of $550.0 million aggregate principal amount of 10% Notes due 2015 (the "**Initial Notes**");

WHEREAS, OSI, Co-Issuer and each of the Guarantors has duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, OSI, Co-Issuer, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

"**144A Global Note**" means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"**Acquired Indebtedness**" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging or amalgamating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Additional Interest**" means all additional interest then owing pursuant to the Registration Rights Agreement.

"**Additional Notes**" means additional Notes (other than the Initial Notes and other than Exchange Notes issued in exchange for such Initial Notes) issued from time to time under this Indenture in accordance with Sections 2.01 and 4.09 hereof.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession,

directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Agent**" means any Registrar or Paying Agent.

"**Applicable Premium**" means, with respect to any Note on any Redemption Date, the greater of:

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

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at June 15, 2011 (such redemption price being set forth in Section 3.07 hereof), plus (ii) all required interest payments due on such Note through June 15, 2011 (excluding accrued but unpaid interest to the Redemption Date), 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 such 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 Depositary, Euroclear and/or Clearstream that apply to such transfer or exchange.

"**Asset Sale**" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction) of the Issuer or any of its Restricted Subsidiaries (each referred to in this definition as a "**disposition**"); or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary, whether in a single transaction or a series of related transactions (other than directors' qualifying shares and shares issued to foreign nationals as required under applicable law);

in each case, other than:

(a) any disposition of Cash Equivalents or Investment Grade Securities or obsolete or worn out property or equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business (it being understood that the sale of inventory or goods (or other assets) in bulk in connection with the closing of any number of retail locations in the ordinary course of business shall be considered a sale in the ordinary course of business);

(b) the disposition of all or substantially all of the assets of the Issuer in a manner permitted pursuant to the provisions described under Section 5.01 hereof or any disposition that constitutes a Change of Control pursuant to this Indenture;

(c) the making of any Restricted Payment that is permitted to be made, and is made, under Section 4.07 hereof or the making of any Permitted Investment;

(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate fair market value of less than $20.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary of the Issuer to the Issuer or by the Issuer or a Restricted Subsidiary of the Issuer to another Restricted Subsidiary of the Issuer;

(f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) the lease, assignment, sublease, license or sublicense of any real or personal property in the ordinary course of business;

(h) any issuance or sale of (i) Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary and (ii) Equity Interests in Employment Participation Subsidiaries to restaurant employees of, and development partners with, the Issuer and its Restricted Subsidiaries;

(i) foreclosures on or expropriations of assets;

(j) any disposition of Securitization Assets, or participations therein, in connection with any Qualified Securitization Financing, or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business;

(k) the granting of a Lien that is permitted under Section 4.12;

(l) the sale or issuance by a Restricted Subsidiary of Preferred Stock or Disqualified Stock that is permitted by Section 4.09;

(m) any financing transaction with respect to property constructed, acquired, replaced, repaired or improved (including any reconstruction, refurbishment, renovation, and/or development of real property) by the Issuer or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations, permitted by this Indenture; and

(n) any disposition of property and assets in connection with the Transactions.

"**Bank Products**" means any services or facilities on account of credit or debit cards, purchase cards or merchant services constituting a line of credit.

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

"**board of directors**" or **"board of managers"** means, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the board of managers of such Person, (iii) in the case of any partnership, the board of directors or functional equivalent of the general partner of such Person and (iv) in any other case, the functional equivalent of the foregoing, or, in each case, any duly authorized committee of such body.

"**Business Day**" means each day which is not a Legal Holiday.

"**Capital Stock**" means:

(1) in the case of a corporation, shares in the capital of such corporation;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"**Capitalized Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

"**Cash Equivalents**" means:

(1) United States dollars;

(2) (a) euro, or any national currency of any participating member state of the EMU; or

(b) in the case of any Foreign Subsidiary that is a Restricted Subsidiary, such local currencies held by them from time to time in the ordinary course of business;

(3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than $250.0 million in the case of U.S. banks and, in the case of any Foreign Subsidiary that is a Restricted Subsidiary, $100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks, and in each case in a currency permitted under clause (1) or (2) above;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above, and in each case in a currency permitted under clause (1) or (2) above;

(6) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P and in each case maturing within 24 months after the date of creation thereof, and in each case in a currency permitted under clause (1) or (2) above;

(7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof and in a currency permitted under clause (1) or (2) above;

(8) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 24 months or less from the date of acquisition;

(9) Indebtedness or Preferred Stock issued by Persons with a rating of A or higher from S&P or A2 or higher from Moody's with maturities of 24 months or less from the date of acquisition and in each case in a currency permitted under clause (1) or (2) above;

(10) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's and in each case in a currency permitted under clause (1) or (2) above;

(11) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (10) above;

(12) with respect to any Foreign Subsidiary of the Issuer, instruments and investments correlative in type, maturity and rating to those referred to in clauses (1) to (11) above denominated in local currencies of the jurisdictions in which such Foreign Subsidiary conducts its business; and

(13) credit card receivables and debit card receivables so long as such are considered cash equivalents under GAAP and are so reflected on the Issuer's balance sheet.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, provided that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"**Cash Management Services**" means any of the following to the extent not constituting a line of credit (other than overdraft facilities): ACH transactions, treasury and/or cash management services, including, without limitation, controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services.

"**Change of Control**" means the occurrence of any of the following after the Issue Date:

(1) the sale, lease or transfer, in one or a series of related transactions (other than by way of merger or consolidation), of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person (other than (i) one or more Permitted Holders or (ii) any Wholly-Owned Subsidiary of the Issuer that is a Restricted Subsidiary and a Guarantor); or

(2) the Issuer becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by (A) any Person (other than one or more Permitted Holders) or (B) Persons (other than one or more Permitted Holders) that are together (1) a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), or (2) acting, for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), as a group, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more

of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Issuer.

"**Clearstream**" means Clearstream Banking, Société Anonyme.

"**Co-Issuer**" is defined in the preamble hereto.

"**Co-Issuers**" means OSI and the Co-Issuer, collectively.

"**Consolidated Depreciation and Amortization Expense**" means with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees and debt discounts of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

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

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, made (less net payments, if any, received) pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (v) penalties and interest related to taxes, (w) any Additional Interest with respect to the Notes, (x) amortization of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (y) any expensing of bridge, commitment and other financing fees and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Securitization Facility); *plus*

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *less*

(3) interest income actually received in cash for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; provided, however, that, without duplication,

(1) any after-tax effect of extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses, Transaction Expenses to the extent incurred on or prior to September 30, 2007, severance, relocation costs, Public Company Costs, catch-up or transition expenses for "Partner Equity Plans" to the extent relating to employee

services rendered in prior periods, integration costs, pre-opening, opening, consolidation and closing costs for facilities (including restaurants), signing, retention or completion bonuses, transition costs, costs incurred in connection with acquisitions after the Issue Date, restructuring charges or reserves and curtailments or modifications to pension and postretirement employee benefit plans shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any net after-tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,

(4) any after-tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions (including sales or other dispositions of assets under a Securitization Facility) other than in the ordinary course of business, as determined in good faith by the Issuer, shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Issuer shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period by such Person,

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of the first paragraph of Section 4.07 hereof, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, provided that Consolidated Net Income of the Issuer will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to the Issuer or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) effects of adjustments (including the effects of such adjustments pushed down to the Issuer and its Restricted Subsidiaries) in such Person's consolidated financial statements, including adjustments to the inventory, property, equipment, software, goodwill, intangible assets (including favorable and unfavorable leases and contracts), deferred revenue and debt resulting from the application of purchase accounting pursuant to GAAP in relation to the Transactions or any consummated acquisition or the amortization or write-off or write-down of any amounts thereof, net of taxes, shall be excluded,

(8) any after-tax effect of income (loss) from the early extinguishment or conversion of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(9) any impairment charge or asset write-off or write-down, in each case, pursuant to GAAP and the amortization of intangibles and other assets (including alcoholic beverage licenses) arising pursuant to GAAP shall be excluded,

(10) any non-cash compensation charge or expense, including any such charge or expense arising from the grant of stock appreciation or similar rights, stock options, restricted stock or other equity-incentive programs and any charge or expense related to deferred compensation or change of control payment obligations, buyout of employee options and employee bonus programs, to the extent (x) funded on or prior to the Issue Date or (y) otherwise not exceeding $15.0 million in the aggregate since the Issue Date, shall be excluded,

(11) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring costs incurred during such period as a result of any such transaction shall be excluded,

(12) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transactions in accordance with GAAP shall be excluded,

(13) any net gain or loss resulting from currency translation gains or losses related to currency remeasurements of Indebtedness (including any realized or unrealized net loss or gain resulting from hedge agreements for currency exchange risk) and any foreign currency translation gains or losses shall be excluded,

(14) any unrealized net gains and losses resulting from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Statement of Financial Accounting Standards No. 133 and related pronouncements shall be excluded,

(15) rent expense as determined in accordance with GAAP not actually paid in cash during such period (net of rent expense paid in cash during such period over and above rent expense as determined in accordance with GAAP) shall be excluded, and

(16) the amount of Tax Distributions made in respect of such period pursuant to clause (15)(b) of the second paragraph of Section 4.07 hereof shall be excluded.

In addition, to the extent not already included in the Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Indenture.

Notwithstanding the foregoing, for the purpose of Section 4.07 hereof only (other than clause (3)(d) of the first paragraph of Section 4.07 hereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Issuer and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Issuer and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted

Investments by the Issuer or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (3)(d) of the first paragraph of Section 4.07 hereof.

"**Consolidated Secured Debt Ratio**" means, as of any date of determination, the ratio of (1) Consolidated Total Indebtedness of the Issuer and its Restricted Subsidiaries that is secured by Liens as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur to (2) the Issuer's EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur, in each case with such *pro forma* adjustments to Consolidated Total Indebtedness and EBITDA as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

"**Consolidated Total Indebtedness**" means, as at any date of determination, an amount equal to (x) the sum of (1) the aggregate amount of all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, Obligations in respect of Capitalized Lease Obligations and debt obligations evidenced by promissory notes and similar instruments (and excluding, for the avoidance of doubt, all obligations relating to Qualified Securitization Financings) and (2) the aggregate amount of all outstanding Disqualified Stock of the Issuer and all Preferred Stock of its Restricted Subsidiaries on a consolidated basis, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP, less (y) the sum of (1) unrestricted cash and Cash Equivalents included on the consolidated balance sheet of the Issuer and any Restricted Subsidiaries as of such date and (2) all cash and Cash Equivalents held in, or credited to, the Capital Expenditures Account (as contemplated by the Senior Credit Facilities); provided that Indebtedness of the Issuer and its Restricted Subsidiaries under any revolving credit facility or line of credit as at any date of determination shall be determined using the Average Quarterly Balance of such Indebtedness for the most recently ended four fiscal quarters for which internal financial statements are available as of such date of determination (the " **Reference Period**"). For purposes hereof, (a) the "**maximum fixed repurchase price**" of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Issuer, (b) " **Average Quarterly Balance**" means, with respect to any Indebtedness incurred by the Issuer or its Restricted Subsidiaries under a revolving facility or line of credit, the quotient of (x) the sum of each Individual Quarterly Balance for each fiscal quarter ended on or prior to such date of determination and included in the Reference Period divided by (y) 4, and (c) "**Individual Quarterly Balance**" means, with respect to any Indebtedness incurred by the Issuer or its Restricted Subsidiaries under a revolving credit facility or line of credit during any fiscal quarter of the Issuer, the quotient of (x) the sum of the aggregate outstanding principal amount of all such Indebtedness at the end of each day of such quarter month divided by (y) the number of days in such fiscal quarter.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds

(a) for the purchase or payment of any such primary obligation, or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Corporate Trust Office of the Trustee**" shall be at the address of the Trustee specified in Section 12.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Co-Issuers.

"**Custodian**" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Definitive Note**" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(c) hereof, substantially in the form of Exhibit A hereto, as the case may be, except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"**Depositary**" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"**Designated Non-cash Consideration**" means the fair market value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Issuer, *less* the amount of Cash Equivalents received in connection with a subsequent sale, redemption, repurchase of, or collection or payment on, such Designated Non-cash Consideration.

"**Designated Preferred Stock**" means Preferred Stock of the Issuer or any parent company thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer or the applicable parent company thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation of the Restricted Payments Basket.

"**Designated Proceeds**" means contributions made to the common equity of the Issuer by its direct parent company (other than contributions made with the cash proceeds from financing activities

of such direct parent company or from other equity contributions to such parent or from dividends or other distributions or payments received by such parent from Other Parent Subsidiaries that are unrelated to the businesses conducted by the Other Parent Subsidiaries on the Issue Date after giving effect to the Transactions) designated as Designated Proceeds pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer prior to delivery of the financial statements for the quarter in which such contributions were received.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control or asset sale) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely as a result of a change of control or asset sale), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; provided, however, that if such Capital Stock is issued to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"**EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period

(1) increased (without duplication) by:

(a) provision for Income Taxes of such Person and, without duplication, Tax Distributions made in respect of such period, in each case paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) Fixed Charges of such Person for such period plus realized and unrealized losses on Hedging Obligations plus bank fees and costs of surety bonds in connection with financing activities plus amounts excluded from Consolidated Interest Expense as set forth in clauses (v), (w), (x), (y) and (z) in the definition thereof, to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income, plus any financing fees, (including commitment, underwriting, funding, "rollover" and similar fees and commissions, discounts, yields and other fees, charges and amounts incurred in connection with the issuance or incurrence of Indebtedness and all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Hedging Obligations) and annual agency, unused line, or similar fees; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same was deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful), including

(i) such fees, expenses or charges related to the offering of the Notes, the Senior Credit Facilities and any Securitization Fees, and

(ii) any amendment or other modification of the Notes, the Senior Credit Facilities and any Securitization Fees, in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) the amount of any restructuring charge or reserve deducted (and not added back) in such period in computing Consolidated Net Income; *plus*

(f) any other non-cash charges, including (i) any write-offs or write-downs, (ii) equity-based awards compensation expense including, but not limited to, charges arising from stock options, restricted stock or other equity incentive programs, (iii) losses on sales, disposals or abandonment of, or any impairment charges or asset write-off or write-down related to, intangible assets, long-lived assets and investments in debt and equity securities, (iv) all losses from investments recorded using the equity method, and (v) other non-cash charges, non-cash expenses or non-cash losses reducing Consolidated Net Income for such period (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(g) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly-Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(h) the amount of management, monitoring, consulting and advisory fees (including termination fees) and related indemnities and expenses and any other fees and expenses paid or accrued in such period to, or for the benefit of, the Investors and the Founders to the extent otherwise permitted under Section 4.11 hereof and deducted (and not added back) in such period in computing Consolidated Net Income; *plus*

(i) the amount of net cost savings projected by the Issuer in good faith to be realized as a result of specified actions taken during such period (calculated on a *pro forma* basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided that (x) such cost savings are reasonably identifiable and factually supportable, (y) such actions are taken within 18 months after the Issue Date and (z) the aggregate amount of cost savings added pursuant to this clause (i) shall not exceed $20.0 million for any four consecutive quarter period (which adjustments may be incremental to *pro forma* adjustments made pursuant to the definition of "Fixed Charge Coverage Ratio"); *plus*

(j) the amount of loss on sale of Securitization Assets and related assets to the Securitization Subsidiary in connection with a Qualified Securitization Financing; *plus*

(k) any costs or expense incurred by the Issuer or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Issuer or net cash proceeds of an issuance of Equity Interest of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation of the Restricted Payments Basket; *plus*

(l) any net loss from disposed or discontinued operations; *plus*

(m) to the extent (1) covered by insurance under which the insurer has been properly notified and has affirmed or consented to coverage, expenses with respect to liability or casualty events or business interruption and (2) actually reimbursed, expenses incurred to the extent covered by indemnification provisions in any agreement in connection with the Transactions or an acquisition permitted under this Indenture; *plus*

(n) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing EBITDA or Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(o) to the extent Consolidated Net Income is not otherwise increased thereby, Designated Proceeds received during such period;

(2) decreased (without duplication) by:

(a) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase EBITDA in such prior period; *plus*

(b) any net income from disposed or discontinued operations, and

(3) increased or decreased by (without duplication), as applicable, any adjustments resulting from the application of FASB Interpretation No. 45 (Guarantees).

"**Employment Participation Subsidiary**" means a limited partnership or other entity that is a Restricted Subsidiary of the Issuer (i) which contracts to provide services to one or more other Subsidiaries of the Issuer which operate one or more restaurants, (ii) which engages in no other material business activities and has no material assets other than those related to clause (i) above and (iii) in which restaurant employees of the Issuer and its Subsidiaries have an equity ownership interest.

"**Employment Participation Subsidiary Conversion**" means the purchase by one or more Restricted Subsidiaries of the Issuer of the ownership interests of restaurant employees in limited partnership Subsidiaries of the Issuer existing as of the Issue Date and which operate restaurants and the simultaneous use of the proceeds of such purchase by such restaurant employees to acquire ownership interests in one or more Employment Participation Subsidiaries.

"**EMU**" means economic and monetary union as contemplated in the Treaty on European Union.

"**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

"**Equity Offering**" means any public or private sale of common stock or Preferred Stock of the Issuer or any of its direct or indirect parent companies (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Issuer's or any direct or indirect parent company's common stock registered on Form S-8;

(2) issuances to any Subsidiary of the Issuer; and

(3) any such public or private sale that constitutes an Excluded Contribution.

"**euro**" means the single currency of participating member states of the EMU.

"**Euroclear**" means Euroclear S.A./N.V., as operator of the Euroclear system.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Exchange Notes**" means the Notes issued in the Exchange Offer pursuant to Section 2.06(f) hereof.

"**Exchange Offer**" has the meaning set forth in the Registration Rights Agreement.

"**Exchange Offer Registration Statement**" has the meaning set forth in the Registration Rights Agreement.

"**Excluded Contribution**" means net cash proceeds, marketable securities or Qualified Proceeds received by the Issuer from

(1) contributions to its common equity capital other than Designated Proceeds, and

(2) the sale (other than to a Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer,

in each case designated as Excluded Contributions pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be (provided that contributions that otherwise qualify as Designated Proceeds but have not previously been designated as such will constitute Excluded Contributions if designated as Excluded Contributions pursuant to such Officer's Certificate delivered prior to the delivery of the financial statements for the quarter in which such contributions were received), which are excluded from the calculation of the Restricted Payments Basket.

"**Fixed Charge Coverage Ratio**" means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Issuer or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the " **Fixed Charge Coverage Ratio Calculation Date**"),

then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, amalgamations, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) that have been made by the Issuer or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, amalgamations, mergers, consolidations and discontinued operations (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, amalgamation, merger, consolidation or discontinued operations that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or discontinued operations had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to an Investment, acquisition, disposition, amalgamation, merger or consolidation (including the Transactions) or discontinued operations and the amount of income or earnings relating thereto, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer (and may include, for the avoidance of doubt, cost savings and operating expense reductions resulting from such Investment, acquisition, amalgamation, merger or consolidation (including the Transactions) or discontinued operations which is being given *pro forma* effect that have been or are expected to be realized). If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may designate.

"**Fixed Charges**" means, with respect to any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and

(3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

"**Foreign Subsidiary**" means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

"**Founders**" means (i) Chris T. Sullivan, Robert D. Basham and J. Timothy Gannon; (ii) the spouses, ancestors, siblings, descendants (including children or grandchildren by adoption) and the descendants of any of the siblings of the Persons referred to in clause (i); (iii) in the event of the incompetence or death of any of the Persons described in clauses (i) or (ii), such Person's estate, executor, administrator or committee administering such estate; (iv) any trust created for the benefit of the Persons described in any of clauses (i) through (iii) or any trust for the benefit of any such trust; or (v) any Person Controlled by any of the Persons described in any of clauses (i) through (iv).

"**GAAP**" means generally accepted accounting principles in the United States which are in effect on the Issue Date. For purposes of this Indenture, the term "consolidated" with respect to any Person means such Person consolidated with its Restricted Subsidiaries and does not include any Unrestricted Subsidiary.

"**Global Note Legend**" means the legend set forth in Section 2.06(g)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"**Global Notes**" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto, issued in accordance with Section 2.01, 2.06(b), 2.06(d) or 2.06(f) hereof.

"**Government Securities**" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means the guarantee by any Guarantor of the Co-Issuers' Obligations under this Indenture and the Notes.

"**Guarantor**" means each Restricted Subsidiary that Guarantees the Notes in accordance with the terms of this Indenture.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

"**Holder**" means the Person in whose name a Note is registered on the Registrar's books.

"**Income Taxes**" means, with respect to any Person, the foreign, federal, state and local taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as the Pennsylvania capital tax and Texas margin tax) and withholding taxes of such Person.

"**Indebtedness**" means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and is not paid after becoming due and payable; or

(d) representing any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit (other than commercial letters of credit) and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business, (b) obligations under or in respect of a Qualified Securitization Financing or (c) obligations in connection with the Specified Lease Transaction (whether obligations under leases by the Issuer and its Restricted Subsidiaries or Indebtedness of any Specified Lease Entity).

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

"**Independent Financial Advisor**" means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Issuer, qualified to perform the task for which it has been engaged.

"**Indirect Participant**" means a Person who holds a beneficial interest in a Global Note through a Participant.

"**Initial Notes**" is defined in the recitals hereto.

"**Initial Purchasers**" means the initial purchasers listed in the Offering Memorandum under "Plan of Distribution."

"**Interest Payment Date**" means June 15 and December 15 of each year to stated maturity.

"**Investment Grade Rating**" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, or, in either case, an equivalent rating by any other Rating Agency.

"**Investment Grade Securities**" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to officers and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of "Unrestricted Subsidiary" and Section 4.07 hereof:

(1) "Investments" shall include the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Issuer's "Investment" in such Subsidiary at the time of such redesignation; *less*

(b) the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Issuer.

"**Investors**" means Bain Capital Partners, LLC and Catterton Partners, each of their respective Affiliates and any investment funds advised or managed by any of the foregoing, but not including, however, any portfolio companies of any of the foregoing.

"**Issue Date**" means June 14, 2007.

"**Issuer**" means OSI; provided that when used in the context of determining the fair market value of an asset or liability under this Indenture, "Issuer" shall be deemed to mean the board of managers or directors of the Issuer when the fair market value is equal to or in excess of $50.0 million (unless otherwise expressly stated).

"**Issuer Order**" means a written request or order signed on behalf of the Co-Issuers by one Officer for each of the Co-Issuers, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of such Co-Issuer, and delivered to the Trustee.

"**Legal Holiday**" means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York.

"**Letter of Transmittal**" means the letter of transmittal to be prepared by the Co-Issuers and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

"**Lien**" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease be deemed to constitute a Lien.

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Net Income**" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"**Net Proceeds**" means the aggregate cash proceeds received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) secured by a Lien on the assets disposed of required (other than required by clause (1) of the second paragraph of Section 4.10 hereof) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"**Non-U.S. Person**" means a Person who is not a U.S. Person.

"**Notes**" means the Initial Notes and more particularly means any Note authenticated and delivered under this Indenture. For all purposes of this Indenture, the term "Notes" shall also include any Additional Notes that may be issued under a supplemental indenture.

"**Obligations**" means any principal, 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 the documentation governing any Indebtedness.

"**Offering Memorandum**" means the offering memorandum, dated June 8, 2007, relating to the sale of the Initial Notes.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Issuer, the Co-Issuer or a Guarantor, as the case may be.

"**Officer's Certificate**" means a certificate signed on behalf of the Co-Issuers by one Officer for each of the Co-Issuers, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, that meets the requirements set forth in this Indenture.

"**Opinion of Counsel**" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer or the Trustee.

"**OSI**" is defined in the preamble hereto.

"**Other Parent Subsidiaries**" means Subsidiaries of the direct parent company of the Issuer other than the Issuer and its Restricted Subsidiaries.

"**Participant**" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

"**Participating Broker-Dealer**" has the meaning set forth in the Registration Rights Agreement.

"**Permitted Asset Swap**" means the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and Cash Equivalents between the Issuer or any of its Restricted Subsidiaries and another Person; provided that any Net Proceeds received must be applied in accordance with Section 4.10 hereof.

"**Permitted Holders**" means each of the Investors, the Founders and members of management of the Issuer (or its direct parent) who are holders of Equity Interests of the Issuer (or any of its direct or indirect parent companies) on the Issue Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that, in the case of such group and without giving effect to the existence of such group or any other group, such Investors, Founders and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies. Any person or group whose acquisition of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of Section 4.14 hereof (or would result in a Change of Control Offer in the absence of the waiver of such requirement by Holders in accordance with Section 4.14 hereof) will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"**Permitted Investments**" means:

(1) any Investment in the Issuer or any of its Restricted Subsidiaries;

(2) any Investment in cash and Cash Equivalents or Investment Grade Securities;

(3) any Investment by the Issuer or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary; or

(b) such Person, in one transaction or a series of related transactions, is merged, amalgamated or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary, and, in each case, any Investment held by such Person; provided that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(4) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to the first paragraph of Section 4.10 hereof or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Issue Date and any extension, modification, replacement or renewal of any such Investments existing on the Issue Date, but only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investment as in effect on the Issue Date (or as subsequently amended or otherwise modified in a manner not disadvantageous to the Holders of the Notes in any material respect);

(6) any Investment acquired by the Issuer or any of its Restricted Subsidiaries:

(a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or

(b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Hedging Obligations permitted under clause (10) of the definition of Permitted Debt;

(8) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed the greater of (x) $50.0 million and (y) 2.5% of Total Tangible Assets at the time such Investment is made (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(9) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Issuer, or any of its direct or indirect parent companies; provided, however, that such Equity Interests will not increase the amount available for Restricted Payments under the Restricted Payments Basket;

(10) guarantees (including Guarantees) of Indebtedness of the Issuer or any Restricted Subsidiary permitted under Section 4.09 hereof, performance guarantees and Contingent Obligations in the ordinary course of business and the creation of liens on the assets of the Issuer or any of its Restricted Subsidiaries in compliance with Section 4.12 hereof;

(11) any transaction to the extent it constitutes an Investment that is permitted and made in accordance with the provisions of the second paragraph of Section 4.11 hereof (except transactions described in clauses (2), (5) and (9) of the second paragraph of Section 4.11 hereof);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;

(13) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do

not consist of, or have not been subsequently sold or transferred for, cash or marketable securities), not to exceed $75.0 million (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(14) Investments relating to a Securitization Subsidiary that, in the good faith determination of the Issuer, are necessary or advisable to effect any Qualified Securitization Financing;

(15) advances to, or guarantees of Indebtedness of, employees, officers, members of the board of managers or directors and consultants not in excess of $15.0 million outstanding at any one time, in the aggregate;

(16) loans and advances to officers, members of the board of managers or directors, employees and consultants for business-related travel expenses, moving expenses and other similar expenses, in each case incurred in the ordinary course of business or consistent with past practices or to fund such Person's purchase of Equity Interests of the Issuer or any direct or indirect parent company thereof or to restaurant employees to fund such Person's purchase of Equity Interests of an Employment Participation Subsidiary in the ordinary course of business;

(17) repurchases, redemptions and other acquisitions of Equity Interests in Employment Participation Subsidiaries held by current or former restaurant employees of, and development partners with, the Issuer or any of its Restricted Subsidiaries; and

(18) Investments consisting of licensing of intellectual property pursuant to joint marketing arrangements with other Persons.

"**Permitted Liens**" means, with respect to any Person:

(1) pledges, deposits or security by such Person under worker's compensation laws, unemployment insurance, employers' health tax and other social security laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's, materialmen's, repairmen's and mechanics' Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate actions or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(3) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or which are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP, or for property taxes on property that the Issuer or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge, levy or claim is to such property;

(4) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptances issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice prior to the Issue Date;

(5) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) 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 Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness permitted to be incurred pursuant to clause (4), (18), (19) or (22) of the definition of Permitted Debt; provided that Liens securing Indebtedness permitted to be incurred pursuant to such clause (18) extend only to the assets or stock of Foreign Subsidiaries and Liens securing Indebtedness permitted to be incurred pursuant to such clause (19) are solely on acquired property or the assets or stock of the acquired entity, as the case may be;

(7) Liens existing on the Issue Date;

(8) Liens existing on property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; provided, further, however, that such Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;

(9) Liens existing on property at the time the Issuer or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Issuer or any of its Restricted Subsidiaries; provided, however, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, merger, amalgamation or consolidation; provided, further, however, that the Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary permitted to be incurred in accordance with Section 4.09 hereof;

(11) Liens securing Hedging Obligations and Cash Management Services so long as the related Indebtedness is permitted to be incurred under this Indenture;

(12) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries and do not secure any Indebtedness;

(14) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;

(15) Liens in favor of the Issuer or any Guarantor;

(16) Liens on equipment of the Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuer's clients;

(17) Liens on Securitization Assets and related assets incurred in connection with a Qualified Securitization Financing;

(18) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (6), (7), (8) and (9); provided, however, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under such clauses (6), (7), (8) and (9) at the time the original Lien became a Permitted Lien under this Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;

(19) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;

(20) Liens securing judgments for the payment of money not constituting an Event of Default under clause (5) of Section 6.01(a) hereof so long as such Liens are adequately bonded and 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;

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

(22) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(23) Liens deemed to exist in connection with Investments in repurchase agreements or other Cash Equivalents permitted under Section 4.09 hereof; provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement or other Cash Equivalent;

(24) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(25) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Issuer or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(26) Liens solely on any cash earnest money deposits made by the Issuer or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted under this Indenture;

(27) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Issuer or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(28) restrictive covenants affecting the use to which real property may be put; provided, however, that the covenants are complied with;

(29) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(30) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements;

(31) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business; and

(32) customary transfer restrictions and purchase options in joint venture and similar agreements.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"**Person**" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

"**Public Company Costs**" shall mean costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Issuer's status as a public company or issuer of publicly held securities, including costs, fees and expenses (including legal,

accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act, as applicable to companies with equity securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, board compensation, fees and expense reimbursement, shareholder meetings and reports to shareholders, directors and officers' insurance and other executive costs, any registration statement, or registered exchange offer, in respect of any Notes, legal and other professional fees, and listing fees, in each case incurred or accrued prior to the effectiveness of such registration statement or the consummation of such exchange offer and that will not continue to be incurred immediately after such effectiveness or consummation.

"**Private Placement Legend**" means the legend set forth in Section 2.06(g)(i) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

"**QIB**" means a "qualified institutional buyer" as defined in Rule 144A.

"**Qualified Proceeds**" means assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business; provided that the fair market value of any such assets or Capital Stock shall be determined by the Issuer in good faith.

"**Qualified Securitization Financing**" means any Securitization Facility of a Securitization Subsidiary that meets the following conditions: (i) the board of managers or directors of the Issuer shall have determined in good faith that such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Issuer and its Restricted Subsidiaries, (ii) all sales of Securitization Assets and related assets by the Issuer or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Issuer), (iii) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings and (iv) the Obligations under such Securitization Facility are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Issuer or any of its Restricted Subsidiaries (other than a Securitization Subsidiary). The grant of a security interest in any Securitization Assets of the Issuer or any of its Restricted Subsidiaries (other than a Securitization Subsidiary) to secure Indebtedness under the Senior Credit Facilities shall not be deemed a Qualified Securitization Financing.

"**Rating Agencies**" means Moody's and S&P or if Moody's or S&P or both shall not make a rating on the applicable security publicly available, another nationally recognized statistical rating agency or agencies, as the case may be, that rates such security and makes such rating publicly available.

"**Record Date**" for the interest or Additional Interest, if any, payable on any applicable Interest Payment Date means the June 1 and December 1 (whether or not a Business Day) next preceding such Interest Payment Date.

"**Registration Rights Agreement**" means (i) the Registration Rights Agreement related to the Notes dated as of the Issue Date, among the Co-Issuers, the Guarantors and the Initial Purchasers and (ii) any other registration rights agreement entered into in connection with the issuance of Additional Notes in a private offering by the Co-Issuers after the Issue Date.

"**Regulation S**" means Regulation S promulgated under the Securities Act.

"**Regulation S Global Note**" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as applicable.

"**Regulation S Permanent Global Note**" means a permanent Global Note in the form of Exhibit A bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary 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.

"**Regulation S Temporary Global Note**" means a temporary Global Note in the form of Exhibit A bearing the Global Note Legend, the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

"**Regulation S Temporary Global Note Legend**" means the legend set forth in Section 2.06(g)(iii) hereof.

"**Related Business Assets**" means assets (other than cash or Cash Equivalents) used or useful in a Similar Business, provided that any assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant treasurer, 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 Definitive Note**" means a Definitive Note bearing the Private Placement Legend.

"**Restricted Global Note**" means a Global Note bearing the Private Placement Legend.

"**Restricted Investment**" means an Investment other than a Permitted Investment.

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

"**Restricted Subsidiary**" means, at any time, any direct or indirect Subsidiary of the Issuer (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; provided, however, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of "Restricted Subsidiary."

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act.

"**Rule 903**" means Rule 903 promulgated under the Securities Act.

"**Rule 904**" means Rule 904 promulgated under the Securities Act.

"**S&P**" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"**Sale and Lease-Back Transaction**" means any arrangement providing for the leasing by the Issuer or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Secured Indebtedness**" means any Indebtedness of the Issuer or any of its Restricted Subsidiaries secured by a Lien.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securitization Asset**" means any accounts receivable, real estate asset, mortgage receivables or related assets, in each case subject to a Securitization Facility.

"**Securitization Facility**" means any of one or more securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, pursuant to which the Issuer or any of its Restricted Subsidiaries sells its Securitization Assets to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells Securitization Assets to a Person that is not a Restricted Subsidiary.

"**Securitization Fees**" means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Qualified Securitization Financing.

"**Securitization Repurchase Obligation**" means any obligation of a seller of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"**Securitization Subsidiary**" means any Subsidiary in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto.

"**Senior Credit Facilities**" means the credit facilities provided under the Credit Agreement, to be entered into as of the Issue Date by and among the Issuer, the lenders party thereto in their capacities as lenders thereunder and Deutsche Bank AG New York Branch, as Administrative Agent, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof and any one or more indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that extend, replace, refund, refinance, renew or defease any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

"**Shelf Registration Statement**" means the Shelf Registration Statement as defined in the Registration Rights Agreement.

"**Significant Subsidiary**" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

"**Similar Business**" means any business conducted or proposed to be conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any business that is a reasonable extension, development or expansion of any of the foregoing or is similar, reasonably related, incidental or ancillary thereto.

"**Specified Lease Entity**" means (i) one or more non-Subsidiary Affiliates of the Issuer, which is a Wholly-Owned Subsidiary of the direct parent company of the Issuer, to which the Issuer and/or its Restricted Subsidiaries has sold, transferred or assigned (or will sell, transfer or assign) in the Specified Lease Transactions certain real property interests and improvements, and (ii) their direct and indirect parent companies; provided that any direct or indirect parent entity of the Issuer shall not be a Specified Lease Entity.

"**Specified Lease Transactions**" means the sale, transfer or assignment of real property interests, including improvements thereon, operated by the Issuer or its Restricted Subsidiaries as restaurants, substantially all of the net proceeds of which are substantially concurrently therewith applied to finance the Transactions or to refinance any interim or other financing used to finance the Transactions, to the extent that the Issuer or a Restricted Subsidiary has leased such real property interests, including improvements thereon, or otherwise arranged for the rights to use and operate such properties.

"**Sponsor Management Agreement**" means the management agreements and financial advisory agreements between certain of the management companies associated with certain of the Investors and the Issuer, as in effect on the Issue Date and as amended, supplemented, amended and restated, replaced or otherwise modified from time to time; provided, however, that the terms of any such amendment, supplement, amendment and restatement or replacement agreement are not, taken as a whole, less favorable to the holders of the Notes in any material respect than the original agreement in effect on the Issue Date.

"**Standard Securitization Undertakings**" means representations, warranties, covenants and indemnities entered into by the Issuer or any Subsidiary of the Issuer which the Issuer has determined in good faith to be customary in a Securitization Financing, including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"**Subordinated Indebtedness**" means, with respect to the Notes,

(1) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Notes, and

(2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

"**Subsidiary**" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"**Tax Distributions**" means any distribution described in clause (15)(b) of the second paragraph of Section 4.07 hereof.

"**Total Tangible Assets**" means, as of any date, the total tangible assets of the Issuer and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Issuer and its Restricted Subsidiaries.

"**Transaction Agreement**" means the Agreement and Plan of Merger dated as of November 5, 2006, among Kangaroo Holdings, Inc., Kangaroo Acquisition, Inc. and the Issuer, as amended on May 21, 2007 and as the same may be further amended from time to time.

"**Transaction Expenses**" means any fees or expenses incurred or paid by the Issuer or any Restricted Subsidiary in connection with the Transactions, including payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options, restricted stock and deferred compensation.

"**Transactions**" means the transactions contemplated by the Transaction Agreement, the issuance of the Notes, the borrowings under the Senior Credit Facilities, the Specified Lease Transactions, the conversion of the Issuer and any of its Subsidiaries from corporations to limited liability companies, intercompany restructurings and reorganizations to effect or facilitate the Transactions (including the Employment Participation Subsidiary Conversion), each as in effect on the Issue Date, the application of proceeds therefrom as set forth in the Offering Memorandum under "Use of Proceeds" (including the purchase of the Founder's non-rollover equity in a sale transaction consummated immediately prior to the completion of the merger contemplated in connection with the Transaction Agreement) and the consummation of any other transactions in connection with the foregoing.

"**Treasury Rate**" means, as of any 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 the 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 the Redemption Date to June 15, 2011; provided, however, that if the period from the Redemption Date to June 15, 2011 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.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb).

"**Trustee**" means Wells Fargo Bank, National Association, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"**Unrestricted Definitive Note**" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

"**Unrestricted Global Note**" means a permanent Global Note, substantially in the form of Exhibit A, that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear the Private Placement Legend.

"**Unrestricted Subsidiary**" means:

(1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary of the Issuer (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); provided that

(1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Issuer;

(2) such designation complies with Section 4.07 hereof; and

(3) each of:

(a) the Subsidiary to be so designated; and

(b) its Subsidiaries

has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Issuer or any Restricted Subsidiary.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

(1) the Issuer could incur at least $1.00 of additional Indebtedness pursuant to the Coverage Ratio Test; or

(2) the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries would be greater than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such designation, in each case on a *pro forma* basis taking into account such designation.

Any such designation by the Issuer shall be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of managers or directors of the Issuer or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"**U.S. Person**" means a U.S. person as defined in Rule 902(k) under the Securities Act.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors or managers of such Person.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(2) the sum of all such payments.

"**Wholly-Owned Subsidiary**" of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares and shares issued to foreign nationals as required under applicable law) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

Section 1.02 Other Definitions.

Term	Defined in Section
"Acceptable Commitment"	4.10
"Affiliate Transaction"	4.11
"Asset Sale Offer"	4.10
"Authentication Order"	2.02
"Change of Control Offer"	4.14
"Change of Control Payment"	4.14
"Change of Control Payment Date"	4.14
"Covenant Defeasance"	8.03
"Covenant Ratio Test"	4.09
"Coverage Ratio Test"	4.09
"DTC"	2.03
"Event of Default"	6.01(a)
"Excess Proceeds"	4.10
"incur" or "incurrence"	4.09
"Legal Defeasance"	8.02
"Note Register"	2.03
"Offer Amount"	3.09(b)
"Offer Period"	3.09(b)
"Pari Passu Indebtedness"	4.10
"Paying Agent"	2.03
"Permitted Debt"	4.09
"Purchase Date"	3.09(b)
"Redemption Date"	3.07(a)
"Refinancing Indebtedness"	4.09
"Refunding Capital Stock"	4.07
"Registrar"	2.03
"Restricted Payments"	4.07
"Restricted Payments Basket"	4.07
"Second Commitment"	4.10
"Successor Company"	5.01(a)
"Successor Person"	5.01(c)
"Treasury Capital Stock"	4.07

Section 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture.

The following Trust Indenture Act terms used in this Indenture have the following meanings:

"indenture securities" means the Notes;

"indenture security holder" means a Holder of a Note;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and

"obligor" on the Notes and the Guarantees means the Co-Issuers and the Guarantors, respectively, and any successor obligor upon the Notes and the Guarantees, respectively.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by SEC rule under the Trust Indenture Act have the meanings so assigned to them.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) words in the singular include the plural, and in the plural include the singular;

(e) "will" shall be interpreted to express a command;

(f) provisions apply to successive events and transactions;

(g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(h) unless the context otherwise requires, any reference to an "Article," "Section" or "clause" refers to an Article, Section or clause, as the case may be, of this Indenture;

(i) words used herein implying any gender shall apply to both genders;

(j) the words "including," "includes" and similar words shall be deemed to be followed by "without limitation";

(k) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the Issuer dated such date prepared in accordance with GAAP;

(l) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater; and

(m) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

Section 1.05 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 an agent duly appointed in writing. 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 Co-Issuers. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture

and (subject to Section 7.01) conclusive in favor of the Trustee and the Co-Issuers, if made in the manner provided in this Section 1.05.

(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 the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. 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 that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by 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 any action taken, suffered or omitted by the Trustee or the Co-Issuers in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Co-Issuers may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Co-Issuers prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date 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 prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including DTC, that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and any Person that is the Holder of a Global Note, including DTC, may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such depositary's standing instructions and customary practices.

(h) The Co-Issuers may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by DTC entitled under the procedures of such depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

ARTICLE 2

THE NOTES

Section 2.01 Form and Dating; Terms.

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $1,000 and integral multiples of $1,000 in excess of $1,000.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Temporary Global Notes. Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which 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 the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Co-Issuers and authenticated by the Trustee as hereinafter provided. The Restricted Period shall be terminated upon the receipt by the Trustee of:

(i) a written certificate from the Depositary, together with copies of certificates from Euroclear and Clearstream certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Temporary 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 144A Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof); and

(ii) an Officer's Certificate from each Co-Issuer.

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent

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.

(d) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Co-Issuers, 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.

The Notes shall be subject to repurchase by the Co-Issuers pursuant to an Asset Sale Offer as provided in Section 4.10 hereof or a Change of Control Offer as provided in Section 4.14 hereof. The Notes shall not be redeemable, other than as provided in Article 3.

Additional Notes ranking *pari passu* with the Initial Notes may be created and issued from time to time by the Co-Issuers without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, redemption or otherwise as the Initial Notes; provided that the Co-Issuers' ability to issue Additional Notes shall be subject to the Co-Issuers' compliance with Section 4.09 hereof. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture.

(e) Euroclear and Clearstream Procedures Applicable. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes that are held by Participants through Euroclear or Clearstream.

Section 2.02 Execution and Authentication.

At least one Officer for each of the Co-Issuers shall execute the Notes on behalf of the Co-Issuers 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 entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A attached hereto by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuer Order (an " **Authentication Order**"), authenticate and deliver the Initial Notes. In addition, at any time, from time to time, the Trustee shall upon an Authentication Order authenticate and deliver any Additional Notes and Exchange Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes or Exchange Notes issued hereunder.

The Trustee may appoint an authenticating agent acceptable to the Co-Issuers to authenticate Notes. 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 an Affiliate of the Co-Issuers.

Section 2.03 Registrar and Paying Agent.

The Co-Issuers shall maintain an office or agency for the Notes where Notes may be presented for registration of transfer or for exchange (" **Registrar**") and an office or agency for the Notes where Notes may be presented for payment (" **Paying Agent**"). The Registrar shall keep a register of the Notes (" **Note Register**") and of their transfer and exchange. The Co-Issuers may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Co-Issuers may change any Paying Agent or Registrar without prior notice to any Holder. The Co-Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Co-Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

The Co-Issuers initially appoint The Depository Trust Company (" DTC") to act as Depositary with respect to the Global Notes.

The Co-Issuers initially appoint the Trustee to act as the Paying Agent and Registrar for the Notes and to act as Custodian with respect to the Global Notes.

Section 2.04 Paying Agent To Hold Money in Trust.

The Co-Issuers 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 Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or Additional Interest, if any, or interest on the Notes, and will notify the Trustee of any default by the Co-Issuers 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 Co-Issuers 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 any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 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 Trust Indenture Act Section 312(a). If the Trustee is not the Registrar, the Co-Issuers shall furnish to the Trustee at least two 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 of Notes and the Co-Issuers shall otherwise comply with Trust Indenture Act Section 312(a).

Section 2.06 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor Depositary or a nominee of such successor Depositary. A beneficial interest

in a Global Note may not be exchanged for a Definitive Note unless (i) the Depositary (x) notifies the Issuer that it is unwilling or unable to continue as Depositary for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Co-Issuers within 120 days or (ii) there shall have occurred and be continuing a Default with respect to the Notes. Upon the occurrence of any of the preceding events in (i) or (ii) above, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depositary (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the preceding events in (i) or (ii) above and pursuant to Section 2.06(c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); provided, however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c) or (f) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) hereof, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above; provided that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration

of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903. Upon consummation of an Exchange Offer by the Co-Issuers in accordance with Section 2.06(f) hereof, the requirements of this Section 2.06(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.

(iii) Transfer of Beneficial Interests to Another Restricted Global Note . A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note . A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii) hereof and:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Co-Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Co-Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes .

(i) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes . If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events in paragraph (i) or (ii) of Section 2.06(a) hereof and receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Co-Issuers or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Co-Issuers shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Sections 2.06(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Co-Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the

form of an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes . If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and satisfaction of the conditions set forth in Section 2.06(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Co-Issuers shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests .

(i) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes . If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Co-Issuers or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, and in the case of clause (C) above, the applicable Regulation S Global Note.

(ii) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes . A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Co-Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(ii), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes . A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraph (ii)(B), (ii)(D) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Co-Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes . Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) Restricted Definitive Notes to Restricted Definitive Notes . Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications required by item (3) thereof, if applicable.

(ii) Restricted Definitive Notes to Unrestricted Definitive Notes . Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Co-Issuers;

(B) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) Exchange Offer. Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, the Co-Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate (i) one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of the beneficial interests in the Restricted Global Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Co-Issuers, and accepted for exchange in the Exchange Offer and (ii) Unrestricted Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Co-Issuers, and accepted for exchange in the Exchange Offer. Concurrently with the issuance of such Notes, the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Co-Issuers shall execute and the Trustee shall authenticate and mail to the Persons designated by the Holders of Definitive Notes so accepted Unrestricted Definitive Notes in the applicable principal amount. Any Notes that remain outstanding after the consummation of the Exchange Offer, and Exchange Notes issued in connection with the Exchange Offer, shall be treated as a single class of securities under this Indenture.

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

(i) Private Placement Legend.

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) 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), (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 OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE CO-ISSUERS OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE CO-ISSUERS SO REQUESTS), OR (G) 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 TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER 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."

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

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

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(h) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE CO-ISSUERS. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT 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 OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE CO-ISSUERS OR THEIR RESPECTIVE AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE 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."

(iii) Regulation S Temporary Global Note Legend. The Regulation S Temporary Global Note shall bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATED NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN)."

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled 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 or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, 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 by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Co-Issuers shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Co-Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14 and 9.05 hereof).

(iii) Neither the Registrar nor the Co-Issuers shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Co-Issuers, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(v) The Co-Issuers shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 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.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Co-Issuers 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 premium, if any) and interest (including Additional Interest, if any) on such Notes and for all other purposes, and none of the Trustee, any Agent or the Co-Issuers shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuer designated pursuant to Section 4.02 hereof, the Co-Issuers shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Co-Issuers shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, the Registrar or the Co-Issuers and the Trustee receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, the Co-Issuers shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Co-Issuers, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Co-Issuers to protect the Co-Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Co-Issuers may charge for its expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Co-Issuers and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled 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 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Co-Issuers or an Affiliate of the Co-Issuers holds the Note.

If a Note is replaced pursuant to Section 2.07 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 4.01 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 2.09 Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Co-Issuers, or by any Affiliate of the Co-Issuers, 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, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not the Issuer or any obligor upon the Notes or any Affiliate of the Issuer or of such other obligor.

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Co-Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Co-Issuers consider appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Co-Issuers shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Co-Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of cancelled Notes (subject to the record retention requirement of the Exchange Act) in its customary manner. Certification of the disposal of all cancelled Notes shall be delivered to the Issuer upon its request therefor. The Co-Issuers may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Interest.

If the Co-Issuers default 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, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Co-Issuers shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Co-Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; provided that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Co-Issuers of such special record date. At least 15 days before the special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the

name and at the expense of the Co-Issuers) shall mail or cause to be mailed, first-class postage prepaid, to each Holder a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13 CUSIP Numbers.

The Co-Issuers in issuing the Notes may use CUSIP numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Co-Issuers will as promptly as practicable notify the Trustee of any change in the CUSIP numbers.

ARTICLE 3

REDEMPTION

Section 3.01 Notices to Trustee.

If the Co-Issuers elect to redeem Notes pursuant to Section 3.07 hereof, they shall furnish to the Trustee, at least 2 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to Section 3.03 hereof but not more than 60 days before a redemption date, an Officer's Certificate setting forth (i) the paragraph or subparagraph of such Notes and/or Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of the Notes to be redeemed and (iv) the redemption price.

Section 3.02 Selection of Notes To Be Redeemed or Purchased.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed or (b) on a *pro rata* basis or, to the extent that selection on a *pro rata* basis is not practicable, by lot or by such other method the Trustee considers fair and appropriate. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Co-Issuers in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of $1,000 or whole multiples of $1,000; no Notes of $1,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

Subject to Section 3.09 hereof, the Co-Issuers shall mail or cause to be mailed by first-class mail, postage prepaid, notices of redemption at least 30 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at such Holder's registered address or shall otherwise deliver on such timeframe such notice in accordance with the procedures of DTC, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 11 hereof. Except as set forth in Section 3.07(b) hereof, notices of redemption may not be conditional.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is 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 of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Co-Issuers default in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

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

(h) 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; and

(i) if in connection with a redemption pursuant to Section 3.07(b) hereof, any condition to such redemption.

At the Co-Issuers' request, the Trustee shall give the notice of redemption in the Co-Issuers' name and at their expense; provided that the Co-Issuers shall have delivered to the Trustee, at least 2 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price (except as provided for in Section 3.07(b) hereof). The notice, if mailed in a manner herein provided, shall

be conclusively presumed to have been given, whether or not the 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 designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption.

Section 3.05 Deposit of Redemption or Purchase Price.

Prior to 10:00 a.m. (New York City time) on the redemption or purchase date, the Co-Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest (including Additional 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 Co-Issuers any money deposited with the Trustee or the Paying Agent by the Co-Issuers in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Co-Issuers comply with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Co-Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Co-Issuers shall issue and the Trustee shall authenticate for the Holder at the expense of the Co-Issuers a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same indebtedness to the extent not redeemed or purchased; provided that each new Note will be in a principal amount of $1,000 or an integral multiple of $1,000. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate such new Note.

Section 3.07 Optional Redemption.

(a) At any time prior to June 15, 2011, the Co-Issuers may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to the registered address of each Holder of Notes or otherwise delivered in accordance with the procedures of DTC, 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 and Additional Interest, if any, to the date of redemption (the "**Redemption Date**"), subject to the rights of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(b) Until June 15, 2010, the Co-Issuers may, at their option, on one or more occasions redeem up to 35% of the aggregate principal amount of Notes (including the aggregate principal amount of Notes issued after the Issue Date), upon notice provided as described in Section 3.03 hereof, at a redemption price equal to 110.000% of the aggregate principal amount thereof, plus accrued and unpaid

interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds of one or more Equity Offerings; provided that at least 50% of the sum of the aggregate principal amount of Notes originally issued under this Indenture and any Additional Notes that are issued under this Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; provided further that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any Equity Offering may be given prior to such redemption, and any such redemption or notice may, at the Co-Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(c) Except pursuant to Sections 3.07(a) and (b), the Notes will not be redeemable at the Issuer's option before June 15, 2011.

(d) On and after June 15, 2011, the Co-Issuers may redeem the Notes, in whole or in part, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve-month period beginning on June 15 of each of the years indicated below:

Year	Percentage
2011	105.000%
2012	102.500%
2013 and thereafter	100.000%

(e) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 Mandatory Redemption.

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

Section 3.09 Offers To Repurchase by Application of Excess Proceeds.

(a) In the event that, pursuant to Section 4.10 hereof, the Co-Issuers shall be required to commence an Asset Sale Offer, they shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "**Offer Period**"). No later than five Business Days after the termination of the Offer Period (the " **Purchase Date**"), the Co-Issuers shall apply all Excess Proceeds (the "**Offer Amount**") to the purchase of Notes and, if required, Pari Passu Indebtedness (on a *pro rata* basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and Pari Passu Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest and Additional Interest, if any, up to but excluding

the Purchase Date, 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 shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(d) Upon the commencement of an Asset Sale Offer, the Co-Issuers shall send, by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders and holders of Pari Passu Indebtedness. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Co-Issuers default in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest on and after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in integral multiples of $1,000 only;

(vi) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Note completed, or transfer such Note by book-entry transfer, to the Issuer, the Depositary, if appointed by the Issuer, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if the Co-Issuers, the Depositary or the Paying Agent, as the case may be, receive, not later than the expiration of the Offer Period, a telegram, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(viii) that, if the aggregate principal amount of Notes and Pari Passu Indebtedness surrendered by the holders thereof exceeds the Offer Amount, the Trustee shall select the Notes and the Co-Issuers, or, if so elected by the Co-Issuers, the agent for such Pari Passu Indebtedness, shall select such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in denominations of $1,000, or integral multiples thereof, shall be purchased); and

(ix) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased.

(e) On or before the Purchase Date, the Co-Issuers shall, to the extent lawful, (1) accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions

thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Co-Issuers, the Depositary or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Co-Issuers for purchase, and the Co-Issuers shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; provided that each such new Note shall be in a principal amount of $1,000 or an integral multiple thereof. Any Note not so accepted shall be promptly mailed or delivered by the Co-Issuers to the Holder thereof. The Co-Issuers shall publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Purchase Date.

Other than as specifically provided in this Section 3.09 or Section 4.10 hereof, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Sections 3.01 through 3.06 hereof.

ARTICLE 4

COVENANTS

Section 4.01 Payment of Notes.

The Co-Issuers shall pay or cause to be paid the principal of, premium, if any, Additional Interest, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, Additional Interest, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Co-Issuers or a Subsidiary, holds as of noon Eastern Time on the due date money deposited by the Co-Issuers in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due. If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day and no interest shall accrue for the intervening period if payment is so made on such Business Day.

The Co-Issuers shall pay all Additional Interest, if any, in the same manner on the dates and in the amounts set forth in the Registration Rights Agreement.

The Co-Issuers 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 and Additional Interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency.

The Co-Issuers shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange or presented for payment and where notices and demands to or upon the Co-

Issuers in respect of the Notes and this Indenture may be served. The Co-Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Co-Issuers 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.

The Co-Issuers 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; provided that no such designation or rescission shall in any manner relieve the Co-Issuers of their obligation to maintain an office or agency for such purposes. The Co-Issuers 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.

The Co-Issuers hereby initially designate the office of the Trustee located at 213 Court Street, Suite 703, Middletown, CT 06457, Attention: Joseph P. O'Donnell, Vice President, as one such office or agency of the Co-Issuers in accordance with Section 2.03 hereof.

Section 4.03 Reports and Other Information.

Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Issuer shall file with the SEC within 15 days after the dates set forth below:

(1) within 90 days after the end of each fiscal year (105 days for the fiscal year ending December 31, 2007), annual reports on Form 10-K, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form;

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (75 days for the fiscal quarter ending June 30, 2007 and September 30, 2007), reports on Form 10-Q containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form;

(3) promptly from time to time after the occurrence of an event required to be therein reported, such other reports on Form 8-K, or any successor or comparable form; and

(4) any other information, documents and other reports which the Issuer would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act beginning on and after the Issue Date;

in each case, in a manner that complies in all material respects with the requirements specified in such form. Notwithstanding the foregoing, the Issuer shall not be so obligated to file such reports with the SEC (i) if the SEC does not permit such filing or (ii) prior to the consummation of an exchange offer or the effectiveness of a shelf registration statement as required by the Registration Rights Agreement, so long as if clause (i) or (ii) is applicable the Issuer makes available such information to prospective purchasers of Notes, in addition to providing such information to the Trustee and the Holders of the Notes, in each case, at the Issuer's expense and by the applicable date the Issuer would be required to file such information pursuant to the immediately preceding sentence. To the extent any such information is not so filed or furnished, as applicable, within the time periods specified above and such information is subsequently filed or furnished, as applicable, the Issuer will be deemed to have satisfied its obligations with

respect thereto at such time and any Default with respect thereto shall be deemed to have been cured; provided that such cure shall not otherwise affect the rights of the Holders under Article 6 hereof if Holders of at least 25% in principal amount of the then total outstanding Notes have declared the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately and such declaration shall not have been rescinded or cancelled prior to such cure. In addition, to the extent not satisfied by the foregoing, for so long as any Notes are outstanding, the Issuer shall furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act. The Issuer will deliver the financial statements and information of the type required to be delivered pursuant to clause (2) of the first sentence of this Section 4.03 with respect to the fiscal quarter ended June 30, 2007, which, notwithstanding the foregoing, shall not be required to give *pro forma* effect to the Transactions, shall not be required to contain financial statement footnote disclosure and shall not be required to contain consolidating financial data with respect to the Guarantor and non-Guarantor Subsidiaries of the type contemplated by Rule 3-10 of Regulation S-X promulgated under the Securities Act or otherwise.

In the event that any direct or indirect parent company of the Issuer becomes a guarantor of the Notes, the Issuer may satisfy its obligations under this Section 4.03 with respect to financial information relating to the Issuer by furnishing financial information relating to such parent; provided that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

Notwithstanding the foregoing, the requirements of this Section 4.03 shall be deemed satisfied prior to the commencement of the Exchange Offer or the effectiveness of the Shelf Registration Statement by the filing with the SEC of the Exchange Offer Registration Statement or Shelf Registration Statement or any other filing, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such 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 (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

Section 4.04 Compliance Certificate.

(a) The Co-Issuers and each Guarantor (to the extent that such Guarantor is so required under the Trust Indenture Act) shall deliver to the Trustee, within 120 days after the end of each fiscal year ending after the Issue Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Co-Issuers and the Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Co-Issuers have kept, observed, performed and fulfilled their obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Co-Issuers have kept, observed, performed and fulfilled each and every condition and covenant contained in this Indenture during such fiscal year and are not in default in the performance or observance of any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action the Co-Issuers are taking or propose to take with respect thereto).

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of the Co-Issuers or any Subsidiary gives any

notice or takes any other action with respect to a claimed Default, the Co-Issuers shall promptly (which shall be no more than five (5) Business Days) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer's Certificate specifying such event and what action the Co-Issuers propose to take with respect thereto.

Section 4.05 Taxes.

The Co-Issuers shall pay or discharge, and shall cause each of the Restricted Subsidiaries to pay or discharge, prior to delinquency, all material taxes, lawful assessments, and governmental levies except such as are contested in good faith and by appropriate actions or where the failure to effect such payment or discharge is not adverse in any material respect to the Holders of the Notes.

Section 4.06 Stay, Extension and Usury Laws.

The Co-Issuers and each of the Guarantors covenant (to the extent that they may lawfully do so) that they 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 Co-Issuers and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant (to the extent that they may lawfully do so) that they 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 4.07 Limitation on Restricted Payments.

The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(I) declare or pay any dividend or make any payment having the effect thereof or any distribution on account of the Issuer's, or any of its Restricted Subsidiaries' Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

(a) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or

(b) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities (or other Equity Interests) issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities (or other Equity Interests);

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer, including in connection with any merger or consolidation;

(III) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than:

(a) Indebtedness permitted under clauses (7) and (8) of the definition of "Permitted Debt"; or

(b) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition; or

(IV) make any Restricted Investment

(all such payments and other actions set forth in clauses (I) through (IV) above being collectively referred to as " **Restricted Payments**"), unless, at the time of such Restricted Payment:

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a pro forma basis, the Issuer could incur $1.00 of additional Indebtedness pursuant to the Coverage Ratio Test; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (1), (6)(c), (9) and (14) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum (the " **Restricted Payments Basket**") of (without duplication):

(a) 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) commencing April 1, 2007 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, or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit; plus

(b) 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by the Issuer since immediately after the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12) of the definition of "Permitted Debt") from the issue or sale of:

(i) (A) Equity Interests of the Issuer, including Treasury Capital Stock, but excluding cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received from the sale of:

(x) Equity Interests to members of management, members of the board of managers or directors or consultants of the Issuer, any direct or indirect parent company of the Issuer and the Issuer's Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph; and

(y) Designated Preferred Stock; and

(B) to the extent such net cash proceeds are actually contributed to the Issuer, Equity Interests of the Issuer's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph); or

(ii) debt securities of the Issuer that have been converted into or exchanged for Equity Interests of the Issuer or any direct or indirect parent of the Issuer;

provided, however, that this clause (b) shall not include the proceeds from (W) Refunding Capital Stock, (X) Equity Interests or convertible debt securities of the Issuer sold to a Restricted Subsidiary, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; *plus*

(c) 100% of the aggregate amount of cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property contributed to the capital of the Issuer following the Issue Date other than (X) net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to clause (12) of the definition of "Permitted Debt," (Y) by a Restricted Subsidiary and (Z) from any Excluded Contributions; *plus*

(d) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) of Restricted Investments made by the Issuer or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Issuer or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Issuer or its Restricted Subsidiaries, in each case after the Issue Date; or

(ii) the sale (other than to the Issuer or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; *plus*

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Issuer or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Issuer or a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred), as determined by the Issuer in good faith or, if such fair market value may exceed $75.0 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets to the extent

the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment.

The foregoing provisions shall not prohibit:

(1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Indenture;

(2)(a) the redemption, repurchase, retirement or other acquisition of any Equity Interests (" **Treasury Capital Stock**") of the Issuer or any Equity Interests of any direct or indirect parent company of the Issuer or any Subordinated Indebtedness of the Issuer or a Restricted Subsidiary, in exchange for, or out of the proceeds of, the substantially concurrent sale or issuance (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent contributed to the Issuer (in each case, other than any Disqualified Stock) (" **Refunding Capital Stock**"), (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any of its Subsidiaries) of Refunding Capital Stock, and (c) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (6) of this paragraph, the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Issuer) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the redemption, repurchase, defeasance or other acquisition or retirement of Subordinated Indebtedness of the Issuer or a Guarantor made by exchange for, or out of the proceeds of, the substantially concurrent sale of, new Indebtedness of the Issuer or a Guarantor, as the case may be, which is incurred in compliance with Section 4.09 hereof so long as:

(a) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, defeased, exchanged, acquired or retired for value, plus the amount of any premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, defeased, exchanged, acquired or retired and any reasonable fees (including any reasonable (as determined by the Issuer) tender premium and any defeasance costs related thereto) and expenses incurred in connection with such redemption, repurchase, defeased, exchange, acquisition or retirement and the issuance of such new Indebtedness;

(b) such new Indebtedness is subordinated to the Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so repurchased, defeased, exchanged, redeemed, acquired or retired for value;

(c) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, defeased, exchanged, acquired or retired; and

(d) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, exchanged, acquired or retired;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Issuer or any of its direct or indirect parent companies held by any future, present or former employee, member of the board of managers or director or consultant of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies, or any of their respective estates, spouses or former spouses pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Issuer or any direct or indirect parent company in connection with any such repurchase, retirement or other acquisition or retirement); provided, however, that the aggregate Restricted Payments made under this clause (4) do not exceed in any calendar year $15.0 million (which shall increase to $30.0 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent company of the Issuer) with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of $30.0 million in any calendar year (which shall increase to $60.0 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent company of the Issuer); provided further that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer, Equity Interests of any of the Issuer's direct or indirect parent companies, in each case to members of management, members of the board of managers or directors or consultants of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of the Restricted Payments Basket, plus, in respect of any sale of Equity Interests in connection with an exercise of stock options, an amount equal to the amount required to be withheld by the Issuer or any of its direct or indirect parent companies in connection with such exercise under applicable law to the extent such amount is repaid to the Issuer or its direct or indirect parent company, as applicable, constituted a Restricted Payment and has not otherwise been applied to the payment of Restricted Payments by virtue of the Restricted Payments Basket; *plus*

(b) the cash proceeds of key man life insurance policies received by the Issuer or its Restricted Subsidiaries after the Issue Date; *less*

(c) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a) and (b) of this clause (4);

and provided further that cancellation of Indebtedness owing to the Issuer or any Restricted Subsidiary from employees, members of the board of managers or directors or consultants of the Issuer, any of the Issuer's direct or indirect parent companies or any of the Issuer's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this Section 4.07 or any other provision of this Indenture;

(5) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries issued in accordance with Section 4.09 hereof to the extent such dividends are included in the definition of "Fixed Charges";

(6) (a) the declaration and payment of dividends and distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Issuer after the Issue Date;

(b) the declaration and payment of dividends and distributions to a direct or indirect parent company of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent company issued after the Issue Date, provided that the amount of dividends paid pursuant to this clause (b) shall not exceed the aggregate amount of cash actually contributed to the Issuer from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends and distributions on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this paragraph;

provided, however, in the case of each of (a), (b) and (c) of this clause (6), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends and distributions on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Issuer and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(7) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (7) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, cash or marketable securities, not to exceed the greater of (x) $50.0 million and (y) 2.5% of Total Tangible Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(8) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(9) the declaration and payment of dividends and distributions on the Issuer's common Capital Stock (or the payment of dividends to any direct or indirect parent entity to fund a payment of dividends on such entity's common Capital Stock), following the consummation of the first public offering of the Issuer's common Capital Stock or the common Capital Stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% per annum of the net cash proceeds received by or contributed to the Issuer in or from any public offering, other than public offerings with respect to the Issuer's common Capital Stock registered on Form S-8 and other than any public sale constituting an Excluded Contribution;

(10) Restricted Payments that are made with Excluded Contributions;

(11) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (11) that are at the time outstanding (without giving effect to the sale of an Investment to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, cash or marketable securities) not to exceed $100.0 million;

(12) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets and purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation, in each case in connection with a Qualified Securitization Financing;

(13) any Restricted Payment used to fund the Transactions and the fees and expenses related thereto or owed to Affiliates, in each case with respect to any Restricted Payment to or owed to an Affiliate, to the extent permitted by Section 4.11 hereof, including any payments to holders of Equity Interests of the Issuer (immediately prior to giving effect to the Transaction) in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto;

(14) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness pursuant to the provisions similar to those described under Section 4.10 and Section 4.14 hereof; provided that all Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(15) the declaration and payment of dividends or distributions by the Issuer to, or the making of loans to, any direct or indirect parent company in amounts required for any direct or indirect parent companies to pay, in each case without duplication,

(a) franchise taxes and other fees, taxes and expenses required to maintain their corporate existence;

(b) the amount any direct or indirect parent company of the Issuer would be required to pay in respect of Income Taxes attributable to the income of such direct or indirect parent company, the Issuer and its Restricted Subsidiaries and Other Parent Subsidiaries; provided, however, that in each case the amount of such payments in any tax year are reduced by Income Taxes required to be paid by such direct or indirect parent company arising from businesses that are unrelated to the businesses conducted by the Other Parent Subsidiaries on the Issue Date after giving effect to the Transactions (except Income Taxes attributable to the income of Unrestricted Subsidiaries shall not reduce such payments to the extent such payments would otherwise be reduced by such Income Taxes and amounts are received from Unrestricted Subsidiaries to pay such Income Taxes);

(c) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Issuer to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(d) the general corporate operating and overhead costs and expenses of any direct or indirect parent company of the Issuer to the extent such costs and expenses are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(e) fees and expenses other than to Affiliates of the Issuer related to any unsuccessful equity or debt offering of such parent company; and

(f) any Restricted Payment used to fund any transactions permitted by clauses (3), (4), (12) and (13) of Section 4.11.

(16) the distribution, by dividend or otherwise, of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are Cash Equivalents);

(17) cash payments in lieu of the issuance of fractional shares or interests in connection with the exercise of warrants, options or other rights or securities convertible into exchangeable for Capital Stock of the Issuer or any direct or indirect parent company of the Issuer; provided that any such cash payment shall not be for the purpose of evading the limitation of this Section 4.07;

(18) the payment of dividends and other distributions in an amount equal to any reduction in taxes actually realized by the direct or indirect parent company, the Issuer and its Restricted Subsidiaries and Other Parent Subsidiaries in the form of refunds or credits or from deductions when applied to offset income or gain (or, without duplication, reductions in amounts otherwise permitted to be paid in clause (15)(b) above) as a direct result of (i) transaction fees and expenses, (ii) commitment and other financing fees or (iii) severance, change in control and other compensation expense incurred in connection with the exercise, repurchase, rollover or payout of stock options, Equity Interests, bonuses or deferred compensation, in each case in connection with the Transactions; and

(19) the Issuer may make additional Restricted Payments out of funds withdrawn from the "Capital Expenditures Account" contemplated under the Senior Credit Facilities in an aggregate amount not to exceed $100.0 million to the extent not prohibited by the Senior Credit Facilities;

provided, however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (7), (11), (16) and (18) of this second paragraph of this Section 4.07, no Default shall have occurred and be continuing or would occur as a consequence thereof.

As of the Issue Date, all of the Issuer's Subsidiaries are Restricted Subsidiaries. The Issuer shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the provisions of the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Issuer and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Investments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation shall be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to the first paragraph of this Section 4.07 or under clause (7), (10), (11) or (16) of the second paragraph of this Section 4.07, or pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in this Indenture.

Section 4.08 Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries .

The Issuer shall not, and shall not permit any of its Restricted Subsidiaries that are not Guarantors to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(1)(a) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(b) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries,

except (in each case) for such encumbrances or restrictions existing under or by reason of:

(a) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Credit Facilities and the related documentation;

(b) this Indenture and the Notes;

(c) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (3) above on the property so acquired;

(d) applicable law or any applicable rule, regulation or order;

(e) any agreement or other instrument of a Person acquired by the Issuer or any of its Restricted Subsidiaries in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person (which includes the survivor of any merger to effect such acquisition) so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries;

(f) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Issuer pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary (at its Subsidiaries and their assets, if applicable);

(g) Secured Indebtedness otherwise permitted to be incurred pursuant to Section 4.09 hereof and Section 4.12 hereof that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(h) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(i) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued subsequent to the Issue Date pursuant to the provisions of Section 4.09 hereof;

(j) customary provisions in any joint venture agreement and other similar agreement relating solely to such joint venture and its assets;

(k) customary provisions contained in leases, subleases, licenses or sublicenses and other agreements, in each case, entered into in the ordinary course of business;

(l) any encumbrances or restrictions of the type referred to in clauses (1), (2) and (3) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (k) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive in any material respect with respect to such encumbrances and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(m) any other agreement governing Indebtedness entered into, or assumed or acquired, after the Issue Date that contains encumbrances and other restrictions that are, in the good faith judgment of the Issuer, no more restrictive in any material respect taken as a whole with respect to any Restricted Subsidiary than those encumbrances and other restrictions that are in effect on the Issue Date with respect to that Restricted Subsidiary pursuant to agreements in effect on the Issue Date; and

(n) restrictions created in connection with any Qualified Securitization Financing that in the good faith determination of the Issuer are necessary or advisable to effect such Securitization Facility.

Section 4.09 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock .

The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, " **incur**" and collectively, an "**incurrence**") with respect to any Indebtedness (including Acquired Indebtedness) and the Issuer shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; provided, however, that the Issuer may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any of its Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if (the " **Coverage Ratio Test**") the Fixed Charge Coverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries' most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of the proceeds therefrom had occurred at the beginning of such four-quarter period; provided that the amount of Indebtedness (including Acquired Indebtedness), Disqualified Stock and Preferred Stock that may be incurred or issued, as applicable, pursuant to the foregoing by Restricted Subsidiaries that are not Guarantors shall not exceed $75.0 million at any one time outstanding.

The foregoing limitations will not apply to each of the following (collectively, " **Permitted Debt**"):

(1) Indebtedness incurred pursuant to the Senior Credit Facilities by the Issuer or any Restricted Subsidiary; provided that immediately after giving effect to any such incurrence, the aggregate principal amount of all Indebtedness incurred under this clause (1) and then outstanding does not exceed $1,560.0 million less up to $250.0 million in the aggregate of all principal payments with respect to such Indebtedness made following the Issue Date pursuant to clause (1) of Section 4.10;

(2) the incurrence by the Issuer and any Guarantor of Indebtedness represented by the Notes (including any Guarantee) (other than any Additional Notes) and exchange notes issued in respect of such Notes and any Guarantee thereof;

(3) Indebtedness of the Issuer and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (1) and (2) above) or incurred pursuant to commitments in existence on the Issue date;

(4)(i) Indebtedness (including Capitalized Lease Obligations) incurred or Disqualified Stock and Preferred Stock issued by the Issuer or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets and (ii) any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refund, refinance or replace any other Indebtedness incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (4); provided that the aggregate amount of Indebtedness incurred and Disqualified Stock and Preferred Stock issued pursuant to clauses (i) and (ii) of this clause (4) does not exceed at any one time outstanding the greater of (x) $75.0 million (y) 3.75% of Total Tangible Assets at the time incurred;

(5) Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; provided, however, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;

(6) Indebtedness arising from agreements of the Issuer or its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; provided, however, that

(a) such Indebtedness is not reflected on the balance sheet of the Issuer, or any of its Restricted Subsidiaries prepared in accordance with GAAP (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (6)(a)); and

(b) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(7) Indebtedness of the Issuer to a Restricted Subsidiary; provided that any such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Notes; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (7);

(8) Indebtedness of a Restricted Subsidiary to the Issuer or another Restricted Subsidiary; provided that if a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Notes of such Guarantor; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (8);

(9) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer or another Restricted Subsidiary, provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Issuer or another of its Restricted Subsidiaries or any pledge of such Capital Stock constituting a Permitted Lien) shall be deemed in each case to be an issuance of such shares of Preferred Stock not permitted by this clause (9);

(10)(x) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk, exchange rate risk or commodity pricing risk, and (y) Indebtedness in respect of Cash Management Services to the extent customary for similarly situated businesses or otherwise in the ordinary course of business;

(11) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees or obligations in respect of letters of credit related thereto provided by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(12) Indebtedness or Disqualified Stock of the Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary equal to 200.0% of the net cash proceeds received by the Issuer since immediately after the Issue Date from the issue or sale of Equity Interests of the Issuer or cash contributed to the capital of the Issuer (in each case, other than proceeds of Disqualified Stock or sales of Equity Interests to the Issuer or any of its Subsidiaries and Designated Proceeds) as determined in accordance with clauses (3)(b) and (3)(c) of Section 4.07 hereof to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges

pursuant to the second paragraph of Section 4.07 hereof or to make Permitted Investments (other than Permitted Investments specified in clauses (1) and (3) of the definition thereof);

(13) the incurrence by the Issuer or any Restricted Subsidiary of Indebtedness or issuance by the Issuer or any Restricted Subsidiary of Disqualified Stock or Preferred Stock which serves to refund or refinance any Indebtedness incurred or Disqualified Stock or Preferred Stock issued as permitted under the first paragraph of this Section 4.09 hereof and clauses (2), (3) and (12) of this Section 4.09, this clause (13) and clause (14) of the second paragraph of this Section 4.09 or any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock including additional Indebtedness incurred or Disqualified Stock or Preferred Stock issued to pay premiums (including tender premiums), defeasance costs and fees in connection therewith (the " **Refinancing Indebtedness**") prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(a) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,

(b) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated or pari passu to the Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or pari passu to the Notes or the Guarantee at least to the same extent as the Indebtedness being refinanced or refunded or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively, and

(c) shall not include:

(i) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer;

(ii) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(iii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and provided further that subclause (a) of this clause (13) will not apply to any refunding or refinancing of any Indebtedness outstanding under the Senior Credit Facilities;

(14) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Issuer or a Restricted Subsidiary incurred or issued to finance an acquisition or (y) Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into or amalgamated or consolidated with the Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture; provided that after giving effect to such acquisition, merger, amalgamation or consolidation, either

(a) the Issuer would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Coverage Ratio Test, or

(b) the Fixed Charge Coverage Ratio of the Issuer and the Restricted Subsidiaries is greater than immediately prior to such acquisition, merger, amalgamation or consolidation;

(15) Indebtedness arising from 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 that such Indebtedness is extinguished within five Business Days of its incurrence;

(16) Indebtedness of the Issuer or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Senior Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(17)(a) any guarantee by the Issuer or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of this Indenture, or

(b) any guarantee by a Restricted Subsidiary of Indebtedness of the Issuer provided that such guarantee is incurred in accordance with Section 4.15 hereof;

(18) Indebtedness of Foreign Subsidiaries of the Issuer incurred not to exceed, together with any other Indebtedness incurred under this clause (18) at any one time outstanding, $75.0 million (it being understood that any Indebtedness incurred pursuant to this clause (18) shall cease to be deemed incurred or outstanding for purposes of this clause (18) but shall be deemed incurred for the purposes of the first paragraph of this Section 4.09 from and after the first date on which the applicable Foreign Subsidiary could have incurred such Indebtedness under the first paragraph of this Section 4.09 without reliance on this clause (18));

(19)(i) Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred or issued to finance or assumed in connection with an acquisition and (ii) Indebtedness incurred to refund, refinance or replace any other Indebtedness, Disqualified Stock and Preferred Stock permitted under this clause (19), in each case, in a principal amount not to exceed, together with all other Indebtedness, Disqualified Stock and/or Preferred Stock issued under this clause (19), $75.0 million in the aggregate at any one time outstanding (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (19) shall cease to be deemed incurred or outstanding for purposes of this clause (19) but shall be deemed incurred for the purposes of the first paragraph of this Section 4.09 from and after the first date on which such Restricted Subsidiary could have incurred such Indebtedness or issued such Disqualified Stock or Preferred Stock under the first paragraph of this Section 4.09 without reliance on this clause (19));

(20) Indebtedness of the Issuer or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;

(21) Indebtedness consisting of Indebtedness issued by the Issuer or any of its Restricted Subsidiaries (i) to current or former officers, members of the board of managers or 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 described in clause (4) of Section 4.07 or (ii) current or former employees, and development partners, of the Issuer and its Restricted

Subsidiaries, in each case, issued as consideration in respect of repurchases, redemptions or acquisitions of Equity Interests in Employment Participation Subsidiaries permitted under clause (17) of the definition of "Permitted Investment" in the ordinary course of business consistent with past practice; and

(22) Indebtedness or Disqualified Stock of the Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this clause (22), does not at any one time outstanding exceed $100.0 million (it being understood that any Indebtedness incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (22) shall cease to be deemed incurred or outstanding for purposes of this clause (22) but shall be deemed incurred for the purposes of the first paragraph of this Section 4.09 from and after the first date on which the Issuer or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this Section 4.09 without reliance on this clause (22)).

For purposes of determining compliance with this Section 4.09:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (21) of the definition of "Permitted Debt" or is entitled to be incurred pursuant to the Coverage Ratio Test, the Issuer, in its sole discretion, shall classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses provided; that all Indebtedness outstanding under the term loan portion of the Senior Credit Facilities on the Issue Date shall at all times be deemed to be outstanding in reliance on clause (1) of the definition of "Permitted Debt"; and

(2) at the time of incurrence, the Issuer shall be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in the first and second paragraphs of this Section 4.09.

Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness, Disqualified Stock or Preferred Stock shall not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.09.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

The Issuer shall not, and shall not permit any Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinated or junior in right of payment to any Indebtedness of the Issuer or such Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Notes or such Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Issuer or such Guarantor, as the case may be.

For purposes of this Indenture, (1) Indebtedness that is unsecured is not deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured and (2) senior indebtedness is not deemed to be subordinated or junior to any other senior indebtedness merely because it has a junior priority with respect to the same collateral.

Section 4.10 Asset Sales.

The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

(1) 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; and

(2) except in the case of a Permitted Asset Swap, 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 Equivalents; provided that the amount of:

(a) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto) of the Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Notes, that are assumed by the transferee of any such assets and for which the Issuer and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(b) any securities received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received) within 180 days following the closing of such Asset Sale, and

(c) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed 5.0% of Total Tangible Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value,

shall be deemed to be Cash Equivalents for purposes of this provision and for no other purpose.

Within 450 days after the receipt of any Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

(1) to permanently reduce:

(a) Obligations under the Senior Credit Facilities and to correspondingly reduce commitments with respect thereto;

(b) Obligations under Indebtedness (other than Subordinated Indebtedness) that is secured by a Lien, which Lien is permitted by this Indenture, and to correspondingly reduce commitments with respect thereto;

(c) Obligations under other Indebtedness (other than Subordinated Indebtedness) (and to correspondingly reduce commitments with respect thereto), provided that the Issuer shall equally and ratably reduce Obligations under the Notes as provided under Section 3.07 hereof, through openmarket purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, and Additional Interest, if any, on the amount of Notes that would otherwise be prepaid; or

(d) Indebtedness of a Restricted Subsidiary that is not a Guarantor, other than Indebtedness owed to the Issuer or another Restricted Subsidiary;

(2) to make (a) an Investment in any one or more businesses, provided that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) capital expenditures or (c) acquisitions of other assets, in the case of each of (a), (b) and (c), used or useful in a Similar Business; or

(3) to make 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 Stock and results in the Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) properties or (c) other assets that, in the case of each of (a), (b) and (c), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

provided that, in the case of clauses (2) and (3) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds shall be applied to satisfy such commitment within 180 days of such commitment (an " **Acceptable Commitment**") and, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, the Issuer or such Restricted Subsidiary enters into another Acceptable Commitment (a "**Second Commitment**") within 180 days of such cancellation or termination; provided further that if any Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

Any Net Proceeds from the Asset Sale that are not invested or applied as provided and within the time period set forth in the preceding paragraph shall be deemed to constitute "**Excess Proceeds.**" When the aggregate amount of Excess Proceeds exceeds $40.0 million, the Issuer shall make an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with

the Notes ("**Pari Passu Indebtedness**"), to the holders of such Pari Passu Indebtedness (an " **Asset Sale Offer**"), to purchase the maximum aggregate principal amount of the Notes and such Pari Passu Indebtedness that is an integral multiple of $1,000 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 and Additional Interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Issuer shall commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed $40.0 million by mailing the notice required pursuant to the terms of this Indenture, with a copy to the Trustee or otherwise in accordance with the procedures of DTC.

To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to compliance with other covenants contained in this Indenture. If the aggregate principal amount of Notes and the Pari Passu Indebtedness surrendered in an Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the Co-Issuers, or, if so elected by the Co-Issuers, the agent for such Pari Passu Indebtedness, shall select such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered in accordance with Section 3.09. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset to zero (regardless of whether there are any remaining Excess Proceeds upon such completion).

Pending the final application of any Net Proceeds pursuant to this Section 4.10, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise use such Net Proceeds in any manner not prohibited by this Indenture.

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

Section 4.11 Transactions with Affiliates.

The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, 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, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an " **Affiliate Transaction**") involving aggregate payments or consideration in excess of $10.0 million, unless:

(1) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and

(2) the Issuer delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $30.0 million, a resolution adopted by the majority of the board of managers or directors of the

Issuer approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (1) above.

The foregoing provisions will not apply to the following:

(1) transactions between or among the Issuer or any of its Restricted Subsidiaries;

(2) Restricted Payments permitted by Section 4.07 hereof and Investments constituting Permitted Investments;

(3) the payment of management, consulting, monitoring, transaction and advisory fees and termination fees and related indemnities and expenses pursuant to the Sponsor Management Agreement as in effect on the Issue Date and any amendment, modification or replacement thereof or any similar agreement that is not, when taken as a whole, less favorable to the holders of the Notes in any material respect as compared to the Sponsor Management Agreement as in effect on the Issue Date (it being agreed, however, that termination fees (or similar amounts) payable upon the occurrence of an initial public offering or a Change of Control (or any events or circumstances of a substantially similar nature) not to exceed an amount equal to the present value (as determined (or pursuant to a determination agreed to) by the Issuer in good faith) of the aggregate amount of any fees that would otherwise have been payable under the Sponsor Management Agreement as in effect on the Issue Date during the stated term thereof shall in any event be permitted);

(4) the payment of reasonable and customary fees and compensation paid to, and indemnities and reimbursements provided on behalf of, officers, members of the board of managers or directors, employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries;

(5) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(6) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous in any material respect to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(7) 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 or purchase agreement related thereto) 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 (7) 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;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses, in each case as disclosed in the Offering Memorandum;

(9) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the board of managers or directors of the Issuer or the senior management thereof, or are on terms at least as favorable as would reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance of Equity Interests (other than Disqualified Stock) of the Issuer to any direct or indirect parent of the Issuer or to any Permitted Holder or to any member of the board of managers or any director, officer, employee or consultant of the Issuer, any Subsidiary or any direct or indirect parent of the Issuer;

(11) any customary transaction with a Securitization Subsidiary effected as part of a Qualified Securitization Financing;

(12) payments by the Issuer or any of its Restricted Subsidiaries to or for the benefit of any of the Investors or Founders made for any financial or transaction advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions, divestitures and securities offerings, which payments are approved by a majority of the board of managers or directors of the Issuer in good faith or are otherwise permitted by this Indenture (it being agreed that fees of up to 1.0% of the gross amount of any applicable transaction shall in any event be permitted);

(13) payments or loans (or cancellation of loans) to employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and employment agreements, stock option plans, restricted stock plans, bonus programs and other similar arrangements with such employees or consultants which, in each case, are approved by the Issuer in good faith; and

(14) investments by the Investors in securities of the Issuer or any of its Restricted Subsidiaries so long as (i) the investment is being offered generally to other investors on the same or more favorable terms and (ii) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities.

Section 4.12 Liens.

The Issuer shall not, and shall not permit any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness or any related guarantee, on any asset or property of the Issuer or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(1) in the case of Liens securing Subordinated Indebtedness, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(2) in all other cases, the Notes or the Guarantees are equally and ratably secured;

except that the foregoing shall not apply to or restrict (a) Liens securing the Notes and the related Guarantees, (b) Liens securing (x) Indebtedness permitted to be incurred under Senior Credit Facilities, including any letter of credit facility relating thereto, that was permitted by the terms of this Indenture to be incurred pursuant to clause (1) of the definition of "Permitted Debt" and (y) both (i) Indebtedness described in clause (x) or in respect of any Senior Credit Facilities secured by Liens pursuant to subclause (c) below or pursuant to clause (6) of the definition of "Permitted Liens" and (ii) obligations of the Issuer or any Guarantor in respect of any Bank Products or Cash Management Services provided by any lender, letter of credit issuer or agent party to any Senior Credit Facilities or any affiliate of such lender, letter of credit issuer or agent (or any Person that was a lender, letter of credit issuer or agent or an affiliate thereof at the time the applicable agreements pursuant to which such Bank Products or Cash Management Services are provided were entered into) and (c) Liens incurred to secure Obligations in respect of any Indebtedness permitted to be incurred pursuant to Section 4.09 hereof; provided that, with respect to Liens securing Obligations permitted under this subclause (c), at the time of incurrence and after giving *pro forma* effect thereto, the Consolidated Secured Debt Ratio would be no greater than 4.0 to 1.0.

Any Lien created for the benefit of the Holders of the Notes pursuant to this Section 4.12 shall be deemed automatically and unconditionally released and discharged upon the release and discharge of each of the Liens described in clauses (1) and (2) of this Section 4.12.

Section 4.13 Corporate Existence.

Subject to Article 5 hereof, the Co-Issuers shall do or cause to be done all things necessary to preserve and keep in full force and effect their limited liability company or corporate existence, as applicable, and the corporate, partnership, limited liability company or other existence of each of the Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Co-Issuers or any such Restricted Subsidiary; provided that, notwithstanding the foregoing, the Issuer may at any time change its existence to a corporation, including through a direct conversion in accordance with the laws of the State of Delaware or by means of a merger under Section 5.01(b)(2).

Section 4.14 Offer to Repurchase Upon Change of Control.

If a Change of Control occurs, unless the Issuer has previously or concurrently mailed a redemption notice with respect to all the outstanding Notes as described under Section 3.07 hereof, the Co-Issuer shall make an offer to purchase all of the Notes pursuant to the offer described below (the " **Change of Control Offer**") at a price in cash (the "**Change of Control Payment**") equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest, if any, to the date of purchase, subject to the right of Holders of record of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date. Within 30 days following any Change of Control, the Issuer shall send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the security register or otherwise in accordance with the procedures of DTC, with the following information:

(1) that a Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;

(2) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is mailed (the "**Change of Control Payment Date**");

(3) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(4) that unless the Co-Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders shall be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes, provided that the paying agent receives, not later than the close of business on the second Business Day prior to the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(7) that if the Co-Issuers are redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to $1,000 or an integral multiple thereof; and

(8) the other instructions, as determined by the Issuer, consistent with this Section 4.14, that a Holder must follow.

The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (a) the notice is mailed in a manner herein provided and (b) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder's failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect. The Co-Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase by the Co-Issuers of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Co-Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.14 by virtue thereof.

On the Change of Control Payment Date, the Co-Issuers shall, to the extent permitted by law,

(1) accept for payment all Notes issued by the Co-Issuers or portions thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered; and

(3) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer's Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Co-Issuers.

The Co-Issuers shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.14 applicable to a Change of Control Offer made by the Co-Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer 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 of the Change of Control Offer.

Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections 3.02, 3.05 and 3.06 hereof.

Section 4.15 Limitation on Guarantees of Indebtedness by Restricted Subsidiaries .

The Issuer shall not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other capital markets debt securities of the Issuer or any Restricted Subsidiary or guarantee all or a portion of the Senior Credit Facilities), other than a Guarantor or a Foreign Subsidiary, to guarantee the payment of any Indebtedness of the Issuer or any other Guarantor unless:

(1) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes;

(2) such Restricted Subsidiary waives and shall not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee; and

(3) such Restricted Subsidiary shall deliver to the Trustee an Opinion of Counsel to the effect that:

(a) such Guarantee has been duly executed and authorized; and

(b) such Guarantee constitutes a valid, binding and enforceable obligation of such Restricted Subsidiary, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity;

provided that this Section 4.15 shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

The Issuer may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Guarantor to become a Guarantor, in which case, such Subsidiary shall only be required to comply with clauses (1) (other than with respect to any time period) and (2) of this Section 4.15.

Section 4.16 Limitation on Activities of the Co-Issuer .

The Co-Issuer may not hold any material assets, become liable for any material obligations, engage in any material trade or business, or conduct any material business activity, other than (1) the issuance of its Equity Interests to the Issuer or any Wholly-Owned Subsidiary that is a Restricted Subsidiary of the Issuer, (2) the incurrence of Indebtedness under the Notes, the Senior Credit Facilities and any other Indebtedness that is permitted to be incurred by the Issuer under Section 4.09 and (3) activities incidental thereto; provided that the foregoing restrictions and limitations shall not apply upon (x) the merger or consolidation of the Co-Issuer with the Issuer (the survivor of which is a corporation organized under the laws of the United States, any state thereof, the District of Columbia or any territory thereof) or (y) the Issuer or any successor to the Issuer being or becoming a corporation organized under the laws of the United States, any state thereof, the District of Columbia or any territory thereof. So long as the Issuer or any successor to the Issuer under the Notes is an entity other than a corporation there shall be a co-issuer of the Notes that is a Wholly-Owned Subsidiary of the Issuer and a Restricted Subsidiary that is a corporation organized and existing under the laws of the United States, any state of the United States or any territory thereof.

ARTICLE 5

SUCCESSORS

Section 5.01 Merger, Consolidation or Sale of All or Substantially All Assets .

(a) The Issuer shall not consolidate or merge with or into or wind up into (whether or not the Issuer is the surviving entity), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(1) the Issuer is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation or limited liability company organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (the Issuer or such Person, as the case may be, being herein called the " **Successor Company**");

(2) the Successor Company, if other than the Issuer, expressly assumes all the obligations of the Issuer under the Notes pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Default exists;

(4) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable four-quarter period,

(a) the Successor Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Coverage Ratio Test, or

(b) the Fixed Charge Coverage Ratio for the Successor Company and its Restricted Subsidiaries would be greater than the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(5) each Guarantor, unless it is the other party to the transactions described above, in which case Section 5.01(c)(1)(B) hereof shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under this Indenture, the Notes and the Registration Rights Agreement; and

(6) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture.

The Successor Company shall succeed to, and be substituted for, the Issuer, as the case may be, under this Indenture, the Guarantees and the Notes, as applicable.

(b) Clauses (3), (4), (5) and (6) of Section 5.01(a) hereof shall not apply to the merger contemplated by the Transaction Agreement. Notwithstanding clauses (3) and (4) of Section 5.01(a) hereof,

(1) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Issuer, and

(2) the Issuer may merge with an Affiliate of the Issuer, as the case may be, solely for the purpose of reincorporating (including as contemplated by Section 4.13) the Issuer in a State of the United States, the District of Columbia or any territory thereof so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

(c) No Guarantor shall, and the Issuer shall not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Issuer or Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(1) (a) such Guarantor is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the " **Successor Person**");

(b) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under this Indenture and such Guarantor's related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(c) immediately after such transaction, no Default exists; and

(d) the Issuer shall have delivered to the Trustee an Officer's Certificate and, if requested by the Trustee, an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture; or

(2) the transaction is made in compliance with clauses (1) and (2) of the first paragraph of Section 4.10 hereof.

(d) Subject to certain limitations described in this Indenture, the Successor Person shall succeed to, and be substituted for, such Guarantor under this Indenture and such Guarantor's Guarantee. Notwithstanding the foregoing, any Guarantor may merge into or with or wind up into or transfer all or part of its properties and assets to another Guarantor or the Issuer.

Section 5.02 Successor Corporation Substituted.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Co-Issuers in accordance with Section 5.01 hereof, the successor corporation formed by such consolidation or into or with which the Co-Issuers is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Issuer shall refer instead to the successor corporation and not to the Co-Issuers), and may exercise every right and power of the Co-Issuers under this Indenture with the same effect as if such successor Person had been named as the Co-Issuers herein; provided that the predecessor Co-Issuers shall not be relieved from the obligation to pay the principal of and interest and Additional Interest, if any, on the Notes except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all of the Co-Issuers' assets that meets the requirements of Section 5.01 hereof.

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

(a) An "**Event of Default**" wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(2) default for 30 days or more in the payment when due of interest or Additional Interest on or with respect to the Notes;

(3) failure by the Co-Issuers or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less than 25% in principal amount of the Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (1) and (2) above) contained in this Indenture or the Notes;

(4) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Issuer or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries, other than Indebtedness owed to the Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Notes, if both:

(a) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(b) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay any principal at its stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $50.0 million or more at any one time outstanding;

(5) failure by the Issuer or any Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, to pay final judgments aggregating in excess of $50.0 million, which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(6) the Co-Issuers or any of the Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;

(iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) generally is not paying its debts as they become due;

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

(i) is for relief against the Co-Issuers or any of the Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in a proceeding in which the Co-Issuers or any such Restricted Subsidiaries, that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Co-Issuers or any of the Restricted Subsidiaries that is a Significant

Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, or for all or substantially all of the property of the Co-Issuers or any of the Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary; or

(iii) orders the liquidation of the Co-Issuers or any of the Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary;

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

(8) the Guarantee of any Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, shall for any reason cease to be in full force and effect or any responsible officer of any Guarantor that is a Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, as the case may be, denies that it has any further liability under its or their Guarantee(s) or gives notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture.

(b) In the event of any Event of Default specified in clause (4) of Section 6.01(a) hereof, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose:

(1) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or

(2) holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(3) the default that is the basis for such Event of Default has been cured.

Section 6.02 Acceleration.

If any Event of Default (other than an Event of Default specified in clause (6) or (7) of Section 6.01(a) hereof with respect to the Issuer) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Upon the effectiveness of such declaration, such principal and interest shall be due and payable immediately. The Trustee shall have no obligation to accelerate the Notes if and so long as a committee of its Responsible Officers in good faith determines acceleration is not in the best interest of the Holders of the Notes.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (6) or (7) of Section 6.01(a) hereof with respect to the Issuer, all outstanding Notes shall be due and payable immediately without further action or notice.

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of all of the Holders rescind an acceleration and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) if all existing Events of Default have been cured, waived, annulled or rescinded except nonpayment of principal interest, Additional Interest, if any, or premium that has become due solely because of the acceleration;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(4) if the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances.

Section 6.03 Other Remedies.

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

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 of a Note 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 6.04 Waiver of Past Defaults.

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default and its consequences hereunder, except a continuing Default in the payment of the principal of, premium, if any, Additional Interest, if any, or interest on, any Note held by a non-consenting Holder (including in connection with an Asset Sale Offer or a Change of Control Offer); provided, subject to Section 6.02 hereof, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto.

Section 6.05 Control by Majority.

Holders of a majority in principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or that would involve the Trustee in personal liability.

Section 6.06 Limitation on Suits.

Subject to Section 6.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(2) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;

(3) Holders of the Notes have offered the Trustee security or indemnity reasonably satisfactory to it against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

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

Section 6.07 Rights of Holders of Notes To Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and Additional Interest, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), 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 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(a)(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 Co-Issuers for the whole amount of principal of, premium, if any, and Additional Interest, if any, 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 6.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Co-Issuers, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12 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 of the Notes allowed in any judicial proceedings relative to the Co-Issuers (or any other obligor upon the Notes including the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable 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 7.07 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 7.07 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 6.13 Priorities.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

(i) to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

(ii) to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and Additional Interest, 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 Additional Interest, if any, and interest, respectively; and

(iii) to the Co-Issuers or to such party as a court of competent jurisdiction shall direct including a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.13.

Section 6.14 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 and expenses, 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 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7

TRUSTEE

Section 7.01 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 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 such person's 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, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the form required by this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

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

(i) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction 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 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders of the Notes unless the Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense.

(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 Co-Issuers. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely upon 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 the document, 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 the books, records and premises of the Co-Issuers, personally or by agent or attorney at the sole cost of the Co-Issuers and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate (from the Co-Issuers) 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 Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

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

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

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have knowledge or 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 or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) In the event the Co-Issuers are required to pay Additional Interest, the Co-Issuers will provide written notice to the Trustee of the Co-Issuers' obligation to pay Additional Interest no later than 15 days prior to the next Interest Payment Date, which notice shall set forth the amount of the Additional Interest to be paid by the Co-Issuers. The Trustee shall not at any time be under any duty or responsibility to any Holders to determine whether the Additional Interest is payable and the amount thereof.

Section 7.03 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 Co-Issuers or any Affiliate of the Co-Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. 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 7.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Co-Issuers' use of the proceeds from the Notes or any money paid to the Co-Issuers or upon the Co-Issuers' direction under any provision of this Indenture, it shall not 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 or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice of the Default within 90 days after it occurs. Except in the case of a

Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 Reports by Trustee to Holders of the Notes.

Within 60 days after each August 15, beginning with the August 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with Trust Indenture Act Section 313(a) (but if no event described in Trust Indenture Act Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with Trust Indenture Act Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by Trust Indenture Act Section 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to the Issuer and filed with the SEC and each stock exchange on which the Notes are listed in accordance with Trust Indenture Act Section 313(d). The Co-Issuers shall promptly notify the Trustee when the Notes are listed on any stock exchange or delisted therefrom.

Section 7.07 Compensation and Indemnity.

The Co-Issuers shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Co-Issuers 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 Co-Issuers and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Co-Issuers or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Co-Issuers or any Guarantor, or liability in connective with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Co-Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Co-Issuers shall not relieve the Co-Issuers of their obligations hereunder. The Co-Issuers shall defend the claim and the Trustee may have separate counsel and the Co-Issuers shall pay the fees and expenses of such counsel. The Co-Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith.

The obligations of the Co-Issuers under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Co-Issuers and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(6) or (7) 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.

The Trustee shall comply with the provisions of Trust Indenture Act Section 313(b)(2) to the extent applicable.

Section 7.08 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 7.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Co-Issuers. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Co-Issuers in writing. The Co-Issuers 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 Co-Issuers 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 Co-Issuers.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Co-Issuers' expense), the Co-Issuers 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 Co-Issuers. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; provided all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Co-Issuers' obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09 Successor Trustee by Merger, etc.

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

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 trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5). The Trustee is subject to Trust Indenture Act Section 310(b).

Section 7.11 Preferential Collection of Claims Against Co-Issuers.

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

ARTICLE 8

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 Option To Effect Legal Defeasance or Covenant Defeasance.

The Co-Issuers may, at their option and at any time, elect to have either Section 8.02 or 8.03 hereof applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 Legal Defeasance and Discharge.

Upon the Co-Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Co-Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes and Guarantees on the date the conditions set forth below are satisfied (" Legal Defeasance"). For this purpose, Legal Defeasance means that the Co-Issuers shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all their other obligations under such Notes and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the Co-Issuers, 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 Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04 hereof;

(b) the Co-Issuers' obligations with respect to Notes concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(c) the rights, powers, trusts, duties and immunities of the Trustee, and the Co-Issuers' obligations in connection therewith; and

(d) this Section 8.02.

Subject to compliance with this Article 8, the Co-Issuers may exercise their option under this Section 8.02 notwithstanding the prior exercise of their option under Section 8.03 hereof.

Section 8.03 Covenant Defeasance.

Upon the Co-Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Co-Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 hereof and clauses (4) and (5) of Section 5.01(a), Sections 5.01(c) and 5.01(d) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (" **Covenant 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 Co-Issuers 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 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Co-Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(a)(3), 6.01(a)(4), 6.01(a)(5), 6.01(a)(6) (solely with respect to Restricted Subsidiaries subject thereto), 6.01(a)(7) (solely with respect to Restricted Subsidiaries subject thereto) and 6.01(a)(8) hereof shall not constitute Events of Default.

Section 8.04 Conditions to Legal or Covenant Defeasance.

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(1) the Co-Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest due on the Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuer must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Co-Issuers shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(a) the Co-Issuers have received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Co-Issuers shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, and the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Senior Credit Facilities, or any other material agreement or instrument (other than this Indenture) to which the Co-Issuers or any Guarantor is a party or by which the Co-Issuers or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such Legal Defeasance or Covenant Defeasance and any similar and simultaneous deposit relating to other Indebtedness, and the granting of Liens in connection therewith);

(6) the Co-Issuers shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

(7) the Co-Issuers shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or any Guarantor or others; and

(8) the Co-Issuers shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 8.05 Deposited Money and Government Securities To Be Held in Trust; Other Miscellaneous Provisions .

Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the " **Trustee**") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust 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 Co-Issuers or a Guarantor 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 and Additional Interest, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Co-Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 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 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Co-Issuers from time to time upon the request of the Co-Issuers any money or Government Securities held by it as provided in Section 8.04 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 8.04(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 8.06 Repayment to Co-Issuers.

Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Co-Issuers, in trust for the payment of the principal of, premium and Additional Interest, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium and Additional Interest, if any, or interest has become due and payable shall be paid to the Co-Issuers on their request or (if then held by the Co-Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Co-Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Co-Issuers as trustee thereof, shall thereupon cease.

Section 8.07 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or Government Securities in accordance with Section 8.02 or 8.03 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 Co-Issuers' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; provided that, if the Co-Issuers make any payment of principal of, premium and Additional Interest, if any, or interest on any Note following the reinstatement of its obligations, the Co-Issuers 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.

ARTICLE 9

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders of Notes.

Notwithstanding Section 9.02 hereof, the Co-Issuers, any Guarantor (with respect to a Guarantee to which it is a party or this Indenture) and the Trustee may amend or supplement this Indenture and any Guarantee or Notes without the consent of any Holder:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency;

(2) to provide for uncertificated Notes of such series in addition to or in place of certificated Notes;

(3) to comply with Section 5.01 hereof;

(4) to provide for the assumption of the Issuer's or any Guarantor's obligations to the Holders in a transaction that complies with this Indenture;

(5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder;

(6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer, the Co-Issuer or any Guarantor;

(7) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;

(8) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee thereunder pursuant to the requirements thereof;

(9) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;

(10) to add a Guarantor under this Indenture;

(11) to conform the text of this Indenture, Guarantees or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum to the extent that such provision in such "Description of Notes" section was intended to be a verbatim recitation of a provision of this Indenture, Guarantee or Notes; or

(12) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation to facilitate the issuance and administration of the Notes; provided, however, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes.

Upon the request of the Co-Issuers accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the

Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Co-Issuers and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, no Opinion of Counsel shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, and delivery of an Officer's Certificate.

Section 9.02 With Consent of Holders of Notes.

Except as provided below in this Section 9.02, the Co-Issuers and the Trustee may amend or supplement this Indenture, the Notes and the Guarantees with the consent of the Holders of at least a majority in principal amount of the Notes (including Additional Notes, if any) then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium and Additional Interest, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including Additional Notes, if any) voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 hereof and Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

Upon the request of the Co-Issuers accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Co-Issuers in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Co-Issuers shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Co-Issuers to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder of Notes, an amendment or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Notes (other than provisions relating to Section 3.09, Section 4.10 and Section 4.14 hereof to the extent that any such amendment or waiver does not have the effect of reducing the principal of or changing the fixed final maturity of any such Note or altering or waiving the provisions with respect to the redemption of such Notes);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all affected Holders;

(5) make any Note payable in money other than that stated therein;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(7) make any change to this paragraph of this Section 9.02;

(8) impair the right of any Holder to receive payment of principal of, or interest on, such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(9) make any change to or modify the ranking of the Notes that would adversely affect the Holders; or

(10) except as expressly permitted by this Indenture, modify the Guarantees of any Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, in any manner adverse to the Holders of the Notes.

Section 9.03 Compliance with Trust Indenture Act.

Every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental indenture that complies with the Trust Indenture Act as then in effect.

Section 9.04 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 of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note 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. An amendment, supplement or waiver becomes effective in accordance with its terms (or if silent as to effectiveness, on the date on which the Trustee receives an Officers' Certificate certifying that the Holders of the requisite principal amount of Notes have consented (and not theretofore revoked such consent) to such amendment, supplement or waiver) and thereafter binds every Holder.

The Co-Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 9.05 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 Co-Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, 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.

Section 9.06 Trustee To Sign Amendments, etc.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. Neither the Issuer nor the Co-Issuer may sign an amendment, supplement or waiver until its board of directors (or a duly authorized committee thereof) (or, if applicable, board of managers) approves it. In executing any amendment, supplement or waiver, the Trustee shall be provided with and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Co-Issuers and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03). Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

Section 9.07 Payment for Consent.

The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to or for the benefit of any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

ARTICLE 10

GUARANTEES

Section 10.01 Guarantee.

Subject to this Article 10, each of the Guarantors hereby fully, jointly and severally, irrevocably and unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Co-Issuers hereunder or thereunder, that: (a) the principal of, and interest, premium and Additional Interest, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other Obligations of the Co-Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall 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. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their 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 of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Co-Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Co-Issuers, any right to require a proceeding first against the Co-Issuers, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Co-Issuers, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Co-Issuers or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, 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 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Co-Issuers for liquidation, reorganization, should the Co-Issuers become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Co-Issuers' assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any 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.

The Guarantee issued by any Guarantor shall be a general unsecured senior obligation of such Guarantor and shall be *pari passu* in right of payment with all existing and future senior Indebtedness of such Guarantor, if any.

Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 10.02 Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws 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 this Article 10, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's *pro rata* portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 10.03 Execution and Delivery.

To evidence its Guarantee set forth in Section 10.01 hereof, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by one of its Officers.

Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15 hereof, the Co-Issuers shall cause any newly created or acquired Restricted Subsidiary to comply with the provisions of Section 4.15 hereof and this Article 10, to the extent applicable.

Section 10.04 Subrogation.

Each Guarantor shall be subrogated to all rights of Holders of Notes against the Co-Issuers in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 10.01 hereof; provided that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Co-Issuers under this Indenture or the Notes shall have been paid in full.

Section 10.05 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 10.06 Release of Guarantees.

A Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Co-Issuers or the Trustee is required for the release of such Guarantor's Guarantee, upon:

(1) (a) any sale, exchange, disposition or transfer (by merger or otherwise) of (x) the Capital Stock of such Guarantor, after which the applicable Guarantor is no longer a Restricted Subsidiary, or (y) all or substantially all the assets of such Guarantor, which sale, exchange, disposition or transfer in each case is made in compliance with clauses (1) and (2) of the first paragraph of Section 4.10;

(b) the release or discharge of the guarantee by such Guarantor of the Senior Credit Facilities or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee under the Senior Credit Facilities;

(c) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary; or

(d) the Co-Issuers exercising Legal Defeasance or Covenant Defeasance in accordance with Article 8 hereof or the Co-Issuers' obligations under this Indenture being discharged in accordance with the terms of this Indenture; and

(2) the Issuer delivering to the Trustee an Officer's Certificate and, if requested by the Trustee, an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

ARTICLE 11

SATISFACTION AND DISCHARGE

Section 11.01 Satisfaction and Discharge.

This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(1) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(2) (A) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, shall become due and payable within one year or are to be called for redemption 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 Co-Issuers and the Co-Issuers or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(B) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, and the granting of Liens in connection therewith) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under the Senior Credit Facilities, or any other material agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, and the granting of Liens in connection therewith);

(C) the Co-Issuers have paid or caused to be paid all sums payable by it under this Indenture; and

(D) the Co-Issuers have delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Co-Issuers must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to subclause (A) of clause (2) of this Section 11.01, the provisions of Section 11.02 and Section 8.06 hereof shall survive such satisfaction and discharge.

Section 11.02 Application of Trust Money.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Co-Issuers acting as their own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium and Additional Interest, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Co-Issuers' and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof; provided that if the Co-Issuers have made any payment of principal of, premium and Additional Interest, if any, or interest on any Notes because of the reinstatement of its obligations, the Co-Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 12

MISCELLANEOUS

Section 12.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Trust Indenture Act Section 318(c), the imposed duties shall control.

Section 12.02 Notices.

Any notice or communication by the Issuer, the Co-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), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuer, the Co-Issuer and/or any Guarantor:

c/o OSI Restaurant Partners, LLC
2202 N. West Shore Boulevard, 5th Floor
Tampa, Florida 33607
Facsimile: (813) 282-1225
Attention: Chief Financial Officer

with a copy to:

Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110
Facsimile: (617) 253-0514
Attention: Craig E. Marcus, Esq.

If to the Trustee:

Wells Fargo Bank, National Association
Corporate Trust Services
213 Court Street, Suite 703
Middletown, CT 06457
Telephone: (860) 704-6217
Facsimile: (860) 704-6219
Attention: Joseph P. O'Donnell
Vice President

The Issuer, the Co-Issuer, any Guarantor or 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) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; and, subject to compliance with the Trust Indenture Act, on the first date on which publication is made, if given by publication; provided that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next 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 Trust Indenture Act Section 313(c), to the extent required by the Trust Indenture Act. 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 otherwise delivered in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If any Co-Issuer mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Section 12.03 Communication by Holders of Notes with Other Holders of Notes .

Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Co-Issuers, the Trustee, the Registrar and anyone else shall have the protection of Trust Indenture Act Section 312(c).

Section 12.04 Certificate and Opinion as to Conditions Precedent .

Upon any request or application by the Co-Issuers or any of the Guarantors to the Trustee to take any action under this Indenture, the Co-Issuers or such Guarantor, as the case may be, shall furnish to the Trustee:

(a) An Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 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 in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 12.05 Statements Required in Certificate or Opinion .

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof or Trust Indenture Act Section 314(a)(4)) shall comply with the provisions of Trust Indenture Act Section 314(e) and 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 complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer's Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with; provided, however, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 12.06 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 12.07 No Personal Liability of Managers, Directors, Officers, Employees and Stockholders .

No past, present or future member of the board of managers or any director, officer, employee, incorporator, member, partner or stockholder of any Co-Issuer or any Guarantor or any of their direct or indirect parent companies (other than the Issuer and the Guarantors) shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 12.08 Governing Law.

THIS INDENTURE, THE NOTES AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 12.09 Waiver of Jury Trial.

EACH OF THE CO-ISSUERS, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW,

ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.10 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 12.11 No Adverse Interpretation of Other Agreements .

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Co-Issuers or any of the Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.12 Successors.

All agreements of the Co-Issuers in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 10.06 hereof.

Section 12.13 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 12.14 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. This Indenture may be executed in multiple counterparts which, when taken together, shall constitute one instrument.

Section 12.15 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 12.16 Qualification of Indenture.

The Co-Issuers and the Guarantors shall qualify this Indenture under the Trust Indenture Act in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Co-Issuers, the Guarantors and the Trustee) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and printing this Indenture and the Notes. The Trustee shall be entitled to receive from the Co-Issuers and the Guarantors any such Officer's Certificates, Opinions of Counsel or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the Trust Indenture Act.

[Signatures on following page]

OSI RESTAURANT PARTNERS, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer

OSI CO-ISSUER, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer

CARRABBA'S/ARIZONA-I, LIMITED PARTNERSHIP
CARRABBA'S/BIRCHWOOD, LIMITED PARTNERSHIP
CARRABBA'S/BROKEN ARROW, LIMITED PARTNERSHIP
CARRABBA'S/CANTON, LIMITED PARTNERSHIP
CARRABBA'S/CAROLINA-I, LIMITED PARTNERSHIP
CARRABBA'S/CENTRAL FLORIDA-I, LIMITED PARTNERSHIP
CARRABBA'S/CHICAGO, LIMITED PARTNERSHIP
CARRABBA'S/COLORADO-I, LIMITED PARTNERSHIP
CARRABBA'S/DALLAS-I, LIMITED PARTNERSHIP
CARRABBA'S/DC-I, LIMITED PARTNERSHIP
CARRABBA'S/FIRST COAST, LIMITED PARTNERSHIP
CARRABBA'S/GEORGIA-I, LIMITED PARTNERSHIP
CARRABBA'S/GREAT LAKES-I, LIMITED PARTNERSHIP
CARRABBA'S/GULF COAST-I, LIMITED PARTNERSHIP
CARRABBA'S/HEARTLAND-I, LIMITED PARTNERSHIP
CARRABBA'S/MID ATLANTIC-I, LIMITED PARTNERSHIP
CARRABBA'S/MID EAST, LIMITED PARTNERSHIP
CARRABBA'S/NEW ENGLAND, LIMITED PARTNERSHIP
CARRABBA'S/OHIO, LIMITED PARTNERSHIP
CARRABBA'S/OUTBACK, LIMITED PARTNERSHIP
CARRABBA'S/PENSACOLA, LIMITED PARTNERSHIP
CARRABBA'S/SECOND COAST, LIMITED PARTNERSHIP
CARRABBA'S/SOUTH FLORIDA-I, LIMITED PARTNERSHIP
CARRABBA'S/SOUTH TEXAS-I, LIMITED PARTNERSHIP
CARRABBA'S/SUN COAST, LIMITED PARTNERSHIP
CARRABBA'S/TEXAS, LIMITED PARTNERSHIP
CARRABBA'S/TRI STATE-I, LIMITED PARTNERSHIP
CARRABBA'S/TROPICAL COAST, LIMITED PARTNERSHIP
CARRABBA'S/VIRGINIA, LIMITED PARTNERSHIP
CARRABBA'S/WEST FLORIDA-I, LIMITED PARTNERSHIP
CARRABBA'S/Z TEAM TWO-I, LIMITED PARTNERSHIP
CARRABBA'S/Z TEAM-I, LIMITED PARTNERSHIP

By: **CARRABBA'S ITALIAN GRILL, INC.**, the general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

BILLABONG BEVERAGE COMPANY, INC.

By: /s/ Walter L. Cervin
Name: Walter L. Cervin
Title: President

OUTBACK BEVERAGES OF WEST TEXAS, L.L.C.

By: /s/ Thomas W. Kenney
Name: Thomas W. Kenney
Title: President

CARRABBA'S DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

CARRABBA'S KANSAS DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

CARRABBA'S MIDWEST DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

CARRABBA'S/KANSAS TWO-I, LIMITED PARTNERSHIP
CARRABBA'S/KANSAS-I, LIMITED PARTNERSHIP

By: **CARRABBA'S KANSAS, INC.,** the general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer

CARRABBA'S OF BATON ROUGE, LLC

By: /s/ James Potesta
Name: James Potesta
Title: Manager

CARRABBA'S/MIDWEST-I, LIMITED PARTNERSHIP

By: **CARRABBA'S MIDWEST, INC.,** its general partner

By: /s/ Paul E. Avery
Name: Paul E. Avery
Title: President

CARRABBA'S OF BOWIE, LLC

By: **CARRABBA'S/DC-I, LIMITED PARTNERSHIP.,** its managing member

By: **CARRABBA'S ITALIAN GRILL, INC.,** its general partner

By: /s/ Dirk A Montgomery
Name: Dirk A. Montgomery
Title: Chief Financial Officer, Senior Vice President

CIGI BEVERAGES OF TEXAS, INC.

By: /s/ John Murphy
Name: John Murphy
Title: President

CIGI HOLDINGS, INC.

By: /s/ Steven T. Shlemon
Name: Steven T. Shlemon
Title: President

FREDERICK OUTBACK, INC.

By: /s/ Steve Newton
Name: Steve Newton
Title: President and Treasurer

HEARTLAND OUTBACK-I, LIMITED PARTNERSHIP
HEARTLAND OUTBACK-II, LIMITED PARTNERSHIP

By: **HEARTLAND OUTBACK, INC.,** the general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS ASSET, INC.

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Chief Officer–Legal and Corporate Affairs,
Executive Vice President

OS CAPITAL, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS DEVELOPERS, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS MANAGEMENT, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS MORTGAGE HOLDINGS, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS REALTY, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS RESTAURANT SERVICES, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS TROPICAL, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK & CARRABBA'S OF NEW MEXICO, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A. Montgomery
Title: Chief Financial Officer, Senior Vice President

A LA CARTE EVENT PAVILION, LTD.
OUTBACK CATERING OF PITTSBURGH, LTD.

By: **OUTBACK CATERING, INC.,** the general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK CATERING DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OS SPEEDWAY, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK SPORTS, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK/HAWAII-I, LIMITED PARTNERSHIP

By: **OUTBACK STEAKHOUSE INTERNATIONAL, L.P.,** its general partner
By: **OSI INTERNATIONAL, INC.,** its general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK INTERNATIONAL DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

CHEESEBURGER-BUCKEYE, LIMITED PARTNERSHIP
CHEESEBURGER-DOWNER'S GROVE, LIMITED PARTNERSHIP
CHEESEBURGER-ILLINOIS, LIMITED PARTNERSHIP
CHEESEBURGER-MARYLAND, LIMITED PARTNERSHIP
CHEESEBURGER-MICHIGAN, LIMITED PARTNERSHIP
CHEESEBURGER-NEBRASKA, LIMITED PARTNERSHIP
CHEESEBURGER-NORTHERN NEW JERSEY, LIMITED PARTNERSHIP
CHEESEBURGER-NORTHERN VIRGINIA, LIMITED PARTNERSHIP
CHEESEBURGER-OHIO, LIMITED PARTNERSHIP
CHEESEBURGER-SOUTH CAROLINA, LIMITED PARTNERSHIP
CHEESEBURGER-SOUTH EASTERN PENNSYLVANIA, LIMITED PARTNERSHIP
CHEESEBURGER-SOUTH FLORIDA, LIMITED PARTNERSHIP
CHEESEBURGER-SOUTHERN NY, LIMITED PARTNERSHIP
CHEESEBURGER-WEST NYACK, LIMITED PARTNERSHIP
CHEESEBURGER-WISCONSIN, LIMITED PARTNERSHIP

By: **CHEESEBURGER IN PARADISE, LLC,** the general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

PRIVATE RESTAURANT MASTER LESSEE, LLC

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President, General Counsel, Secretary
Chief Officer-Legal and Corporate Affairs

CHEESEBURGER DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

CHEESEBURGER-KANSAS, LIMITED PARTNERSHIP

By: **CHEESEBURGER IN PARADISE OF KANSAS, INC.,** its general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer

OUTBACK BEVERAGES OF NORTH TEXAS, INC.

By: /s/ William B. Hadley
Name: William B. Hadley
Title: President

OUTBACK DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK STEAKHOUSE OF CENTRAL FLORIDA, LTD.
OUTBACK STEAKHOUSE OF CENTRAL FLORIDA-II, LTD.
OUTBACK STEAKHOUSE OF DALLAS-I, LTD.
OUTBACK STEAKHOUSE OF DALLAS-II, LTD.
OUTBACK STEAKHOUSE OF HOUSTON-I, LTD.
OUTBACK STEAKHOUSE OF HOUSTON-II, LTD.
OUTBACK STEAKHOUSE OF INDIANAPOLIS, LTD.
OUTBACK STEAKHOUSE OF KENTUCKY, LTD.
OUTBACK STEAKHOUSE OF NORTH GEORGIA-I, L.P.
OUTBACK STEAKHOUSE OF NORTH GEORGIA-II, L.P.
OUTBACK STEAKHOUSE OF SOUTH FLORIDA, LTD
OUTBACK STEAKHOUSE OF SOUTH GEORGIA-I, L.P.
OUTBACK STEAKHOUSE OF SOUTH GEORGIA-II, L.P.
OUTBACK STEAKHOUSE OF WASHINGTON, D.C., LTD.
OUTBACK/ALABAMA-I, LIMITED PARTNERSHIP
OUTBACK/ALABAMA-II, LIMITED PARTNERSHIP
OUTBACK/BAYOU-I, LIMITED PARTNERSHIP
OUTBACK/BAYOU-II, LIMITED PARTNERSHIP
OUTBACK/BILLINGS, LIMITED PARTNERSHIP
OUTBACK/BLUEGRASS-I, LIMITED PARTNERSHIP
OUTBACK/BLUEGRASS-II, LIMITED PARTNERSHIP
OUTBACK/BUCKEYE-I, LIMITED PARTNERSHIP
OUTBACK/BUCKEYE-II, LIMITED PARTNERSHIP
OUTBACK/CHARLOTTE-I, LIMITED PARTNERSHIP
OUTBACK/CHICAGO-I, LIMITED PARTNERSHIP
OUTBACK/CLEVELAND-I, LIMITED PARTNERSHIP
OUTBACK/CLEVELAND-II, LIMITED PARTNERSHIP
OUTBACK/DC, LIMITED PARTNERSHIP
OUTBACK/DENVER-I, LIMITED PARTNERSHIP
OUTBACK/DETROIT-I, LIMITED PARTNERSHIP
OUTBACK/HEARTLAND-I, LIMITED PARTNERSHIP
OUTBACK/HEARTLAND-II, LIMITED PARTNERSHIP
OUTBACK/INDIANAPOLIS-II, LIMITED PARTNERSHIP
OUTBACK/METROPOLIS-I, LIMITED PARTNERSHIP
OUTBACK/MID ATLANTIC-I, LIMITED PARTNERSHIP
OUTBACK/MIDWEST-II, LIMITED PARTNERSHIP
OUTBACK/MISSOURI-I, LIMITED PARTNERSHIP
OUTBACK/MISSOURI-II, LIMITED PARTNERSHIP
OUTBACK/NEVADA-I, LIMITED PARTNERSHIP
OUTBACK/NEVADA-II, LIMITED PARTNERSHIP
OUTBACK/NEW ENGLAND-I, LIMITED PARTNERSHIP
OUTBACK/NEW ENGLAND-II, LIMITED PARTNERSHIP
OUTBACK/NEW YORK, LIMITED PARTNERSHIP
OUTBACK/NORTH FLORIDA-I, LIMITED PARTNERSHIP
OUTBACK/NORTH FLORIDA-II, LIMITED PARTNERSHIP
OUTBACK/PHOENIX-I, LIMITED PARTNERSHIP
OUTBACK/PHOENIX-II, LIMITED PARTNERSHIP
OUTBACK/SHENANDOAH-I, LIMITED PARTNERSHIP
OUTBACK/SHENANDOAH-II, LIMITED PARTNERSHIP
OUTBACK/SOUTH FLORIDA-II, LIMITED PARTNERSHIP
OUTBACK/SOUTHWEST GEORGIA, LIMITED PARTNERSHIP
OUTBACK/STONE-II, LIMITED PARTNERSHIP
OUTBACK/UTAH-I, LIMITED PARTNERSHIP
OUTBACK/VIRGINIA, LIMITED PARTNERSHIP
OUTBACK/WEST FLORIDA-I, LIMITED PARTNERSHIP
OUTBACK/WEST FLORIDA-II, LIMITED PARTNERSHIP
OUTBACK/WEST PENN, LIMITED PARTNERSHIP
OUTBACK STEAKHOUSE-NYC, LTD.
OUTBACK CATERING COMPANY, LIMITED PARTNERSHIP
OUTBACK CATERING COMPANY-II, LIMITED PARTNERSHIP
OUTBACK/CENTRAL MASS, LIMITED PARTNERSHIP
OUTBACK/EAST MICHIGAN, LIMITED PARTNERSHIP
OUTBACK/EMPIRE –I, LIMITED PARTNERSHIP

By: **OUTBACK STEAKHOUSE OF FLORIDA, INC.,** the general partner

By: /s/ Dirk A Montgomery

Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK KANSAS DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK/CARRABBA'S PARTNERSHIP

By: **OUTBACK/MID-ATLANTIC-I, LIMITED PARTNERSHIP,** its general partner
By: **OUTBACK STEAKHOUSE OF FLORIDA, INC.,** its general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

By: **CARRABBA'S/MID ATLANTIC-I, LIMITED PARTNERSHIP,** its general partner
By: **CARRABBA'S ITALIAN GRILL, INC.,** its general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OSF/CIGI OF EVESHAM PARTNERSHIP

By: **OUTBACK/MID ATLANTIC-I, LIMITED PARTNERSHIP,** its general partner
By: **OUTBACK STEAKHOUSE OF FLORIDA, INC.,** its general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

By: **CARRABBA'S/MID ATLANTIC-I, LIMITED PARTNERSHIP,** its general partner
By: **CARRABBA'S ITALIAN GRILL, INC.,** its general partner

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK ALABAMA, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A. Montgomery
Title: Chief Financial Officer

CARRABBA'S SHREVEPORT, LLC

By: /s/ John Murphy
Name: John Murphy
Title: Manager

OUTBACK OF WALDORF, INC.

By: /s/ Cornell Barnett
Name: Cornell Barnett
Title: President, Secretary and Treasurer

OUTBACK STEAKHOUSE OF SOUTH CAROLINA, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK STEAKHOUSE WEST VIRGINIA, INC.

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President, Treasurer

CARRABBA'S MIDWEST, INC.

By: /s/ Paul E. Avery
Name: Paul E. Avery
Title: President

CARRABBA'S ITALIAN GRILL, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

CARRABBA'S KANSAS, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer

CHEESEBURGER IN PARADISE OF KANSAS, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer

CHEESEBURGER IN PARADISE, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

CHEESEBURGER KANSAS DESIGNATED PARTNER, LLC

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

HEARTLAND OUTBACK, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OSI INTERNATIONAL, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK CATERING, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK STEAKHOUSE INTERNATIONAL, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

OUTBACK STEAKHOUSE INTERNATIONAL, L.P.

By: **OSI INTERNATIONAL, INC.**, its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title:

OUTBACK STEAKHOUSE OF FLORIDA, INC.

By: /s/ Dirk A Montgomery
Name: Dirk A Montgomery
Title: Chief Financial Officer, Senior Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Joseph P O'Donnell
Name: Joseph P O'Donnell
Title: Vice President

EXHIBIT A

[face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP [ ]
ISIN [ ]

[[RULE 144A][REGULATION S] GLOBAL NOTE
representing up to
$[_____]
10% Senior Notes due 2015

No. ___ [$_____]

OSI RESTAURANT PARTNERS, LLC
OSI CO-ISSUER, INC.

promises to pay to CEDE & CO. or registered assigns, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] [of _____ United States Dollars] on June 15, 2015.

Interest Payment Dates: June 15 and December 15.

Record Dates: June 1 and December 1.

IN WITNESS HEREOF, the Issuer has caused this instrument to be duly executed.

OSI RESTAURANT PARTNERS, LLC

By: _____
Name:
Title:

OSI CO-ISSUER, INC.

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture:

Dated: [ ], [ ]

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

[Back of Senior Note]

10% Senior Notes due 2015

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. OSI Restaurant Partners, LLC, a Delaware limited liability company ("**OSI**"), and OSI Co-Issuer, Inc., a Delaware corporation ("**Co-Issuer**," and together with OSI, the "**Co-Issuers**"), promise to pay interest on the principal amount of this Note at 10% per annum from June 14, 2007 [1] until maturity and shall pay the Additional Interest, if any, payable pursuant to the Registration Rights Agreement referred to below. The Co-Issuers will pay interest and Additional Interest, if any, semi-annually in arrears on June 15 and December 15 of each year, 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 will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; provided that the first Interest Payment Date shall be December 15, 2007.] [2] The Co-Issuers will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the interest rate on the Notes; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Interest, if any, (without regard to any applicable grace periods) from time to time on demand at the interest rate on the Notes. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. METHOD OF PAYMENT. The Co-Issuers will pay interest on the Notes and Additional Interest, if any, to the Persons who are registered Holders of Notes at the close of business on June 1 and December 1 (whether or not a Business Day), as the case may be, next preceding the Interest Payment Date, even if such Notes are canceled 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. Payment of interest and Additional Interest, if any, 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 will be required with respect to principal of and interest, premium and Additional Interest, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Co-Issuers or the Paying Agent. 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.

3. PAYING AGENT AND REGISTRAR. Initially, Wells Fargo Bank, National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Co-Issuers may change any Paying Agent or Registrar without notice to the Holders. The Co-Issuers or any of its Subsidiaries may act in any such capacity.

[1] With respect to the Initial Notes.

[2] With respect to Additional Notes, this form of Note shall be adjusted to either accrue interest from the date of issuance of such Additional Note ("settle flat") or for interest thereunder to be deemed to have accrued since last interest payment date.

4. INDENTURE. The Co-Issuers issued the Notes under an Indenture, dated as of June 14, 2007 (the " **Indenture**"), among OSI, the Co-Issuer, the Guarantors named therein and the Trustee. This Note is one of a duly authorized issue of notes of the Co-Issuers designated as its 10% Senior Notes due 2015. The Co-Issuers shall be entitled to issue Additional Notes pursuant to Section 2.01 and 4.09 of the Indenture. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the " **Trust Indenture Act**"). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. OPTIONAL REDEMPTION.

(a) Except as described below under clauses 5(b) and 5(c) hereof, the Notes will not be redeemable at the Issuer's option before June 15, 2011.

(b) At any time prior to June 15, 2011, the Co-Issuers may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to the registered address of each Holder of Notes or otherwise delivered in accordance with the procedures of DTC, 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 and Additional Interest, if any, to the date of redemption (the "**Redemption Date**"), subject to the rights of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(c) Until June 15, 2010, the Co-Issuers may, at their option, on one or more occasions redeem up to 35% of the aggregate principal amount of Notes (including the aggregate principal amount of Notes issued after the Issue Date) at a redemption price equal to 110.000% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds of one or more Equity Offerings; provided that at least 50% of the sum of the aggregate principal amount of Notes originally issued under the Indenture and any Additional Notes that are issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; provided further that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any Equity Offering may be given prior to such redemption, and any such redemption or notice may, at the Co-Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(d) On and after June 15, 2011, the Co-Issuers may redeem the Notes, in whole or in part, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve-month period beginning on June 15 of each of the years indicated below:

Year	Percentage
2011	105.000%
2012	102.500%
2013 and thereafter	100.000%

(e) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Sections 3.01 through 3.06 of the Indenture.

6. MANDATORY REDEMPTION. The Co-Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. NOTICE OF REDEMPTION. Subject to Section 3.03 of the Indenture, notice of redemption will be mailed by first-class mail at least 30 days but not more than 60 days before the redemption date (except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 11 of the Indenture) to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than $1,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

8. OFFERS TO REPURCHASE.

(a) Upon the occurrence of a Change of Control, the Co-Issuers shall make an offer (a **"Change of Control Offer"**) to each Holder to repurchase all or any part (equal to $1,000 or an integral multiple thereof) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest thereon, if any, to the date of purchase (the **"Change of Control Payment"**). The Change of Control Offer shall be made in accordance with Section 4.14 of the Indenture.

(b) If the Co-Issuers or any of the Restricted Subsidiaries consummates an Asset Sale, within 10 Business Days of each date that Excess Proceeds exceed $40.0 million, the Co-Issuers shall commence, an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Notes ("**Pari Passu Indebtedness**"), to the holders of such Pari Passu Indebtedness (an " **Asset Sale Offer**"), to purchase the maximum principal amount of Notes (including any Additional Notes) and such other Pari Passu Indebtedness 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 and Additional Interest thereon, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. To the extent that the aggregate amount of Notes (including any Additional Notes) and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Co-Issuers may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Notes and the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the Co-Issuers, or, if so elected by the Co-Issuers, the agent for such Pari Passu Indebtedness, shall select such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. Holders of Notes that are the subject of an offer to purchase will receive an Asset Sale Offer from the Co-Issuers prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled "Option of Holder To Elect Purchase" attached to the Notes.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of $1,000 and integral multiples of $1,000. The transfer of Notes may be registered and 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 Co-Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Co-Issuers 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, the Co-Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed.

10. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

11. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

12. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture, the Notes or the Guarantees except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, Additional Interest, if any, or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or and its consequences under the Indenture except a continuing Default in payment of the principal of, premium, if any, Additional Interest, if any, or interest on, any of the Notes held by a non-consenting Holder. The Co-Issuers and each Guarantor (to the extent that such Guarantor is so required under the Trust Indenture Act) is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Co-Issuers are required within five (5) Business Days after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default and what action the Co-Issuers propose to take with respect thereto.

13. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

14. ADDITIONAL RIGHTS OF HOLDERS OF RESTRICTED GLOBAL NOTES AND RESTRICTED DEFINITIVE NOTES. In addition to the rights provided to Holders of Notes under the Indenture, Holders of Restricted Global Notes and Restricted Definitive Notes shall have all the rights set forth in the Registration Rights Agreement, dated as of [June 14, 2007, among OSI, the Co-Issuer, the

Guarantors named therein and the other parties named on the signature pages thereof] [3] (the **"Registration Rights Agreement"**), including the right to receive Additional Interest (as defined in the Registration Rights Agreement).

15. GOVERNING LAW. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THE NOTES AND THE GUARANTEES.

16. CUSIP NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Co-Issuers have caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to 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 Co-Issuers will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement, if applicable. Requests may be made to the Issuer at the following address:

OSI Restaurant Partners, LLC
2202 N. West Shore Boulevard, 5th Floor
Tampa, Florida 33607
Facsimile: (813) 282-1225
Attention: Chief Financial Officer

[3] To be adjusted as appropriate for Additional Notes.

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____

(Insert assignee' legal name)

(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 Co-Issuers. 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*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Co-Issuers pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

☐ Section 4.10 ☐ Section 4.14

If you want to elect to have only part of this Note purchased by the Co-Issuers pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is $ _____. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized officer of Trustee or Note Custodian

* This schedule should be included only if the Note is issued in global form.

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

OSI Restaurant Partners, LLC
2202 N. West Shore Boulevard, 5th Floor
Tampa, Florida 33607
Attention: Chief Financial Officer

Wells Fargo Bank, National Association
Corporate Trust Services
213 Court Street, Suite 703
Middletown, CT 06457
Fax No.: (806) 704-6219
Attention: Joseph P. O'Donnell
Vice President

Re: 10% Senior Notes due 2015

Reference is hereby made to the Indenture, dated as of June 14, 2007 (the " **Indenture**"), among OSI Restaurant Partners, LLC, OSI Co-Issuer, Inc., the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "**Transferor**") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "**Transfer**"), to _____ (the "**Transferee**"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE 144A GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "**Securities Act**"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note 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 Transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

2. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United

States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Indenture and the Securities Act.

3. ☐ CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) ☐ such Transfer is being effected to the Co-Issuers or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act.

4. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

(a) ☐ CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) ☐ CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) ☐ CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Co-Issuers.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP [ ]), or

(ii) ☐ Regulation S Global Note (CUSIP [ ]), or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note ([ ]), or

(ii) ☐ Regulation S Global Note ([ ]), or

(iii) ☐ Unrestricted Global Note ([ ]); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note, in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

OSI Restaurant Partners, LLC
2202 N. West Shore Boulevard, 5th Floor
Tampa, Florida 33607
Attention: Chief Financial Officer

OSI Co-Issuer, Inc.
2202 N. West Shore Boulevard, 5th Floor
Tampa, Florida 33607
Attention: Chief Financial Officer

Wells Fargo Bank, National Association
Corporate Trust Services
213 Court Street, Suite 703
Middletown, CT 06457
Fax No.: (806) 704-6219
Attention: Joseph P. O'Donnell
Vice President

Re: 10% Senior Notes due 2015

Reference is hereby made to the Indenture, dated as of June 14, 2007 (the " **Indenture**"), among OSI Restaurant Partners, LLC, OSI Co-Issuer, Inc., the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "**Owner**") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "**Exchange**"). In connection with the Exchange, the Owner hereby certifies that:

1) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE

a) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the " **Securities Act**"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

b) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

c) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

d) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES

a) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

b) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK

ONE] ☐ 144A Global Note ☐ Regulation S Global Note, with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Co-Issuers and are dated _____.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT D

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "**Supplemental Indenture**"), dated as of _____, among _____ (the "**Guaranteeing Subsidiary**"), a subsidiary of OSI Restaurant Partners, LLC., a Delaware limited liability company (the " **Issuer**"), and OSI Co-Issuer, Inc., a Delaware corporation (together with the Issuer, the "**Co-Issuers**") and Wells Fargo Bank, National Association, as trustee (the "**Trustee**").

WITNESSETH

WHEREAS, each of the Co-Issuers and the Guarantors (as defined in the Indenture referred to below) has heretofore executed and delivered to the Trustee an indenture (the "**Indenture**"), dated as of June 14, 2007, providing for the issuance of an unlimited aggregate principal amount of 10% Notes due 2015 (the "**Notes**");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Co-Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the " **Guarantee**"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. The Guaranteeing Subsidiary hereby agrees as follows:

(a) Along with all Guarantors named in the Indenture, to jointly and severally unconditionally guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or the obligations of the Co-Issuers hereunder or thereunder, that:

(i) the principal of and interest, premium and Additional Interest, if any, on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Co-Issuers to the Holders or the Trustee hereunder or thereunder will be promptly 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 any of such other obligations, that 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. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors and the Guaranteeing Subsidiary shall be jointly and severally obligated to pay the same immediately. This is a guarantee of payment and not a guarantee of collection.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Co-Issuers, 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) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Co-Issuers, any right to require a proceeding first against the Co-Issuers, protest, notice and all demands whatsoever.

(d) This Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes, the Indenture and this Supplemental Indenture, and the Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to the Co-Issuers, the Guarantors (including the Guaranteeing Subsidiary), or any custodian, trustee, liquidator or other similar official acting in relation to either the Co-Issuers or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guaranteeing Subsidiary, 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 6 of the Indenture for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guaranteeing Subsidiary for the purpose of this Guarantee.

(h) The Guaranteeing Subsidiary shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Guarantee.

(i) Pursuant to Section 10.02 of the Indenture, after giving effect to all other contingent and fixed liabilities that are relevant under any applicable Bankruptcy or fraudulent conveyance laws, 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 Article 10 of the Indenture, this new Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guaranteeing Subsidiary under this Guarantee will not constitute a fraudulent transfer or conveyance.

(j) This Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Co-Issuers for liquidation, reorganization, should the Co-Issuers become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Co-Issuers' assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes and Guarantee, whether as a "voidable preference", "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Note shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(k) In case any provision of this 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.

(l) This Guarantee shall be a general unsecured senior obligation of such Guaranteeing Subsidiary, ranking *pari passu* with any other future senior Indebtedness of such Guaranteeing Subsidiary, if any.

(m) Each payment to be made by the Guaranteeing Subsidiary in respect of this Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

(3) Execution and Delivery. The Guaranteeing Subsidiary agrees that the Guarantee shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(4) Merger, Consolidation or Sale of All or Substantially All Assets .

(a) The Guaranteeing Subsidiary may not consolidate or merge with or into or wind up into (whether or not the Issuer or Guaranteeing Subsidiary is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i)(A) the Guaranteeing Subsidiary is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than the Guaranteeing Subsidiary) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of the Guaranteeing Subsidiary, as the case may be, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (the Guaranteeing Subsidiary or such Person, as the case may be, being herein called the "**Successor Person**");

(B) the Successor Person, if other than the Guaranteeing Subsidiary, expressly assumes all the obligations of the Guaranteeing Subsidiary under the Indenture and the Guaranteeing Subsidiary's related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(C) immediately after such transaction, no Default exists; and

(D) the Co-Issuers shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture; or

(ii) the transaction is made in compliance with clauses (1) and (2) of the first paragraph of Section 4.10 of the Indenture;

(b) Subject to certain limitations described in the Indenture, the Successor Person will succeed to, and be substituted for, the Guaranteeing Subsidiary under the Indenture and the Guaranteeing Subsidiary's Guarantee. Notwithstanding the foregoing, the Guaranteeing Subsidiary may merge into or transfer all or part of its properties and assets to another Guarantor or the Co-Issuers.

(5) Releases.

The Guarantee of the Guaranteeing Subsidiary shall be automatically and unconditionally released and discharged, and no further action by the Guaranteeing Subsidiary, the Co-Issuers or the Trustee is required for the release of the Guaranteeing Subsidiary's Guarantee, upon:

(1)(A) any sale, exchange, disposition or transfer (by merger or otherwise) of (x) the Capital Stock of the Guaranteeing Subsidiary, after which the Guaranteeing Subsidiary is no longer a Restricted Subsidiary, or (y) all or substantially all the assets of the Guaranteeing Subsidiary which sale, exchange, disposition or transfer in each case is made in compliance with clauses (1) and (2) of the first paragraph of Section 4.10 of the Indenture;

(B) the release or discharge of the guarantee by the Guaranteeing Subsidiary of the Senior Credit Facilities or the guarantee which resulted in the creation of the Guarantee, except a discharge or release by or as a result of payment under such guarantee;

(C) the proper designation of the Guaranteeing Subsidiary as an Unrestricted Subsidiary; or

(D) the Co-Issuers exercising their Legal Defeasance or Covenant Defeasance in accordance with Article 8 of the Indenture or the Co-Issuers' obligations under the Indenture being discharged in accordance with the terms of the Indenture; and

(2) the Issuer delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

(6) No Recourse Against Others. No past, present or future director, officer, employee, incorporator, member, partner or stockholder of the Guaranteeing Subsidiary or any of its direct or indirect parent companies shall have any liability for any obligations of the Co-Issuers or the Guarantors (including the Guaranteeing Subsidiary) under the Notes, any Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

(7) Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(8) Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

(9) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(10) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

(11) Subrogation. The Guaranteeing Subsidiary shall be subrogated to all rights of Holders of Notes against the Co-Issuers in respect of any amounts paid by the Guaranteeing Subsidiary pursuant to the provisions of Section 2 hereof and Section 10.01 of the Indenture; provided that, if an Event of Default has occurred and is continuing, the Guaranteeing Subsidiary shall not be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Co-Issuers under the Indenture or the Notes shall have been paid in full.

(12) Benefits Acknowledged. The Guaranteeing Subsidiary's Guarantee is subject to the terms and conditions set forth in the Indenture. The Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

(13) Successors. All agreements of the Guaranteeing Subsidiary in this Supplemental Indenture shall bind its Successors, except as otherwise provided in Section 2(k) hereof or elsewhere in this Supplemental Indenture. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

Exhibit 4.4

AGREEMENT OF RESIGNATION, APPOINTMENT AND ACCEPTANCE, dated as of February 5, 2009 by and among OSI Restaurant Partners, LLC, a Delaware limited liability company ("OSI"), OSI Co-Issuer, Inc., a Delaware corporation ("Co-Issuer", and collectively with OSI, "Co-Issuers"), each having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607, HSBC BANK USA, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America and having a corporate trust office at 452 Fifth Avenue, New York, New York 10018 ("Successor Trustee") and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America and having its designated corporate trust office at 625 Marquette Avenue, MAC N9311-110, Minneapolis, MN 55479 ("Resigning Trustee").

RECITALS:

WHEREAS, there are currently $488,220,000 aggregate principal amount of the Co-Issuers' 10% Senior Notes due 2015 (the "Securities") outstanding under an Indenture, dated as of June 14, 2007, by and among the Co-Issuers, the Guarantors named therein and Resigning Trustee (the "Indenture");

WHEREAS, the Co-Issuers appointed Resigning Trustee as the Trustee, Registrar and Paying Agent under the Indenture;

WHEREAS, Section 7.08 of the Indenture provides that the Trustee may at any time resign with respect to the Securities by giving written notice of such resignation to the Co-Issuer, effective upon the acceptance by a successor Trustee of its appointment as a successor Trustee;

WHEREAS, Section 7.08 of the Indenture provides that, if the Trustee shall resign, the Co-Issuers shall promptly appoint a successor Trustee;

WHEREAS, Section 7.08 of the Indenture provides that any successor Trustee appointed in accordance with the Indenture shall deliver written acceptance to the Co-Issuers and to its predecessor Trustee; thereupon, the resignation of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall have all rights, powers and duties of the predecessor Trustee under the Indenture;

WHEREAS, on December 5, 2008, the Resigning Trustee provided written notice to the Co-Issuers that it is resigning as Trustee, Registrar and Paying Agent under the Indenture;

WHEREAS, the Co-Issuers desire to appoint Successor Trustee as successor Trustee, Registrar and Paying Agent to succeed Resigning Trustee in such capacities under the Indenture; and

WHEREAS, Successor Trustee is willing to accept such appointment as Successor Trustee, Registrar and Paying Agent under the Indenture;

NOW, THEREFORE, the Co-Issuers, Resigning Trustee and Successor Trustee, for and in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby consent and agree as follows:

THE RESIGNING TRUSTEE

1.1 Pursuant to Section 7.08 of the Indenture, on December 5, 2008, the Resigning Trustee provided written notice to the Co-Issuers that Resigning Trustee is resigning as Trustee, Registrar and Paying Agent under the Indenture.

1.2 Resigning Trustee hereby represents and warrants to Successor Trustee that:

(a) No covenant or condition contained in the Indenture has been waived by Resigning Trustee or, to the best knowledge of Responsible Officers of Resigning Trustee, by the Holders of the percentage in aggregate principal amount of the Securities required by the Indenture to effect any such waiver.

(b) There is no action, suit or proceeding pending or, to the best knowledge of Responsible Officers of Resigning Trustee threatened against Resigning Trustee before any court or any governmental authority arising out of any act or omission of Resigning Trustee as Trustee under the Indenture.

(c) As of the effective date of this Agreement, Resigning Trustee will hold no moneys or property under the Indenture.

(d) Pursuant to Section 2.02 of the Indenture, Resigning Trustee has duly authenticated and delivered $488,220,000 aggregate principal amount of Securities that are outstanding as of the effective date hereof.

(e) The registers in which Resigning Trustee has registered and transferred registered Securities accurately reflect the amount of Securities issued and outstanding and the amounts payable thereon.

(f) Each person who so authenticated the Securities was duly elected, qualified and acting as an officer or authorized signatory of Resigning Trustee and empowered to authenticate the Securities at the respective times of such authentication and the signature of such person or persons appearing on such Securities is each such person's genuine signature.

(g) This Agreement has been duly authorized, executed and delivered on behalf of Resigning Trustee and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

(h) To the best knowledge of Responsible Officers of the Resigning Trustee, no event has occurred and is continuing which is, or after notice or lapse of time would become, an Event of Default under Section 6.01 of the Indenture.

1.3 Resigning Trustee hereby assigns, transfers, delivers and confirms to Successor Trustee all right, title and interest of Resigning Trustee in and to the trust under the Indenture and all the rights, powers and trusts of the Trustee under the Indenture. Resigning Trustee shall execute and deliver such further instruments and shall do such other things as Successor Trustee may reasonably require so as to more fully and certainly vest and confirm in Successor Trustee all the rights, powers and trusts hereby assigned, transferred, delivered and confirmed to Successor Trustee as Trustee, Registrar and Paying Agent.

1.4 Resigning Trustee shall deliver to Successor Trustee, as of or promptly after the effective date hereof, all of the documents listed on Exhibit A hereto.

1.5 Resigning Trustee acknowledges that it shall be subject to Trust Indenture Act Section 311(a) to the extent indicated therein in connection with the Indenture.

THE CO-ISSUERS

2.1 Pursuant to Section 7.08 of the Indenture, the Co-Issuers hereby accept the resignation of Resigning Trustee as Trustee, Registrar and Paying Agent under the Indenture.

2.2 The Co-Issuers hereby certify that they have duly authorized certain officers of the Co-Issuers to: (a) accept Resigning Trustee's resignation as Trustee, Registrar and Paying Agent under the Indenture; (b) appoint Successor Trustee as Trustee, Registrar and Paying Agent under the Indenture; and (c) execute and deliver such agreements and other instruments as may be necessary or desirable to effectuate the succession of Successor Trustee as Trustee. Registrar and Paying Agent under the Indenture.

2.3 The Co-Issuers hereby appoint Successor Trustee as Trustee, Registrar and Paying Agent under the Indenture to succeed to, and hereby vest Successor Trustee with, all the rights, powers and duties of Resigning Trustee under the Indenture with like effect as if originally named as Trustee, Registrar and Paying Agent in the Indenture.

2.4 The Co-Issuers hereby represent and warrant to Resigning Trustee and Successor Trustee that:

(a) Each of the Co-Issuers is duly and validly organized and existing pursuant to the laws of the State of Delaware.

(b) The Indenture was validly and lawfully executed and delivered by the Co-Issuers and the Securities were validly issued by the Co-Issuers.

(c) The Co-Issuers have performed or fulfilled prior to the date hereof, and will continue to perform and fulfill after the date hereof, each covenant, agreement, condition, obligation and responsibility under the Indenture.

(d) No event has occurred and is continuing which is, or after notice or lapse of time would become, an Event of Default under Section 6.01 of the Indenture.

(e) No covenant or condition contained in the Indenture has been waived by the Co-Issuers or, to the best of the Co-Issuers' knowledge, by Holders of the percentage in aggregate principal amount of the Securities required to effect any such waiver.

(f) There is no action, suit or proceeding pending or, to the best of the Co-Issuers' knowledge, threatened against the Co-Issuers before any court or any governmental authority arising out of any act or omission of the CoIssuers under the Indenture.

(g) This Agreement has been duly authorized, executed and delivered on behalf of the Co-Issuers and constitutes their legal, valid and binding obligation, enforceable in accordance with its terms.

(h) All conditions precedent relating to the appointment of Successor Trustee as successor Trustee under the Indenture have been complied with by the Co-Issuers.

THE SUCCESSOR TRUSTEE

3.1 Successor Trustee hereby represents and warrants to Resigning Trustee and to the Co-Issuers that:

(a) Successor Trustee is not disqualified under the provisions of Section 7.10 and is eligible under the provisions of Section 7.10 of the Indenture to act as Trustee under the Indenture.

(b) Successor Trustee satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5), and is subject to Section 310(b) of the Trust Indenture Act.

(c) This Agreement has been duly authorized, executed and delivered on behalf of Successor Trustee and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

(d) Each person acting on behalf of Successor Trustee is a duly authorized signatory of Successor Trustee.

(e) Promptly after the effective date of this Agreement, the Successor Trustee shall send a notice, substantially in the form of Exhibit B annexed hereto, to each Holder of the Securities in accordance with the provisions of Section 7.08 of the Indenture.

3.2 Successor Trustee hereby accepts its appointment as Successor Trustee, Registrar and Paying Agent under the Indenture and accepts the rights, powers, duties and obligations of Resigning Trustee as Trustee, Registrar and Paying Agent under the Indenture, upon the terms and conditions set forth therein, with like effect as if originally named as Trustee, Registrar and Paying Agent under the Indenture.

3.3 References in the Indenture to “Corporate Trust Office” or other similar terms shall be deemed to refer to the principal corporate trust office of Successor Trustee, which is presently located at 452 Fifth Avenue, New York, New York 10018.

MISCELLANEOUS

4.1 Except as otherwise expressly provided herein or unless the context otherwise requires, all terms used herein which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

4.2 This Agreement and the resignation, appointment and acceptance effected hereby shall be effective as of the opening of business on February 5, 2009.

4.3 Resigning Trustee hereby acknowledges payment or provision for payment in full by the Co-Issuers of compensation for all services rendered by Resigning Trustee in its capacity as Trustee, Registrar and Paying Agent under Section 7.07 of the Indenture and reimbursement in full by the Co-Issuers of the expenses, disbursements and advances incurred or made by Resigning Trustee in its capacity as Trustee, Registrar and Paying Agent in accordance with the provisions of the Indenture. Resigning Trustee acknowledges that it relinquishes any lien it may have upon all property or funds held or collected by it to secure any amounts due it pursuant to the provisions of Section 7.07 of the Indenture. This Agreement does not constitute a waiver or assignment by the Resigning Trustee of any compensation, reimbursement, expenses or indemnity to which it is or may be entitled pursuant to the Indenture. The Co-Issuers acknowledge their obligation set forth in Section 6.05 of the Indenture to indemnify Resigning Trustee for, and to hold Resigning Trustee harmless against, any loss, liability or expense incurred without willful misconduct, negligence or bad faith on the part of Resigning Trustee and arising out of or in connection with the acceptance or administration of the trust evidenced by the Indenture (which obligation shall survive the execution hereof).

4.4 This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles thereof.

4.5 This Agreement may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

4.6 The Co-Issuers, Resigning Trustee and Successor Trustee hereby acknowledge receipt of an executed counterpart of this Agreement and the effectiveness thereof

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Resignation, Appointment and Acceptance to be duly executed, all as of the day and year first above written.

OSI RESTAURANT PARTNERS, LLC

By: /s/ Dirk Montgomery
Name: Dirk A. Montgomery
Title: Chief Financial Officer

OSI CO-ISSUER, INC.

By: /s/ Dirk Montgomery
Name: Dirk A. Montgomery
Title: Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Resigning Trustee

By: /s/ Jayne Sillman
Name: Jayne Sillman
Title: Vice President

HSBC BANK USA, NATIONAL ASSOCIATION
as Successor Trustee

By: /s/ Vivian Ly
Name: Vivian Ly
Title: Assistant Vice President

EXHIBIT A

Documents to be delivered to Successor Trustee

1. Copy of Indenture.
2. File of closing documents from initial issuance.
3. Copies of the most recent of each of the SEC reports delivered by the Co-Issuers pursuant to Section 4.03 of the Indenture.
4. A copy of the most recent compliance certificate delivered pursuant to Section 4.04 of the Indenture.
5. Certified list of Holders, including certificate detail and all "stop transfers" and the reason for such "stop transfers" (or, alternatively, if there are a substantial number of registered Holders, the computer tape reflecting the identity of such Holders).
6. Copies of any official notices sent by the Trustee to all the Holders of the Securities pursuant to the terms of the Indenture during the past twelve months and a copy of the most recent Trustee's annual report to Holders delivered pursuant to Section 7.06 of the Indenture.
7. List of any documents which, to the knowledge of Resigning Trustee, are required to be furnished but have not been furnished to Resigning Trustee.

EXHIBIT B

NOTICE

To the Holders of.

10% Senior Notes due 2015 CUSIP #

of OSI RESTAURANT PARTNERS, LLC
AND OSI CO-ISSUER, INC.

NOTICE IS HEREBY GIVEN, pursuant to Section 7.08 of the Indenture (the "Indenture"), dated as of June 14, 2007, by and among OSI Restaurant Partners, LLC, OSI Co-Issuer, Inc. and Wells Fargo Bank, National Association, as Trustee, that Wells Fargo Bank, National Association has resigned as Trustee, Registrar and Paying Agent under the Indenture.

Pursuant to Section 7.08 of the Indenture, HSBC BANK USA, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, has accepted appointment as Trustee, Registrar and Paying Agent under the Indenture. The address of the corporate trust office of the successor Trustee is 452 Fifth Avenue, New York, New York 10018.

Wells Fargo Bank, National Association's resignation as Trustee, Registrar and Paying Agent and HSBC BANK USA, NATIONAL ASSOCIATION's appointment as successor Trustee, Registrar and Paying Agent were effective as of the opening of business on February 5, 2009.

Dated: , 2009

HSBC BANK USA, NATIONAL ASSOCIATION,
as Trustee

Exhibit 4.5

REGISTRATION RIGHTS AGREEMENT

Among

Kangaroo Holdings, Inc.

And

Certain Stockholders of Kangaroo Holdings, Inc.

Dated as of June 14, 2007

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REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made as of June 14, 2007 by and among:

(i) Kangaroo Holdings, Inc., a Delaware corporation (the "Company");

(ii) each of Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., BCIP TCV, LLC, Bain Capital Integral Investors 2006, LLC and BCIP Associates—G (collectively, the "Bain Funds") and any other Person executing this Agreement and listed as an "Investor" on the signature pages hereto and such other Persons who from time to time become party hereto by executing a counterpart signature page hereof and are designated by the Board as "Investors" (collectively with their Permitted Transferees, the "Investors");

(iii) Catterton Partners VI—Kangaroo, L.P. and Catterton Partners VI—Kangaroo Coinvest, L.P. (collectively, the "Catterton Funds") and such other Persons who from time to time become party hereto by executing a counterpart signature page hereof and are designated by the Board as "Other Investors" (collectively, with their Permitted Transferees, the "Other Investors");

(iii) The Chris T. Sullivan Foundation, the Ashley Sullivan Irrevocable Trust, Ashley Sullivan, the Alexander Sullivan Irrevocable Trust, Alexander Sullivan, CTS Equities Limited Partnership, RDB Equities Limited Partnership and JTG Equities Limited Partnership (collectively, the "Founders");

(iv) Bill Allen, Paul Avery, Dirk Montgomery, Joe Kadow and such other Persons who from time to time become party hereto by executing a counterpart signature page hereof and are designated by the Board as "Managers" (collectively, the "Managers"); and

(v) such other Persons, if any, that from time to time become party hereto as holders of Shares pursuant to Section 3.5 solely in the capacity of permitted assignees with respect to certain registration rights hereunder (collectively, the "Other Holders").

RECITALS

1. On or about the date hereof, the Company is consummating a merger on the terms and subject to the conditions of an Agreement and Plan of Merger, dated as of November 5, 2006 (as amended, the "Merger Agreement"), among the Company, Kangaroo Acquisition, Inc., a Delaware corporation, and OSI Restaurant Partners, Inc., a Delaware corporation.

2. Upon the closing of the transactions contemplated by the Merger Agreement, the Common Stock (as defined below) of the Company will be held as set forth on Schedule 1 hereto.

3. In connection with the foregoing, the Company and the Investors, the Other Investors, Founders and Managers are entering into a Stockholders Agreement dated on or about the date hereof (the "Stockholders Agreement").

4. The parties believe that it is in the best interests of the Company and the other parties hereto to set forth their agreements on certain matters.

AGREEMENT

Therefore, the parties hereto hereby agree as follows:

1. EFFECTIVENESS; DEFINITIONS.

1.1. Effectiveness. This Agreement shall become effective at the Effective Time (as defined in the Merger Agreement (referred to herein as the "Closing")).

1.2. Definitions. Certain terms are used in this Agreement as specifically defined herein. These definitions are set forth or referred to in Section 7 hereof.

2. HOLDER LOCK-UP.

In connection with each underwritten Public Offering each Holder hereby agrees to be bound by, and, if requested, to execute and deliver, a lock-up agreement with the underwriter(s) of such Public Offering (the "Principal Lock-Up Agreement") restricting such Holder's right to (i) Transfer any Shares or (ii) enter into any swap or other arrangement that transfers to another any of the economic consequences of ownership of Shares, in each case to the extent that such restrictions are agreed to (A) in the case of an Initial Public Offering that is not initiated pursuant to Section 3.1.1, by the Board, (B) in the case of a demand registration under Section 3.1 hereof, by Investors holding a majority of the Shares proposed to be offered and (C) otherwise, by the holders of a majority of the Shares participating in the Public Offering; provided, however, that no Holder shall be required by this Section 2 to be bound by a lock-up agreement covering a period of greater than 90 days (180 days in the case of the Initial Public Offering) following the effectiveness of the related registration statement plus such additional period of up to 17 days as may be required by the underwriters to satisfy NASD regulations and permit the managing underwriters' analysts to publish research updates; provided further, that no Holder will be required by this Section 2 to be bound by a lock-up agreement unless the Holders that hold a majority of the Shares held by all Holders execute such a lock-up agreement with the underwriter(s) of the applicable Public Offering. Notwithstanding the foregoing, such lock-up agreement shall not apply to (i) transactions relating to shares of Common Stock or other securities acquired in (A) open market transactions or block purchases after the completion of the Initial Public Offering or (B) a Public Offering, (ii) Transfers to Permitted Transferees of such Holder in accordance with the terms of this Agreement and (iii) conversions of shares of Common Stock into other classes of Common Stock without change of holder. In addition, notwithstanding the foregoing, any Holder, or group of Affiliated Funds that are Holders, beneficially holding at Closing more than 5% of the outstanding Shares as of the Closing may elect not to be bound by any lock-up agreement for a Public Offering following (but not

including) the first Public Offering after the Initial Public Offering that includes the sale of Shares by a Holder; provided, however, that if such a Holder elects not to be so bound, then such Holder will not have piggyback registration rights under Section 3.2 hereof or demand registration rights under Section 3.1 hereof with respect to such Public Offering or any future Public Offering thereafter.

3. REGISTRATION RIGHTS. The Company will perform and comply with, and cause each of its subsidiaries to perform and comply with, such of the following provisions as are applicable to it. Each Holder will perform and comply with such of the following provisions as are applicable to such Holder.

3.1. Demand Registration Rights.

3.1.1. Demand Registration Rights. At any time following the Initial Public Offering but subject to Section 2, any Investors, Other Investors or Founders that, collectively, beneficially hold at least 5% of the outstanding Shares (the " Initiating Holders"), by notice to the Company specifying the intended method or methods of disposition, may request that the Company effect the registration under the Securities Act for a Public Offering of all or a specified part of the Registrable Securities held by such Initiating Holders.

Notwithstanding the foregoing, no Initiating Holder may request a registration unless the value of Registrable Securities that the Initiating Holders propose to sell in such Public Offering on Form S-1 (or any other registration form that contains substantially the same information required by such form) is at least twenty-five million dollars ($25,000,000), or, in the case of any other registration on Form S-3, fifteen million dollars ($15,000,000) or, in either case, such lower amount as agreed by the Board. The Company will then use its best efforts to (i) effect the registration under the Securities Act (including by means of a shelf registration pursuant to Rule 415 under the Securities Act if so requested by a majority of the Initiating Holders and if the Company is then eligible to use such registration) of the Registrable Securities that the Company has been requested to register by such Initiating Holders together with all other Registrable Securities that the Company has been requested to register pursuant to Section 3.2 by other Holders, all to the extent required to permit the disposition of the Registrable Securities that the Company has been so requested to register, and (ii) if requested by an Initiating Holder, obtain acceleration of the effective date of the registration statement relating to such registration; provided, however, that the Company shall not be obligated to take any action to effect any such registration pursuant to this Section 3.1.1:

(a) prior to the consummation of the first underwritten Public Offering following the Initial Public Offering if the Initiating Holders are exclusively Other Investors and/or Founders;

(b) during the effectiveness of any Principal Lock-Up Agreement entered into in connection with any registration statement pertaining to an underwritten public offering of securities of the Company for its own account (other than a Rule 145 Transaction, or a registration relating solely to employee benefit plans);

(c) if a registration statement requested under this Section 3.1.1 became effective within the preceding 90 days (unless otherwise consented to by the Board).

3.1.2. Shelf Takedowns. At any time during which the Company has effective a shelf registration pursuant to Rule 415 under the Securities Act with respect to such Holder's Shares, any Holder (a "Shelf Takedown Holder"), by notice to the Company specifying the intended method or methods of disposition, may request that the Company effect an underwritten offering of the Shelf Takedown Holder's Shares that are subject to such registration statement (an "Underwritten Shelf Takedown") of all or a specified part of the Registrable Securities held by such Shelf Takedown Holder; provided, however, that the value of Registrable Securities that the Shelf Takedown Holder proposes to sell in an Underwritten Shelf Takedown is at least twenty-five million dollars ($25,000,000) or fifteen million dollars ($15,000,000) in the case of a registration statement that does not include substantially more information than is required to included on Form S-3 or, in either case, such lower amount as agreed to by the Board. The Company shall not be obligated to take any action to effect any such Underwritten Shelf Takedown pursuant to this Section 3.1.2 if an Underwritten Shelf Takedown requested under this Section 3.1.2 was consummated within the preceding 90 days (unless otherwise consented to by the Board).

3.1.3. Form. Except as otherwise provided above or required by law, each registration requested pursuant to Section 3.1.1 shall be effected by the filing of a registration statement on Form S-3 (or any other form which includes substantially the same information as would be required to be included in a registration statement on such form as currently constituted); provided, that if any registration requested pursuant to this Section 3.1 is proposed to be effected on Form S-3 (or any successor or similar short-form registration statement) and is in connection with an underwritten offering, and if the managing underwriter shall advise the Company in writing that, in its opinion, it is of material importance to the success of such proposed offering to file a registration statement on Form S-1 (or any successor or similar registration statement), or to include in such registration statement information not required to be included pursuant to Form S-3 (or any successor or similar short-form registration statement), then the Company will file a registration statement on Form S-1 or supplement Form S-3 (or any successor or similar short-form registration statement) as reasonably requested by such managing underwriter.

3.1.4. Payment of Expenses. The Company will pay all Registration Expenses in connection with registrations of Registrable Securities pursuant to this Section 3.1, including all reasonable expenses (other than fees and disbursements of counsel that do not constitute Registration Expenses) that any Holder incurs in connection with each registration of Registrable Securities requested pursuant to this Section 3.1.

3.1.5. Additional Procedures. In the case of a registration pursuant to Section 3.1 hereof, whenever an Initiating Holder is entitled to request and so requests that such registration shall be effected pursuant to an underwritten offering, the Company shall include such information in any written notice to Holders required by

Section 3.2. In such event, the right of any Holder to have securities owned by such Holder included in such registration shall be conditioned upon the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed upon by the Initiating Holder and such Holder). If requested by the Initiating Holder or Shelf Takedown Holder, the Company together with the Holders proposing to distribute their securities through the underwriting will enter into an underwriting agreement with the underwriters for such offering containing such representations and warranties by the Company and such Holders and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, including customary indemnity and contribution provisions (subject, in each case, to the limitations on such liabilities set forth in this Agreement).

3.1.6. Suspension of Registration. If the filing, initial effectiveness or continued use of a registration statement, including a shelf registration statement pursuant to Rule 415 under the Securities Act, in respect of a registration pursuant to this Section 3.1 at any time would require the Company to make a public disclosure of material non-public information, which disclosure in the good faith judgment of the Board (after consultation with external legal counsel) (i) would be required to be made in any registration statement so that such registration statement would not be materially misleading, (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement and (iii) would have a material adverse effect on the Company or its business, or on the Company's ability to effect a material proposed acquisition, disposition, financing, reorganization, recapitalization or similar transaction, then the Company may, upon giving prompt written notice of such action to the Holders participating in such registration, delay the filing or initial effectiveness of, or suspend use of, such registration statement; provided, that the Company shall not be permitted to do so (i) for a period exceeding 30 days on any one occasion or (ii) for an aggregate period exceeding 60 days in any 12-month period. In the event the Company exercises its rights under the preceding sentence, such Holders agree to suspend, promptly upon their receipt of the notice referred to above, their use of any prospectus relating to such registration in connection with any sale or offer to sell Registrable Securities. The Company shall promptly notify such Holders of the expiration of any period during which it exercised its rights under this Section 3.1.6. The Company agrees that, in the event it exercises its rights under this Section 3.1.6, it shall, within 30 days following such Holders' receipt of the notice of suspension, update the suspended registration statement as may be necessary to permit the Holders to resume use thereof in connection with the offer and sale of their Registrable Securities in accordance with applicable law.

3.2. Piggyback Registration Rights.

3.2.1. Piggyback Registration.

(a) General. Each time the Company proposes to register any shares of Common Stock under the Securities Act on a form which would permit registration of Registrable Securities for sale to the public, for its own account and/or for the account of any other Person (pursuant to Section 3.1 or otherwise)

for sale in a Public Offering, the Company will give notice to all Holders of its intention to do so. Any Holder may, by written response delivered to the Company within 20 days after the date of delivery of such notice, request that all or a specified part of such Holder's Registrable Securities be included in such registration. A Holder may request in any such response that varying numbers of such Holder's Registrable Securities be included in the registration based on varying prices at which such Registrable Securities are to be sold in the registered offering. The Company thereupon will use its best efforts to cause to be included in such registration under the Securities Act all Registrable Securities that the Company has been so requested to register by such Holders, to the extent required to permit the disposition (in accordance with the methods to be used by the Company or, pursuant to Section 3.1, other Holders in such Public Offering) of the Registrable Securities to be so registered; provided that (i) if, at any time after giving written notice of its intention to register any securities, the Company shall determine for any reason not to proceed with the proposed registration of the securities to be sold by it, the Company may, at its election, give written notice of such determination to each Holder and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not from its obligation to pay the Registration Expenses in connection therewith), and (ii) if such registration involves an underwritten offering, all Holders requesting to be included in the Company's registration must sell their Registrable Securities to the underwriters selected by the Company on the same terms and conditions as apply to the Company (with such differences as may be customary or appropriate in combined primary and secondary offerings, and, in any event, without providing for indemnification or contribution obligations in excess of what is required by Section 3.4) or, in the case of a registration initiated pursuant to Section 3.1.1, the Principal Participating Holders. No registration of Registrable Securities effected under this Section 3.2 shall relieve the Company of any of its obligations to effect registrations of Registrable Securities pursuant to Section 3.1 hereof.

(b) Excluded Transactions. The Company shall not be obligated to effect any registration of Registrable Securities under this Section 3.2 or give any notice to Holders of the Company's intent to register Registrable Securities, in each case incidental to the registration of any of its securities in connection with:

(i) Any Public Offering relating to employee benefit plans or dividend reinvestment plans;

(ii) Any Public Offering relating to the acquisition or merger after the date hereof by the Company or any of its subsidiaries of or with any other businesses except to the extent such Public Offering is for the sale of securities for cash; or

(iii) The Initial Public Offering, unless such offering shall include any Registrable Securities of any Holder or the Board determines otherwise.

3.2.2. Payment of Expenses. The Company will pay all Registration Expenses in connection with registrations of Registrable Securities pursuant to this Section 3.2.

3.2.3. Additional Procedures. Holders participating in any Public Offering pursuant to this Section 3.2 shall take all such actions and execute all such documents and instruments that are reasonably requested by the Company to effect the sale of their Registrable Securities in such Public Offering, including being parties to the underwriting agreement entered into by the Company and any other selling shareholders in connection therewith and being liable in respect of the representations and warranties and the other agreements (including customary selling stockholder representations, warranties, indemnifications and "lock-up" agreements) for the benefit of the underwriters contained therein; provided, however, that (i) with respect to individual representations, warranties, indemnities and agreements of sellers of Registrable Securities in such Public Offering, the aggregate amount of such liability shall not exceed any such Holder's net proceeds from such offering, (ii) to the extent selling stockholders give further representations, warranties and indemnities, then with respect to all other representations, warranties and indemnities of sellers of Registrable Securities in such Public Offering, the aggregate amount of such liability shall not exceed the lesser of (A) any such Holder's pro rata portion of any such liability, in accordance with such Holder's portion of the total number of Registrable Securities included in the offering, and (B) any such Holder's net proceeds from such offering and (iii) the aggregate liability with respect to clauses (i) and (ii) shall not exceed such holder's net proceeds from such offering.

3.3. Certain Other Provisions.

3.3.1. Underwriter's Cutback. In connection with any registration of shares, the underwriter may determine that marketing factors (including an adverse effect on the per share offering price) require a limitation of the number of shares to be underwritten. Notwithstanding any contrary provision of this Section 3 and subject to the terms of this Section 3.3.1, the underwriter may limit the number of shares which would otherwise be included in such registration by excluding any or all Registrable Securities from such registration, it being understood that, if the registration in question involves a registration for sale of securities for the Company's own account, then the number of shares which the Company seeks to have registered in such registration shall not be subject to exclusion, in whole or in part, under this Section 3.3.1. Upon receipt of notice from the underwriter of the need to reduce the number of shares to be included in the registration, the Company shall advise all holders of the Company's securities that would otherwise be registered and underwritten pursuant hereto, and the number of shares of such securities, including Registrable Securities, that may be included in the registration shall be allocated in the following manner: shares, other than Registrable Securities, requested to be included in such registration by other shareholders shall be excluded unless the Company, with the consent of the parties required to approve any amendment or waiver of this Agreement pursuant to Section 6.2, has granted registration rights which are to be treated on an equal basis with Registrable Securities for the purpose of the exercise of the underwriter cutback (such shares afforded such equal treatment being " Parity Shares"); and, if a limitation on the number of shares is

still required, the number of Registrable Securities, Parity Shares and other shares of Common Stock that may be included in such registration shall be allocated among the holders thereof in proportion, as nearly as practicable, as follows:

(a) there shall be first allocated to each such holder requesting that its Registrable Securities or Parity Shares be registered in such registration a number of such shares to be included in such registration equal to the lesser of (i) the number of such shares requested to be registered by such holder, and (ii) a number of such shares equal to such holder's Pro Rata Portion;

(b) the balance, if any, not allocated pursuant to clause (a) above shall be allocated to those holders requesting that their Registrable Securities or Parity Shares be registered in such registration that requested to register a number of such shares in excess of such holder's Pro Rata Portion pro rata to each such holder based upon the number of Registrable Securities and Parity Shares held by such holder, or in such other manner as the holders requesting that their Registrable Securities or Parity Shares be registered in such registration may otherwise agree; and

(c) the balance, if any, not allocated pursuant to clause (b) above shall be allocated to shares, other than Registrable Securities and Parity Shares, requested to be included in such registration by other stockholders.

For purposes of any underwriter cutback, all Registrable Securities held by any Holder shall also include any Registrable Securities held by the partners, retired partners, shareholders or Affiliates of such Holder, or the estates and family members of any such Holder or such partners and retired partners, any trusts for the benefit of any of the foregoing Persons and, at the election of such Holder or such partners, retired partners, trusts or Affiliates, any Charitable Organization to which any of the foregoing shall have contributed Common Stock prior to the execution of the underwriting agreement in connection with such underwritten offering, and such Holder and other Persons shall be deemed to be a single selling Holder, and any pro rata reduction with respect to such selling Holder shall be based upon the aggregate amount of Common Stock owned by all entities and individuals included with such selling Holder, as defined in this sentence. No securities excluded from the underwriting by reason of the underwriter's marketing limitation shall be included in such registration. Upon delivery of a written request pursuant to Section 3.1.1 or 3.2.1(a) that Registrable Securities be sold in an underwritten offering, the Holder thereof may not thereafter elect to withdraw therefrom without the written consent of the Principal Participating Holders. Notwithstanding the foregoing, (i) if the managing underwriter of any underwritten offering shall advise the Holders participating in the offering that the Registrable Securities covered by the registration statement cannot be sold in such offering within a price range acceptable to the Initiating Holder or Shelf Takedown Holder, then the Initiating Holder or Shelf Takedown Holder shall have the right to withdraw from such underwritten offering and, upon any such withdrawal, the Principal Participating Holders remaining after such withdrawal shall have the right to notify the Company that they have determined that the registration statement be abandoned or withdrawn, in which event the Company shall abandon or withdraw such registration statement, (ii) if the price to the public at which the Registrable Securities are proposed to be sold will be less than 90% of the average

closing price of the Common Stock during the 10 trading days preceding the date on which notice of such offering was given pursuant to Section 3.2.1(a) , then any Holder participating in such underwritten offering may elect to withdraw from such offering by written notice to the Company and (iii) nothing in this Section 3.3.1 shall be deemed to limit a Holder's ability pursuant to Section 3.2.1(a) to request the registration and sale of varying numbers of Registrable Securities based on varying prices at which such Registrable Securities are to be sold in the offering. The Company may, but shall not be required to, extend a similar withdrawal right to other Holders or holders of Parity Shares.

3.3.2. Registration Procedures. If, and in each case when, the Company is required to effect a registration of any Registrable Securities as provided in this Section 3, the Company shall promptly:

(a) prepare and, in any event within 45 days (30 days in the case of a Form S-3 registration) after the end of the period under Section 3.2.1(a) within which a piggyback request for registration may be given to the Company, file with the Commission a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective within 90 days of the initial filing;

(b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of 270 days (or such shorter period which will terminate when all Registrable Securities covered by such registration statement have been sold) and to comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement; provided, that before filing a registration statement or prospectus, or any amendments or supplements thereto in accordance with Section 3.1 or 3.2, the Company will furnish to counsel selected pursuant to Section 3.3.3 hereof copies of all documents proposed to be filed, which documents will be subject to the review of such counsel;

(c) furnish to each seller of such Registrable Securities such number of copies of such registration statement and of each amendment and supplement thereto (in each case including all exhibits filed therewith), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and summary prospectus), in conformity with the requirements of the Securities Act, and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities by such seller;

(d) use its best efforts to register or qualify such Registrable Securities covered by such registration in such jurisdictions as each seller shall reasonably request, and do any and all other acts and things which may be reasonably

necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction where, but for the requirements of this clause (d) it would not be obligated to be so qualified or to consent to general service of process in any such jurisdiction;

(e) notify each seller of any such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the Company's becoming aware that the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and, at the request of any such seller, prepare and furnish to such seller a reasonable number of copies of an amended or supplemental prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(f) otherwise use its best efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable (but not more than 15 months) after the effective date of the registration statement, an earnings statement which shall satisfy the provisions of Section 11(a) of the Securities Act;

(g) (i) if such Registrable Securities are Common Stock (including Common Stock issuable upon conversion, exchange or exercise of another security), use its best efforts to list such Registrable Securities on any securities exchange on which the Common Stock is then listed if such Registrable Securities are not already so listed, and (ii) use its best efforts to provide a transfer agent and registrar for such Registrable Securities covered by such registration statement not later than the effective date of such registration statement;

(h) enter into such customary agreements (including an underwriting agreement in customary form), which may include indemnification provisions in favor of underwriters and other Persons in addition to the provisions of Section 3.4 hereof, and take such other actions as the Principal Participating Holders or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities;

(i) obtain a "cold comfort" letter or letters from the Company's independent public accountants in customary form and covering matters of the type customarily covered by "cold comfort" letters as the Principal Participating Holders shall reasonably request;

(j) make available for inspection by any seller of such Registrable Securities covered by such registration statement, by any managing underwriter or underwriters participating in any disposition to be effected pursuant to such registration statement and by any attorney, accountant or other agent retained by any such seller or any such managing underwriter or underwriters, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement (subject to each party referred to in this clause (j) entering into customary confidentiality agreements in a form reasonably acceptable to the Company);

(k) notify counsel (selected pursuant to Section 3.3.3 hereof) for the Holders included in such registration statement and the managing underwriter or agent, immediately, and confirm the notice in writing (i) when the registration statement, or any post-effective amendment to the registration statement, shall have become effective, or any supplement to the prospectus or any amendment to the prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request of the Commission to amend the registration statement, or to amend or supplement the prospectus, or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the registration statement, or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the registration statement for offering or sale in any jurisdiction, or of the institution or threatening of any proceedings for any of such purposes, (v) of the issuance by the Commission of a notice of objection to the use of the form on which such registration statement has been filed and (vi) of the occurrence of any event that causes the Company to become an "ineligible issuer" as defined in Rule 405 under the Securities Act;

(l) use its best efforts to prevent the issuance of any stop order suspending the effectiveness of the registration statement, or of any order preventing or suspending the use of any preliminary prospectus, and, if any such order is issued, to obtain the withdrawal of any such order as soon as practicable;

(m) if requested by the managing underwriter or agent or any Holder covered by the registration statement, incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or agent or such Holder reasonably requests to be included therein, including, with respect to the number of Registrable Securities being sold by such Holder to such underwriter or agent, the purchase price being paid therefor by such underwriter or agent and with respect to any other terms of the underwritten offering of the Registrable 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 being notified of the matters incorporated in such prospectus supplement or post-effective amendment;

(n) cooperate with the Holders covered by the registration statement and the managing underwriter or agent, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing securities to be sold under the registration statement, and enable such securities to be in such denominations and registered in such names as the managing underwriter or agent, if any, or such Holders may request;

(o) obtain for delivery to the Holders being registered and to the underwriters or agents an opinion or opinions from counsel for the Company in customary form and in form, substance and scope reasonably satisfactory to such Holders, underwriters or agents and their counsel;

(p) cooperate with each seller of Registrable Securities and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the NASD; and

(q) use its best efforts to make available the executive officers of the Company to participate with the Holders and any underwriters in any "road shows" that may be reasonably requested by the Holders in connection with distribution of the Registrable Securities.

3.3.3. Selection of Underwriters and Counsel. The underwriters and legal counsel to be retained by the Company in connection with any Public Offering shall be selected by the Board; provided, that in the case of an offering following a request therefor under Section 3.1.1, such underwriters and counsel shall be reasonably acceptable to the Principal Participating Holders. In connection with any registration of Registrable Securities pursuant to Sections 3.1 and 3.2 hereof, the Principal Participating Holders may select one counsel to represent all Holders covered by such registration; provided, however, that in the event that the counsel selected as provided above is also acting as counsel to the Company in connection with such registration, the remaining Holders shall be entitled to select one additional counsel to represent, at the Company's expense, all such remaining Holders.

3.3.4. Company Lock-Up. If any registration pursuant to Section 3.1 of this Agreement shall be in connection with an underwritten Public Offering, the Company agrees not to effect any public sale or distribution of any Common Stock of the Company (or securities convertible into or exchangeable or exercisable for Common Stock) (in each case, other than as part of such underwritten public offering and other than pursuant to a registration on Form S-4 or S-8) for its own account, within 90 days (or such shorter period as the managing underwriters may require) after the effective date of such registration (except as part of such registration).

3.3.5. Other Agreements. The Company covenants and agrees that, so long as any Person holds any Registrable Securities in respect of which any registration rights provided for in Section 3.1 of this Agreement remain in effect, the Company will not, directly or indirectly, grant to any Person or agree to or otherwise become obligated in

respect of rights of registration in the nature or substantially in the nature of those set forth in Section 3.1 or 3.2 of this Agreement without the consent of Stockholders holding a majority of the Registrable Securities (plus the consent of any Stockholder who would be disproportionately and adversely affected thereby compared to other Stockholders) other than registration rights set forth in Section 3.1 or 3.2 that are provided to Managers, Other Investors or Investors that join this Agreement from time to time.

3.4. Indemnification and Contribution.

3.4.1. Indemnities of the Company. In the event of any registration of any Registrable Securities or other debt or equity securities of the Company or any of its subsidiaries under the Securities Act pursuant to this Section 3 or otherwise, and in connection with any registration statement or any other disclosure document produced by or on behalf of the Company or any of its subsidiaries, including reports required and other documents filed under the Exchange Act, and other documents pursuant to which any debt or equity securities of the Company or any of its subsidiaries are sold (whether or not for the account of the Company or its subsidiaries), the Company will, and hereby does, and will cause each of its subsidiaries, jointly and severally, to indemnify and hold harmless each Holder, any Person who is or might be deemed to be a controlling Person of the Company or any of its subsidiaries within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, their respective direct and indirect partners, advisory board members, advisors, directors, officers, trustees, members and shareholders, and each other Person, if any, who controls any such holder or any such controlling Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such Person being referred to herein as a "Covered Person"), against any losses, claims, damages or liabilities or actions or proceedings in respect thereof (collectively, "Losses"), joint or several, to which such Covered Person may be or become subject under the Securities Act, the Exchange Act, any other securities or other law of any jurisdiction, the common law or otherwise, insofar as such Losses arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in any registration statement under the Securities Act, any preliminary prospectus or final prospectus included therein, or any related summary prospectus, "issuer free writing prospectus" as defined in Rule 433 under the Securities Act ("Issuer FWP") or any amendment or supplement thereto, or any document incorporated by reference therein, or any other such disclosure document (including reports and other documents filed under the Exchange Act and any document incorporated by reference therein) or other document or report, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company or any of its subsidiaries of any federal, state, foreign or common law rule or regulation applicable to the Company or any of its subsidiaries and relating to action or inaction in connection with any such registration, disclosure document or other document or report, and will reimburse such Covered Person for any legal or any other expenses incurred by it in connection with investigating or defending any such Loss; provided, however, that neither the Company nor any of its subsidiaries shall be liable to any

Covered Person in any such case to the extent that any such Loss arises out of or is based upon an untrue statement or omission made in such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement, incorporated document or other such disclosure document or other document or report, in reliance upon and in conformity with written information furnished to the Company or to any of its subsidiaries through an instrument duly executed by such Covered Person specifically stating that it is for use in the preparation thereof. The indemnities of the Company and of its subsidiaries contained in this Section 3.4.1 shall remain in full force and effect regardless of any investigation made by or on behalf of such Covered Person, and shall survive any transfer of securities or any termination of this Agreement.

3.4.2. Indemnities to the Company. Subject to Section 3.4.4, the Company and any of its subsidiaries may require, as a condition to including any securities in any registration statement filed pursuant to this Section 3, that the Company and any of its subsidiaries shall have received an undertaking satisfactory to it from the prospective seller of such securities, severally and not jointly, to indemnify and hold harmless the Company and any of its subsidiaries, each director of the Company or any of its subsidiaries, each officer of the Company or any of its subsidiaries who shall sign such registration statement and each other Person (other than such seller), if any, who controls the Company and any of its subsidiaries within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and each other prospective seller of such securities with respect to any statement in or omission from such registration statement, any preliminary prospectus, final prospectus or summary prospectus included therein, or any amendment or supplement thereto, or any other disclosure document (including reports and other documents filed under the Exchange Act or any document incorporated therein) or other document or report, if such statement or omission was made in reliance upon and in conformity with written information furnished to the Company or any of its subsidiaries through an instrument executed by such seller specifically stating that it is for use in the preparation of such registration statement, preliminary prospectus, final prospectus, summary prospectus, Issuer FWP, amendment or supplement, incorporated document or other document or report. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company, any of its subsidiaries or any such director, officer or controlling Person and shall survive any transfer of securities or any termination of this Agreement.

3.4.3. Contribution. If the indemnification provided for in Section 3.4.1 or 3.4.2 hereof is unavailable to a party that would have been entitled to indemnification pursuant to the foregoing provisions of this Section 3.4 (an " Indemnitee") in respect of any Losses referred to therein, then each party that would have been an indemnifying party thereunder shall, subject to Section 3.4.4, and in lieu of indemnifying such Indemnitee, contribute to the amount paid or payable by such Indemnitee as a result of such Losses in such proportion as is appropriate to reflect the relative fault of such indemnifying party on the one hand and such Indemnitee on the other in connection with the statements or omissions which resulted in such Losses. The relative fault shall be determined by reference to, among other things, whether the untrue statement of a

material fact or the omission to state a material fact relates to information supplied by such indemnifying party or such Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties agree that it would not be just or equitable if contribution pursuant to this Section 3.4.3 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the preceding sentence. The amount paid or payable by a contributing party as a result of the Losses referred to above in this Section 3.4.3 shall include any legal or other expenses reasonably incurred by such Indemnitee in connection with investigating or defending any such action or claim. 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.

3.4.4. Limitation on Liability of Holders of Registrable Securities. The liability of each Holder in respect of any indemnification or contribution obligation of such Holder arising under this Section 3.4 shall not in any event exceed an amount equal to the net proceeds to such Holder (after deduction of all underwriters' discounts and commissions) from the disposition of the Registrable Securities disposed of by such Holder pursuant to such registration.

3.4.5. Indemnification Procedures. Promptly after receipt by an Indemnitee of written notice of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Section 3.4, such Indemnitee will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action or proceeding; provided, that the failure of the Indemnitee to give notice as provided herein shall not relieve the indemnifying party of its obligations under this Section 3.4, except to the extent that the indemnifying party is materially prejudiced by such failure to give notice. In case any such action or proceeding is brought against an Indemnitee, the indemnifying party will be entitled to participate in and to assume the defense thereof (at its expense), jointly with any other indemnifying party similarly notified to the extent that they may wish, with counsel reasonably satisfactory to such Indemnitee, and after notice from the indemnifying party to such Indemnitee of its election so to assume the defense thereof, the indemnifying party will not be liable to such Indemnitee for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof other than reasonable costs of investigation, and shall have no liability for any settlement made by the Indemnitee without the consent of the indemnifying party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, if in such Indemnitee's reasonable judgment a conflict of interest between such Indemnitee and the indemnifying parties may exist in respect of such action or proceeding or the indemnifying party does not assume the defense of any such action or proceeding within a reasonable time after notice of commencement, the Indemnitee shall have the right to assume or continue its own defense and the indemnifying party shall be liable for any reasonable expenses therefor, but in no event will bear the expenses for more than one firm of counsel for all Indemnitees in each jurisdiction who shall be approved by the Principal Participating Holders in the registration in respect of which such indemnification is sought. No indemnifying party will settle any action or

proceeding or consent to the entry of any judgment without the prior written consent of the Indemnitee, unless such settlement or judgment (i) includes as an unconditional term thereof the giving by the claimant or plaintiff of a release to such Indemnitee from all liability in respect of such action or proceeding, and (ii) does not involve the imposition of equitable remedies or the imposition of any obligations on such Indemnitee, and does not otherwise adversely affect such Indemnitee, other than as a result of the imposition of financial obligations for which such Indemnitee will be indemnified hereunder.

3.5. Permitted Registration Rights Assignees .

3.5.1. Registration Rights. The rights of a Holder to cause the Company to register its Registrable Securities pursuant to Section 3.1 or 3.2 may be assigned (but only with all related obligations as set forth below) in a Transfer effected in accordance with the terms of the Stockholders Agreement and this Agreement to: (a) a Charitable Organization, (b) a Permitted Transferee or (c) any other transferee that, together with its Affiliates, in the case of this clause (c) acquires shares of Registrable Securities either (i) for consideration of at least $15,000,000 or (ii) having a then fair market value (determined in good faith by the Board) of at least $15,000,000 (the transferees described in clauses (a), (b) and (c) each a " Permitted Registration Rights Assignee "). Without prejudice to any other or similar conditions imposed hereunder, with respect to any such Transfer, no assignment permitted under the terms of this Section 3.5.1 shall be effective unless the Permitted Registration Rights Assignee, if not a Stockholder, has delivered to the Company a written acknowledgment and agreement in form and substance reasonably satisfactory to the Company that such Registrable Securities in respect of which such assignment is made shall be deemed Shares and shall be subject to all of the provisions of this Agreement relating to Shares, and that such Permitted Registration Rights Assignee shall be bound by, and shall be an Other Holder party to, this Agreement and the holder of Shares hereunder. A transferee to whom rights are transferred pursuant to this Section 3.5.1 may not again transfer such rights to any Person, other than as provided in this Section 3.5.1. A Permitted Transferee to whom rights are transferred pursuant to this Section 3.5.1 may not again transfer such rights to any other Permitted Transferee, other than as provided in this Section 3.5.1. An Affiliate or Affiliated Fund of an Investor to whom rights are assigned pursuant to this Section 3.5.1 in connection with a Transfer of Shares by such Investor will be deemed for all purposes under this Agreement to have been the beneficial Holder at Closing of the proportionate number of Shares that such Affiliate or Affiliated Fund held indirectly (through the Transferring Investor and its Affiliates or Affiliated Funds) on a pass-through basis.

3.6. Form S-8 Registration. The Company shall use commercially reasonable efforts (i) to file, not later than 60 calendar days following the effectiveness of a registration statement in connection with the Initial Public Offering, a registration statement on Form S-8 (or successor registration statement) covering the shares of Common Stock issuable upon exercise of equity-based awards granted under all Company Stock Option Plans, and (ii) to keep such registration statement (or a successor registration statement) effective for so long as there are equity-based awards outstanding and exercisable under any such Company Stock Option Plan.

4. REMEDIES.

4.1. Generally. The parties shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder. The parties acknowledge and agree that, in the event of any breach of this Agreement, in addition to any other remedies which may be available, each of the parties hereto shall be entitled to specific performance of the obligations of the other parties hereto, and, in addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances.

5. COORDINATION.

5.1. Generally. Subject to Section 2, from and after the consummation of the Initial Public Offering, each Holder may Transfer Shares (a) in a block sale, (b) pursuant to Rule 144 or (c) to its partners, members or other holders of its beneficial interests, in each case, only on a Transfer Date. In addition, after the Initial Public Offering, to the extent any Holders are considered a group for purposes of aggregating sales to comply with Rule 144 volume limitations, neither (i) the Bain Funds, collectively, (ii) the Catterton Funds, collectively, nor (iii) any other Holder shall Transfer any Shares in excess of such Holder's pro rata share of such permitted volume.

6. AMENDMENT, TERMINATION, ETC.

6.1. Oral Modifications. This Agreement may not be orally amended, modified, extended or terminated, nor shall any oral waiver of any of its terms be effective.

6.2. Written Modifications. This Agreement may be amended, modified or extended, and the provisions hereof may be waived, only by an agreement in writing signed by the Company and the Stockholders that hold a majority of the Shares held by all Stockholders; provided, however, that any amendment, modification, extension or waiver (an "Amendment") shall also require the consent of any Stockholder who would be disproportionately and adversely affected thereby. Each such Amendment shall be binding upon each party hereto and each holder of Shares subject hereto. In addition, each party hereto and each holder of Shares subject hereto may waive any right hereunder by an instrument in writing signed by such party or holder. This Agreement may be terminated only by an agreement in writing signed by the Company and each of the Stockholders who hold Registrable Securities.

6.3. Effect of Termination. No termination under this Agreement shall relieve any Person of liability for breach prior to termination. In the event this Agreement is terminated, each Covered Person shall retain the indemnification and contribution rights pursuant to Section 3.4 hereof with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

7. DEFINITIONS.

For purposes of this Agreement:

7.1. Certain Matters of Construction. In addition to the definitions referred to or set forth below in this Section 7:

(i) The words "hereof," "herein," "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or provision of this Agreement, and reference to a particular Section of this Agreement shall include all subsections thereof;

(ii) The word "including" shall mean including, without limitation;

(iii) Definitions shall be equally applicable to both nouns and verbs and the singular and plural forms of the terms defined; and

(iv) The masculine, feminine and neuter genders shall each include the other.

(v) References to Sections, unless otherwise specified, shall refer to Sections of this Agreement.

7.2. Definitions. The following terms shall have the following meanings:

"Affiliate" shall mean, with respect to any specified Person, (i) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise); and (ii) with respect to any natural Person, any Member of the Immediate Family of such natural Person.

"Affiliated Fund" means with respect to any Investors, each corporation, trust, limited liability company, general or limited partnership or other entity under common control with that Investor (including any such entity with the same general partner or principal investment advisor as that Investor or with a general partner or principal investment advisor that is an Affiliate of the general partner or principal investment advisor of that Investor).

"Agreement" shall have the meaning set forth in the Preamble.

"Amendment" shall have the meaning set forth in Section 6.2.

"Bain Funds" shall have the meaning set forth in the Preamble.

"Board" shall mean the board of directors of the Company.

"business day" shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City of New York.

"Catterton Funds" shall have the meaning set forth in the Preamble.

"Charitable Organization" means a charitable organization as described by Section 501(c)(3) of the Internal Revenue Code of 1986, as in effect from time to time.

"Closing" shall have the meaning set forth in Section 1.1.

"Commission" shall mean the Securities and Exchange Commission.

"Common Stock" shall mean the common stock, par value $0.01 per share, of the Company.

"Company" shall have the meaning set forth in the Preamble.

"Company Stock Option Plan" shall mean any equity-based compensation plan of the Company, either in effect before or after the Closing, including any plan governing Rollover Options (as defined in the Merger Agreement) and the Company's 2006 Equity Incentive Plan.

"Convertible Securities" shall mean any evidence of indebtedness, shares of stock (other than Common Stock) or other securities (other than Options and Warrants) which are directly or indirectly convertible into or exchangeable or exercisable for shares of Common Stock.

"Covered Person" shall have the meaning set forth in Section 3.4.1.

"Equivalent Shares" shall mean, at any date of determination, (a) as to any outstanding shares of Common Stock, such number of shares of Common Stock and (b) as to any outstanding Options, Warrants or Convertible Securities which constitute Shares, the maximum number of shares of Common Stock for which or into which such Options, Warrants or Convertible Securities may at the time be exercised, converted or exchanged (or which will become exercisable, convertible or exchangeable on or prior to, or by reason of, the transaction or circumstance in connection with which the number of Equivalent Shares is to be determined).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as in effect from time to time.

"Founders" has the meaning set forth in the Preamble.

"Holders" shall mean the holders of Registrable Securities under this Agreement.

"Indemnitee" shall have the meaning set forth in Section 3.4.3.

"Initial Public Offering" shall mean the initial Public Offering registered on Form S-1 (or any successor form under the Securities Act) after the date hereof.

"Initiating Holders" shall have the meaning set forth in Section 3.1.1.

"Investors" shall have the meaning set forth in the Preamble.

"Issuer FWP" shall have the meaning set forth in Section 3.4.1.

"Losses" shall have the meaning set forth in Section 3.4.1.

"Management Shares" shall mean all Shares held by a Manager. Any Management Shares that are Transferred by the holder thereof to such holder's Permitted Transferees shall remain Management Shares in the hands of such Permitted Transferee.

"Managers" shall have the meaning set forth in the Preamble.

"Members of the Immediate Family" means, with respect to any individual, each spouse, parent, parent of spouse and each descendant of each such individual's parents and parents of such individual's spouse, whether natural or adopted, each trust (or limited liability company, partnership or other estate planning vehicle) created solely for the benefit of one or more of the aforementioned Persons and their spouses and each custodian or guardian of any property of one or more of the aforementioned Persons in his or her capacity as such custodian or guardian.

"Merger Agreement" shall have the meaning set forth in the Recitals.

"NASD" shall mean the National Association of Securities Dealers, Inc.

"Options" shall mean any options to subscribe for, purchase or otherwise directly acquire Common Stock, other than any such option held by the Company or any right to purchase shares pursuant to this Agreement.

"Other Holders" shall have the meaning set forth in the Preamble.

"Other Investors" shall have the meaning set forth in the Preamble.

"Parity Shares" shall have the meaning set forth in Section 3.3.1.

"Permitted Registration Rights Assignee" shall have the meaning set forth in Section 3.5.1.

"Permitted Transferee" shall have the meaning set forth in the Stockholders Agreement.

"Person" shall mean any individual, partnership, corporation, company, association, trust, joint venture, limited liability company, unincorporated organization, entity or division, or any government, governmental department or agency or political subdivision thereof.

"Principal Lock-Up Agreement" shall have the meaning set forth in Section 2.

"Principal Participating Holders" shall mean, with respect to any Public Offering, (i) the Holder including the greatest number of Registrable Securities in such Public Offering or (ii) if there is more than one such Holder including the greatest number of Registrable Securities in such Public Offering (i.e., if more than one Holder is including the same amount), a majority of such Holders.

"Pro Rata Portion" shall mean for purposes of Section 3.3, with respect to each Holder or holder of Parity Shares requesting that such shares be registered in such registration statement, a number of such shares equal to the aggregate number of shares of Common Stock to be registered in such registration (excluding any shares to be registered for the account of the Company) multiplied by a fraction, the numerator of which is the aggregate number of Registrable Securities and Parity Shares held by such holder, and the denominator of which is the aggregate number of Registrable Securities and Parity Shares held by all holders requesting that their Registrable Securities or Parity Shares be registered in such registration.

"Public Offering" shall mean a public offering and sale of Common Stock for cash pursuant to an effective registration statement under the Securities Act.

"Registrable Securities" shall mean (i) all shares of Common Stock that are not then subject to vesting (including shares that were at one time subject to vesting to the extent they have vested), (ii) all shares of Common Stock issuable upon exercise, conversion or exchange of any vested Option, Warrant or Convertible Security and (iii) all shares of Common Stock directly or indirectly issued or issuable with respect to the securities referred to in clauses (i) or (ii) above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization, in each case constituting Shares. As to any particular Registrable Securities, such shares shall cease to be Registrable Securities when (i) such securities shall have ceased to be Shares hereunder, (ii) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (iii) such securities shall have been Transferred pursuant to Rule 144 or Rule 145, (iv) disposition of all such Shares held by a Holder may be made under Rule 144 or Rule 145 without volume limitation, (v) such securities shall have been otherwise transferred to a Person that is not an Affiliate of the transferor, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company as part of such transfer and subsequent disposition of them shall not require registration of them under the Securities Act and such securities may be distributed without volume limitation or other restrictions on transfer under Rule 144 or Rule 145 (including without application of paragraphs (c), (e), (f) and (h) of Rule 144) or (vi) such securities shall have ceased to be outstanding.

"Registration Expenses" means any and all expenses incident to performance of or compliance with Section 3 of this Agreement (other than underwriting discounts and commissions paid to underwriters and transfer taxes, if any), including (i) all Commission and securities exchange or NASD registration and filing fees, (ii) all fees and expenses of complying with securities or blue sky laws (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, messenger and delivery expenses, (iv) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or NASD pursuant to Section 3.3.2(g) and all rating agency fees, (v) the fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of any special audits and/or "cold comfort" letters required by or incident to such performance and compliance, (vi) the reasonable fees and disbursements of one counsel for the Holders selected pursuant to the terms of Section 3 and one counsel for certain Holders selected pursuant to the second proviso of Section 3.3.3, if applicable, (vii) any fees and disbursements customarily paid by the issuers of

securities, (viii) expenses incurred in connection with any road show (including the reasonable out-of-pocket expenses of the Holders) and (ix) fees and expenses incurred in connection with the distribution or transfer of Registrable Securities to or by a Holder or its permitted transferees in connection with a Public Offering.

"Rule 144" shall mean Rule 144 under the Securities Act (or any successor Rule).

"Rule 145" shall mean Rule 145 under the Securities Act (or any successor Rule).

"Rule 145 Transaction" shall mean a registration on Form S-4 (or any successor Form) pursuant to Rule 145.

"Securities Act" shall mean the Securities Act of 1933, as in effect from time to time.

"Shares" shall mean (i) all shares of Common Stock held by a Stockholder, whenever issued, including all shares of Common Stock issued upon the exercise, conversion or exchange of any Options, Warrants or Convertible Securities, and (ii) all Options, Warrants and Convertible Securities held by a Stockholder (treating such Options, Warrants and Convertible Securities as a number of Shares equal to the number of Equivalent Shares represented by such Options, Warrants and Convertible Securities for all purposes of this Agreement except as otherwise specifically set forth herein).

"Shelf Takedown Holders" shall have the meaning set forth in Section 3.1.2.

"Stockholders" shall mean Investors, Other Investors, Founders and Managers.

"Stockholders Agreement" shall have the meaning set forth in the Recitals.

"Transfer" shall mean any sale, pledge, assignment, encumbrance or other transfer or disposition of any Shares to any other Person, whether directly, indirectly, voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise.

"Transfer Date" shall mean each date that is 5 business days after a Holder has provided written notice to the Company that it intends to Transfer Shares in a block sale, pursuant to Rule 144 (in which case the Transfer Date shall include the 90-day period covered by the applicable Form 144 provided to the Company with respect to the Shares identified therein) or to its limited partners, members or other beneficial owners.

"Underwritten Shelf Takedown" shall have the meaning set forth in Section 3.1.2.

"Warrants" shall mean any warrants to subscribe for, purchase or otherwise directly acquire Common Stock.

8. MISCELLANEOUS.

8.1. Authority; Effect. Each party hereto represents, and warrants to, and agrees with each other party that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized on behalf of such party and

do not violate any agreement or other instrument applicable to such party or by which its assets are bound. This Agreement does not, and shall not be construed to, give rise to the creation of a partnership among any of the parties hereto, or to constitute any of such parties members of a joint venture or other association. The Company and its subsidiaries shall be jointly and severally liable for all obligations of each such party pursuant to this Agreement.

8.2. Notices. All notices, requests, demands, claims and other communications required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered, given or otherwise provided:

(a) by hand (in which case, it will be effective upon delivery);

(b) by facsimile (in which case, it will be effective upon receipt of confirmation of good transmission if prior to 5pm (local time of the recipient) on a business day or, if not, on the next succeeding business day); or

(c) by overnight delivery by a nationally recognized courier service (in which case, it will be effective on the business day after being deposited with such courier service);

in each case, to the address (or facsimile number) listed below

If to the Company, to:

c/o Bain Capital Partners, LLC
111 Huntington Avenue
Boston, MA 02199
Facsimile: (617) 516-2010
Attention: Andrew Balson
Philip Loughlin

with a copy to:

Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110
Facsimile: (617) 951-7050
Attention: Jane D. Goldstein
Howard S. Glazer

If to the Bain Funds, to:

Bain Capital Partners, LLC
111 Huntington Avenue
Boston, MA 02199
Facsimile: (617) 516-2010
Attention: Andrew Balson
Philip Loughlin

with a copy to:

Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110
Facsimile: (617) 951-7050
Attention: Jane D. Goldstein
Howard S. Glazer

If to the Catterton Funds, to

Catterton Partners
599 West Putnam Avenue
Greenwich, CT 06830
Facsimile: (203) 629-4903
Attention: J. Michael Chu

with a copy to:

Latham & Watkins LLP
555 Eleventh Street, NW
Washington, DC 20004
Facsimile: (202) 637-2201
Attention: Eric Stern

If to an Other Investor, a Founder or a Manager, to him at the address set forth in the stock record book of the Company;

with a copy, in the case of a Founder, to:

Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, NY 10022
Facsimile: (212) 446-6460
Attention: Michael A. Brosse

with a copy, in the case of a Manager, to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Facsimile: (212) 225-3999
Attention: A. Richard Susko

Notice to the holder of record of any shares of capital stock shall be deemed to be notice to the holder of such shares for all purposes hereof.

Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

8.3. Merger; Binding Effect, Etc. This Agreement and the Stockholders Agreement, collectively, constitute the entire agreement of the parties with respect to their subject matter, supersede all prior or contemporaneous oral or written agreements or discussions with respect to such subject matter and shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective heirs, representatives, successors and permitted assigns. Except as otherwise expressly provided herein, no Stockholder or other party hereto may assign any of its respective rights or delegate any of its respective obligations under this Agreement without the prior written consent of the other parties hereto, and any attempted assignment or delegation in violation of the foregoing shall be null and void.

8.4. Descriptive Headings. The descriptive headings of this Agreement are for convenience of reference only, are not to be considered a part hereof and shall not be construed to define or limit any of the terms or provisions hereof.

8.5. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one instrument.

8.6. Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

8.7. No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, the Company and each Stockholder covenant, agree and acknowledge that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any current or future director, officer, employee, general or limited partner or member of any Stockholder or of any Affiliate or assignee thereof, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Stockholder or any current or future member of any Stockholder or any current or future director, officer, employee, partner or member of any Stockholder or of any Affiliate or assignee thereof, as such, for any obligation of any Stockholder under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

9. GOVERNING LAW.

9.1. Governing Law. This Agreement and all claims arising out of or based upon this Agreement or relating to the subject matter hereof shall be governed by and construed in

accordance with the domestic substantive laws of the State of New York without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

9.2. Consent to Jurisdiction. Each party to this Agreement, by its execution hereof, (i) hereby irrevocably submits to the exclusive jurisdiction of the state courts of the state of New York, New York County or any federal courts sitting in the Southern District of New York for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof, (ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court and (iii) hereby agrees neither to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof or thereof other than before one of the above-named courts, nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts, whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which it may assert indemnification rights set forth in this agreement, the court in which such litigation is being heard shall be deemed to be included in clause (i) above. Notwithstanding the foregoing, any party to this Agreement may commence and maintain an action to enforce a judgment of any of the above-named courts in any court of competent jurisdiction. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by New York law, and agrees that service of process by registered or certified mail, return receipt requested, at its address specified pursuant to Section 8.2 hereof is reasonably calculated to give actual notice.

9.3. WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 9.3 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9.3 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

9.4. Exercise of Rights and Remedies. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any such delay, omission nor waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

[Signature pages follow**]**

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement (or caused this Agreement to be executed on its behalf by its officer or representative thereunto duly authorized) under seal as of the date first above written.

COMPANY:

KANGAROO HOLDINGS, INC.

By: /s/Ian Blasco
Name: Ian Blasco
Title: Vice President

THE INVESTORS:

BAIN CAPITAL (OSI) IX, L.P.

By: Bain Capital Investors, LLC, its managing partner

By: /s/ Michael F. Goss
Name: Michael F. Goss
Title: Authorized Person

BAIN CAPITAL (OSI) IX COINVESTMENT, L.P.

By: Bain Capital Investors, LLC, its managing partner

By: /s/ Michael F. Goss
Name: Michael F. Goss
Title: Authorized Person

BCIP TCV, LLC

By: Bain Capital Investors, LLC, its managing partner

By: /s/ Michael F. Goss
Name: Michael F. Goss
Title: Authorized Person

BAIN CAPITAL INTEGRAL INVESTORS 2006, LLC

By: Bain Capital Investors, LLC, its managing partner

By: /s/ Michael F. Goss
Name: Michael F. Goss
Title: Authorized Person

BCIP ASSOCIATES—G

By: Bain Capital Investors, LLC, its managing partner

By: /s/ Michael F. Goss
Name: Michael F. Goss
Title: Authorized Person

THE OTHER INVESTORS:

CATTERTON PARTNERS VI – KANGAROO, L.P.

By: Catterton Managing Partner VI, LLC General Partner

By: CP6 Management, LLC
Managing Member of General Partner

By: /s/J. Michael Chu
Name: J. Michael Chu
Title: J. Michael Chu

CATTERTON PARTNERS VI – KANGAROO COINVEST, L.P.

By: Catterton Managing Partner VI, LLC
General Partner

By: CP6 Management, LLC
Managing Member of General Partner

By: /s/J. Michael Chu
Name: J. Michael Chu
Title: J. Michael Chu

CTS EQUITIES LIMITED PARTNERSHIP

By: CTS Equities, LLC
Its: General Partner

By: /s/Chris T. Sullivan
Its: Manager

CHRIS T. SULLIVAN FOUNDATION

By: /s/Chris T. Sullivan
Name: Chris T. Sullivan
Its: President

ASHLEY SULLIVAN IRREVOCABLE TRUST

By: /s/Ava Forney
Ava Forney, Trustee

ALEXANDER SULLIVAN IRREVOCABLE TRUST

By: /s/Ava Forney
Ava Forney, Trustee

/s/Ashley Sullivan
ASHLEY SULLIVAN

/s/Alexander Sullivan
ALEXANDER SULLIVAN

FOUNDER:

RDB EQUITIES LIMITED PARTNERSHIP

By: RDB EQUITIES, LLC
Its: General Partner

By: /s/Robert D. Basham
Name: Robert D. Basham
Its: Manager

FOUNDER:

JTG EQUITIES LIMITED PARTNERSHIP

By: JTG EQUITIES, LLC
Its: General Partner

By: /s/John T. Gannon
Name: John T. Gannon
Its: Manager

MANAGEMENT:

/s/A. William Allen, III
A. William Allen, III

/s/Paul E. Avery
Paul E. Avery

/s/Dirk A. Montgomery
Dirk A. Montgomery

/s/Joseph J. Kadow
Joseph J. Kadow

/s/Mark Aaron

Mark Aaron

/s/Stephanie Amberg

Stephanie Amberg

/s/Richard J. Beach

Richard J. Beach

/s/Jody Bilney

Jody Bilney

/s/Karen C. Bremer

Karen C. Bremer

/s/Michael W. Coble

Michael W. Coble

/s/John W. Cooper

John W. Cooper

/s/Trudy Cooper

Trudy Cooper

/s/William A. Daniel

William A. Daniel

/s/Steve Erickson

Steve Erickson

/s/Donnie Everts

Donnie Everts

/s/C.H. “Skip” Fox

C.H. “Skip” Fox

/s/Randy Graham

Randy Graham

/s/Matthew P. Halme

Matthew P. Halme

/s/Joseph W. Hartnett

Joseph W. Hartnett

/s/Dennis Hood

Dennis Hood

/s/Joseph Larry Jackson

Joseph Larry Jackson

/s/Joseph Kadow

JOSEPH KADOW CUST FOR EMILY
KADOW UNDER FLORIDA UTMA

/s/Joseph Kadow

JOSEPH KADOW CUST FOR
KATHERINE KADOW UNDER
FLORIDA UTMA

/s/William J. Kadow
William J. Kadow

/s/Gregory A. Laney

Gregory A. Laney

/s/Bill Leahy

Bill Leahy

/s/Kelly M. Lefferts

Kelly M. Lefferts (f/k/a Braun)

/s/Clive Howard Leigh

Clive Howard Leigh

/s/John A. Massari

John A. Massari

/s/Dick Meyer

Dick Meyer

/s/James Morey

James Morey

/s/Steve Newton

Steve Newton

/s/Steve Overholt

Steve Overholt

/s/Jim Pollard

Jim Pollard

/s/Dennis L. Prescott

Dennis L. Prescott

/s/Martin E. Reichenthal

Martin E. Reichenthal

/s/Richard L. Renninger

Richard L. Renninger

/s/Linden D. Richardson

Linden D. Richardson

/s/Mark D. Running

Mark D. Running

/s/Amanda L. Shaw

Amanda L. Shaw

/s/Steven T. Shlemon

Steven T. Shlemon

/s/Steven T. Shlemon

Steven T. Shlemon as
CUST Steven Michael Shlemon
UNDER THE FL UNIF TRAN MIN ACT

/s/Jeff Smith

Jeff Smith

/s/Steven C. Stanley

Steven C. Stanley

/s/Irene D. Wenzel

Irene D. Wenzel

/s/Fred T. Williams

Fred T. Williams

Schedule 1 to
Registration Rights Agreement

Common Stock of Kangaroo Holdings, Inc.

Name/Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Bain Capital (OSI) IX, L.P.	54,006,581.7				54,006,581.7	49.39%
Bain Capital (OSI) IX Coininvestment, L.P.	15,292,202.8				15,292,202.8	13.99%
BCIP TCV, LLC	126,959.0				126,959.0	0.12%
Bain Capital Integral Investors 2006, LLC	637,456.1				637,456.1	0.58%
BCIP Associates-G	8,800.4				8,800.4	0.01%
Catterton Partners VI-Kangaroo, L.P.	10,000,000				10,000,000	9.15%
Catterton Partners VI-Kangaroo Coinvest, L.P.	4,500,000				4,4000,000	4.12%
CTS Equities Limited Partnership (BOA)	1,126,104				1,126,104	1.03%
CTS Equities Limited Partnership (Wach)	1,200,000				1,200,000	1.10%
CTS Equities Limited Partnership (Sun)	2,991,812				2,991,812	2.74%
Chris T. Sullivan Foundation	611,415				611,415	0.56%
Ashley Sullivan Irrevocable Trust	146,214				146,214	0.13%
Alexander Sullivan Irrevocable Trust	142,099				142,099	0.13%
Ashley Sullivan	5,280				5,280	0.00%
Alexander Sullivan	5,284				5,284	0.00%
RDB Equities Limited Partnership	8,604,652				8,604,652	7.87%
JTG Equities Limited Partnership	1,200,000				1,200,000	1.10%
Mark Aaron	100,000				100,000	0.09%
A. William Allen, III			1,851,750	497,482	2,349,232	2.15%
Stephanie L. Amberg	5,000		8,230		13,230	0.01%
Paul E. Avery			1,234,500	459,214	1,693,714	1.55%
Richard J. Beach			16,460		16,460	0.02%
Jody Bilney			102,875		102,875	0.09%
Karen C. Bremer	5,000				5,000	0.00%
Michael W. Coble	100,000				100,000	0.09%
John W. and Trudy I. Cooper	100,000				100,000	0.09%
William A. Daniel			61,725		61,725	0.06%
Stephen C. Erickson	50,000				50,000	0.05%
Donald R. Everts	80,000				80,000	0.07%
Curtis H. Fox	5,000				5,000	0.00%
Randy Graham	15,000				15,000	0.01%
Matthew P. Halme	5,000		16,400		21,460	0.02%
Joseph W. Hartnett	5,000		41,150		46,150	0.04%
Dennis L. Hood	10,000				10,000	0.01%
Joseph Larry Jackson			20,575		20,575	0.02%
Joseph J. Kadow			308,625	319,810	628,435	0.57%
Joseph Kadow CUST for Emily Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%

Name/Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Joseph Kadow CUST for Katherine Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%
William J. Kadow	20,000		82,300		102,300	0.09%
Gregory A. Laney	5,000		16,640		21,460	0.02%
William G. Leahy	10,000				10,000	0.01%
Kelly M. Lefferts	5,000		20,575		25,575	0.02%
C. Howard Leigh			41,150		41,150	0.04%
John A. Massari			24,690		24,690	0.02%
Richard E. Meyer	100,000				100,000	0.09%
Dirk A. Montgomery			411,500	153,071	564,571	0.52%
James Morey			102,875		102,875	0.09%
Stephen S. Newton	15,000				15,000	0.01%
Steven A. Overholt	100,000				100,000	0.09%
James Pollard	30,000				30,000	0.03%
Dennis L. Prescott	20,000		41,150		61,150	0.06%
Martin Reichenthal	50,000		61,725		111,725	0.10%
Richard Renninger			102,875		102,875	0.09%
Lindon D. Richardson	10,000		41,150		51,150	0.05%
Mark Running	25,000				25,000	0.02%
Amanda L. Shaw			4,115		4,115	0.00%
Steven T. Shlemon	30,000	306,156			336,156	0.31%
Steven T. Shlemon CUST Steven Michael Shelmon UNDER THE FL UNIF TRAN MIN ACT		6,617			6,617	0.01%
Jeffrey S. Smith	45,000				45,000	0.04%
Steven C. Stanley			41,150		41,500	0.04%
Irene Wenzel	10,000		20,575		30,575	0.03%
Fred T. Williams			32,920		32,920	0.03%
Current Option Pool				483,814	483,814	0.44%
Options res'd for later issuance				820,025	820,025	0.75%
Total	**101,582,860**	**312,773**	**4,707,560**	**2,733,415**	**109,336,608**	**100.00%**
Total Shares issued at close	106,603,193					97.5%
Option Pool	2,733,415					2.5%
Total Fully Diluted Shares	**109,336,608**					**100.0%**

Exhibit 10.1

KANGAROO HOLDINGS INC.
2007 EQUITY INCENTIVE PLAN

1. DEFINED TERMS

Exhibit A, which is incorporated by reference, defines the terms used in the Plan and sets forth certain operational rules related to those terms.

2. PURPOSE

The Plan has been established to advance the interests of the Company by providing for the grant to Participants of Stock-based Awards.

3. ADMINISTRATION

The Administrator has discretionary authority, subject only to the express provisions of the Plan, to interpret the Plan; determine eligibility for and grant Awards; determine, modify or waive the terms and conditions of any Award; prescribe forms, rules and procedures; and otherwise do all things necessary to carry out the purposes of the Plan. Determinations of the Administrator made under the Plan will be conclusive and will bind all parties.

4. LIMITS ON AWARDS UNDER THE PLAN

(a) **Number of Shares**. A maximum of 4,000,000 shares of Stock may be delivered in satisfaction of Awards under the Plan. The number of shares of Stock delivered in satisfaction of Awards shall, for purposes of the preceding sentence, be determined net of shares of Stock withheld by the Company in payment of the exercise price of the Award or in satisfaction of tax withholding requirements with respect to the Award. To the extent that any Award granted under the Plan terminates, expires or is canceled without having been exercised, the Stock covered by such Award shall again be available for Awards under the Plan. The limit set forth in this Section 4(a) shall be construed to comply with Section 422. To the extent consistent with the requirements of Section 422, Stock issued under awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition shall not reduce the number of shares available for Awards under the Plan.

(b) **Type of Shares**. Stock delivered by the Company under the Plan may be authorized but unissued Stock or previously issued Stock acquired by the Company.

5. ELIGIBILITY AND PARTICIPATION

The Administrator will select Participants from among those key Employees and directors of, and consultants and advisors to, the Company or its Affiliates who, in the opinion of the Administrator, are in a position to make a significant contribution to the success of the Company and its Affiliates. Eligibility for ISOs is limited to employees of the Company or of a "parent corporation" or "subsidiary corporation" of the Company, as those terms are defined in Section 424 of the Code.

6. RULES APPLICABLE TO AWARDS

(a) All Awards

(1) Award Provisions. The Administrator will determine the terms of all Awards, subject to the limitations provided herein. By accepting an Award, the Participant agrees to the terms of the Award and the Plan. Notwithstanding any provision of this Plan to the contrary, awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition may contain terms and conditions that are inconsistent with the terms and conditions specified herein, as determined by the Administrator.

(2) Term of Plan. No Awards may be made after June 30, 2017, but previously granted Awards may continue beyond that date in accordance with their terms.

(3) Transferability. Awards may not be transferred other than by will or by the laws of descent and distribution, and, during a Participant's lifetime, Awards requiring exercise may be exercised only by the Participant.

(4) Vesting, Etc. The Administrator may determine the time or times at which an Award will vest or become exercisable, and the terms on which an Award requiring exercise will remain exercisable. Without limiting the foregoing, the Administrator may at any time accelerate the vesting or exercisability of an Award, regardless of any adverse or potentially adverse tax consequences resulting from such acceleration. Unless the Administrator expressly provides otherwise, however, the following rules will apply: immediately upon the cessation of the Participant's Employment, each Award requiring exercise that is then held by the Participant or by the Participant's permitted transferees, if any, will cease to be exercisable and will terminate, and all other Awards that are then held by the Participant or by the Participant's permitted transferees, if any, to the extent not already vested will be forfeited, except that:

(A) subject to (B) and (C) below, all Stock Options held by the Participant or the Participant's permitted transferees, if any, immediately prior to the cessation of the Participant's Employment, to the extent then vested and exercisable, and any Stock Options that become vested and exercisable as a result of the cessation of the Participant's Employment, will remain exercisable for the lesser of (i) a period of 90 days, or (ii) the period ending on the latest date on which such Stock Option could have been exercised without regard to this Section 6(a)(4), and will thereupon terminate;

(B) all Stock Options held by a Participant or the Participant's permitted transferees, if any, immediately prior to the Participant's death or Disability, to the extent then exercisable, will remain exercisable for the lesser of (i) the one year period ending with the first anniversary of the Participant's death or Disability, or (ii) the period ending on the latest date on which such Stock Option could have been exercised without regard to this Section 6(a)(4), and will thereupon terminate; and

(C) all Stock Options held by a Participant or the Participant's permitted transferees, if any, immediately prior to the cessation of the Participant's Employment will immediately terminate upon such cessation if the Administrator determines that such cessation of Employment is the result of Cause.

(5) Taxes. The Administrator will make such provision for the withholding of taxes as it deems necessary. The Administrator may, but need not unless otherwise specified in an Award, hold back shares of Stock from an Award or permit a Participant to tender previously owned shares of Stock in satisfaction of tax withholding requirements (but not in excess of the minimum withholding required by law).

(6) Dividend Equivalents, Etc. Except as otherwise provided in an Award, the Administrator may provide for the payment of amounts in lieu of cash dividends or other cash distributions with respect to Stock subject to an Award. Any entitlement to dividend equivalents or similar entitlements shall be established and administered consistent either with exemption from, or compliance with, the requirements of Section 409A.

(7) Rights Limited. Nothing in the Plan will be construed as giving any person the right to continued employment or service with the Company or its Affiliates, or any rights as a stockholder except as to shares of Stock actually issued under the Plan. The loss of existing or potential profit in Awards will not constitute an element of damages in the event of termination of Employment for any reason, even if the termination is in violation of an obligation of the Company or any Affiliate to the Participant.

(8) Coordination with Other Plans. Awards under the Plan may be granted in tandem with, or in satisfaction of or substitution for, other Awards under the Plan or awards made under other compensatory plans or programs of the Company or its Affiliates. For example, but without limiting the generality of the foregoing, awards under other compensatory plans or programs of the Company or its Affiliates may be settled in Stock (including, without limitation, Unrestricted Stock) if the Administrator so determines, in which case the shares delivered shall be treated as awarded under the Plan (but shall not reduce the number of shares available under the Plan as set forth in Section 4 above).

(9) Section 409A. Each Award shall contain such terms as the Administrator determines, and shall be construed and administered, such that the Award either (i) qualifies for an exemption from the requirements of Section 409A to the extent applicable, or (ii) satisfies such requirements.

(10) Certain Requirements of Corporate Law. Awards shall be granted and administered consistent with the requirements of applicable Delaware law relating to the issuance of stock and the consideration to be received therefor, and with the applicable requirements of the stock exchanges or other trading systems on which the Stock is listed or entered for trading, in each case as determined by the Administrator.

(11) Other Restrictions. For the avoidance of doubt, Awards and Stock issued upon exercise of Awards may be subject to restrictions under other agreements to which Participants are, or may become, party.

(b) Awards Requiring Exercise

(1) Time And Manner Of Exercise. Unless the Administrator expressly provides otherwise in an Award, an Award requiring exercise by the holder will not be deemed to have been exercised until the Administrator receives a notice of exercise (in form acceptable to the Administrator) signed by the appropriate person and accompanied by any payment (in cash or Stock, as applicable) required under the Award, if any. If the Award is exercised by any person other than the Participant, the Administrator may require satisfactory evidence that the person exercising the Award has the right to do so.

(2) Exercise Price. The exercise price (or the base value from which appreciation is to be measured) of each Award requiring exercise shall be 100% (in the case of an ISO granted to a ten-percent shareholder within the meaning of subsection (b)(6) of Section 422, 110%) of the Fair Market Value of the Stock subject to the Award, determined as of the date of grant, or such higher amount as the Administrator may determine in connection with the grant.

(3) Payment Of Exercise Price. Where the exercise of an Award is to be accompanied by payment, payment of the exercise price shall be by cash or check reasonably acceptable to the Administrator, or, if so permitted by the Administrator and if legally permissible, (i) through the delivery of shares of Stock that have been outstanding for at least six months (unless the Administrator approves a shorter period) and that have a Fair Market Value equal to the exercise price, (ii) at such time, if any, as the Stock is publicly traded, through a broker-assisted exercise program reasonably acceptable to the Administrator, (iii) by other means reasonably acceptable to the Administrator or (iv) by any combination of the foregoing permissible forms of payment. The delivery of shares of Stock in payment of the exercise price under clause (i) above may be accomplished either by actual delivery or by constructive delivery through attestation of ownership, subject to such rules as the Administrator may reasonably prescribe.

(4) Maximum Term. Awards requiring exercise will have a maximum term not to exceed ten years from the date of grant.

7. EFFECT OF CERTAIN TRANSACTIONS

(a) Mergers, Etc. Except as otherwise provided in an Award:

(1) Assumption or Substitution. Subject to any required action by the stockholders of the Company, in the event that the Company shall be the surviving corporation in any merger or consolidation (except a merger or consolidation as a result of which the holders of shares of Stock receive securities of another corporation), the Awards outstanding on the date of such merger or consolidation shall pertain to and apply to the securities that a holder of the number of shares of Stock subject to any such Award would have received in such merger or consolidation (it being understood that if, in connection with such transaction, the holders of Stock of the Company retain their shares of Stock and are not entitled to any additional or other consideration, the Awards shall not be affected by such transaction).

(2) Cash-Out of Awards. In the event of (i) a dissolution or liquidation of the Company or any of its Affiliates, (ii) a sale, directly or indirectly, of all or substantially all of the Company's assets, (iii) a merger or consolidation involving the Company or any of its Affiliates in which the Company or any of its Affiliates is not the surviving corporation or (iv) a merger or consolidation involving the Company or any of its Affiliates in which the Company or any of its Affiliates is the surviving corporation but the holders of shares of Stock receive securities of another corporation and/or other property, including cash, the Administrator shall, in its sole discretion (a) have the power to provide for the exchange of each Award outstanding immediately prior to such event (whether or not then exercisable) for an award on some or all of the property for which the stock underlying such Awards are exchanged, and, incident thereto, make an equitable adjustment, as reasonably determined by the Administrator, in the exercise price of Awards, or the number or kind of securities or amount of property subject to the Awards and/or, (b) if appropriate, cancel, effective immediately prior to such event, any outstanding Award (whether or not exercisable or vested) and in full consideration of such cancellation pay to the Participant an amount in cash, with respect to each underlying share of Stock, equal to the excess of (1) the value, as determined by the Administrator in its good faith discretion, of securities and/or property (including cash) received by such holders of shares of Stock as a result of such event over (2) the exercise price, as the Administrator may in good faith consider appropriate to prevent dilution or enlargement of rights; *provided*, that the Administrator shall not exercise discretion under this Section 7(a)(2) with respect to an Award or portion thereof providing for "nonqualified deferred compensation" subject to Section 409A in a manner that would constitute an extension or acceleration of, or other change in, payment terms if such change would be inconsistent with the applicable requirements of Section 409A.

(3) Additional Limitations. Any share of Stock and any cash or other property delivered pursuant to Section 7(a)(2) above with respect to an Award may, in the discretion of the Administrator, contain such restrictions, if any, as the Administrator deems appropriate to reflect any performance or other vesting conditions to which the Award was subject as of such transaction and that did not lapse (and were not satisfied) in connection with such transaction. In the case of Restricted Stock that does not vest in connection with such transaction, the Administrator may require that any amounts delivered, exchanged or otherwise paid in respect of such Stock in connection with such transaction be placed in escrow, or otherwise be made subject to such restrictions as the Administrator deems appropriate to carry out the intent of the Plan.

(b) Changes in and Distributions With Respect to Stock

(1) Basic Adjustment Provisions. Subject to any required action by the stockholders of the Company, in the event of any increase or decrease in the number or change in the kind of issued shares of stock or securities that results from a subdivision or consolidation of shares of Stock, the payment of a stock dividend or from a recapitalization, or any other increase, decrease or other change in the number of such shares effected without receipt of consideration by the Company, the Administrator shall make such adjustments with respect to the number of shares of Stock or other securities specified in Section 4(a) above, the number and kind of shares of Stock or other securities subject to the Awards and/or the exercise price per share of Stock or other security, as the Administrator may consider appropriate to prevent the enlargement or dilution of rights.

(2) Certain Other Adjustments. The Administrator may also make adjustments of the type described in Section 7(b)(1) above to take into account distributions to stockholders other than those provided for in Section 7(a) and 7(b)(1) above, or any other event, if the Administrator determines that adjustments are appropriate to avoid distortion in the operation of the Plan and to preserve the value of Awards made hereunder, having due regard for the qualification of ISOs under Section 422 and the requirements of Section 409A, where applicable.

(3) Continuing Application of Plan Terms. References in the Plan to shares of Stock will be construed to include any stock or securities resulting from an adjustment pursuant to this Section 7.

8. LEGAL CONDITIONS ON DELIVERY OF STOCK

The Company will not be obligated to deliver any shares of Stock pursuant to the Plan, or to remove any restriction from shares of Stock previously delivered under the Plan, until: (i) the Company is satisfied that all legal matters in connection with the issuance and delivery of such shares have been addressed and resolved, (ii) if a Public Market for the Stock exists, the shares to be delivered have been listed or authorized to be listed on such exchange or system upon official notice of issuance and (iii) all conditions of the Award have been satisfied or waived. If the sale of Stock has not been registered under the Securities Act of 1933, as amended, the Company may require, as a condition to exercise of the Award, such representations or agreements as counsel for the Company may consider appropriate to avoid violation of such Act. The Company may require that certificates evidencing Stock issued under the Plan bear an appropriate legend reflecting any restriction on transfer applicable to such Stock, and the Company may hold the certificates pending lapse of the applicable restrictions.

9. AMENDMENT AND TERMINATION

The Administrator may at any time or times amend the Plan or any outstanding Award for any purpose which may at the time be permitted by law, and may at any time terminate the Plan as to any future grants of Awards; *provided*, that, except as otherwise expressly provided in the Plan, the Administrator may not, without the Participant's consent, alter the terms of an Award so as to affect materially and adversely the Participant's rights under the Plan or an Award, unless the Administrator expressly reserved the right to do so at the time of the Award. Any amendments to the Plan shall be conditioned upon stockholder approval only to the extent, if any, such approval is required by law (including the Code), as determined by the Administrator.

10. OTHER COMPENSATION ARRANGEMENTS

The existence of the Plan or the grant of any Award will not in any way affect the Company's right to Award a person bonuses or other compensation in addition to Awards under the Plan.

11. MISCELLANEOUS

(a) WAIVER OF JURY TRIAL. BY ACCEPTING AN AWARD UNDER THE PLAN, EACH PARTICIPANT WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THE PLAN AND ANY AWARD, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BY ACCEPTING AN AWARD UNDER THE PLAN, EACH PARTICIPANT CERTIFIES THAT NO OFFICER, REPRESENTATIVE OR ATTORNEY OF THE COMPANY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE COMPANY WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS.

(b) Limitation of Liability. Notwithstanding anything to the contrary in the Plan, neither the Company, nor any Affiliate, nor the Administrator, nor any person acting on behalf of the Company, any Affiliate, or the Administrator, shall be liable to any Participant or to the estate or beneficiary of any Participant or to any other holder of an Award by reason of any acceleration of income, or any additional tax, asserted by reason of the failure of an Award to satisfy the requirements of Section 422 or Section 409A or by reason of Section 4999 of the Code; *provided*, that (i) nothing in this Section 11(b) shall limit the ability of the Administrator or the Company to provide by separate express written agreement with a Participant for a gross-up payment or other payment in connection with any such tax or additional tax, and (ii) nothing in this Section 11(b) shall limit the liability of the Company to any Participant or to the estate or beneficiary of such Participant by reason of the failure of an Award to satisfy the requirements of Section 409A to the extent such failure results from the Administrator's gross negligence in connection with the administration of the Plan.

EXHIBIT A

Definition of Terms

The following terms, when used in the Plan, will have the meanings and be subject to the provisions set forth below:

"Administrator": The Board, except that the Board may delegate its authority under the Plan to a committee of the Board, in which case references herein to the Board shall refer to such committee. The Board may delegate (i) to one or more of its members such of its duties, powers and responsibilities as it may determine; (ii) to one or more officers of the Company the power to grant rights or options to the extent permitted by Section 157(c) of the Delaware General Corporation Law; and (iii) to such Employees or other persons as it determines such ministerial tasks as it deems appropriate. In the event of any delegation described in the preceding sentence, the term "Administrator" shall include the person or persons so delegated to the extent of such delegation.

"Affiliate": Any corporation or other entity that stands in a relationship to the Company that would result in the Company and such corporation or other entity being treated as one employer under Section 414(b) and Section 414(c) of the Code, except that in determining eligibility for the grant of a Stock Option by reason of service for an Affiliate, Sections 414(b) and 414(c) of the Code shall be applied by substituting "at least 50%" for "at least 80%" under Section 1563(a)(1), (2) and (3) of the Code and Treas. Regs. § 1.414(c)-2; *provided*, that to the extent permitted under Section 409A, "at least 20%" shall be used in lieu of "at least 50%"; *and further provided*, that the lower ownership threshold described in this definition (50% or 20% as the case may be) shall apply only if the same definition of affiliation is used consistently with respect to all compensatory stock options or stock awards (whether under the Plan or another plan).

"Award": Any or a combination of the following:

(i) Stock Options.

(ii) Restricted Stock

"Board": The Board of Directors of the Company.

"Cause": The termination of the Participant's Employment on account of "Cause" has the meaning ascribed to it in the Participant's Award, or, if there is no definition of "Cause" in the Participant's Award, in the Participant's employment agreement with the Company or its Affiliates, or, if the Participant does not have an employment agreement or there is no definition of "Cause" in the Participant's employment agreement, (i) the willful failure by the Participant to substantially perform his duties with the Company or any Affiliate (other than any such failure resulting from incapacity due to physical or mental illness); (ii) the Participant's negligence, willful misconduct or illegal conduct in the performance of his duties for the Company or any

Affiliate which has resulted in, or is reasonably expected to result in, injury to the Company or any Affiliate; (iii) the Participant's conviction of, or entering a plea of guilty or *nolo contendere* to, a misdemeanor involving theft or embezzlement, or a felony; or (iv) the breach by the Participant of any obligations under any written agreement or covenant with the Company or any of its Affiliates, or of any fiduciary duty or any material act of disloyalty, in any case, which has resulted in or is reasonably expected to result in injury to the Company or any Affiliates.

"Change in Control": shall have the meaning set forth in the Company's Stockholders Agreement dated as of June 14, 2007.

"Code": The U.S. Internal Revenue Code of 1986, as from time to time amended and in effect, or any successor statute, as from time to time in effect.

"Company": Kangaroo Holdings, Inc.

"Disability": a permanent disability as defined in the Company's or an Affiliate's disability plans, or as defined from time to time by the Company, in its discretion, or as specified in the Participant's Award; *provided*, that in the event the Participant is party to an effective employment agreement or other written agreement with respect to the termination of a Participant's Employment, and such agreement contains or operates under a different definition of Disability (or any derivative of such term), the definition of Disability used in such agreement shall be substituted for the definition set forth above for all purposes hereunder.

"Employee": Any person who is employed by the Company or an Affiliate.

"Employment": A Participant's employment or other service relationship (including, for the avoidance of doubt, service as a director) with the Company or any of its Affiliates. Employment will be deemed to continue so long as the Participant is employed by, or otherwise is providing services in a capacity described in Section 5 hereto to, the Company or its Affiliates. If a Participant's employment or other service relationship is with an Affiliate and that entity ceases to be an Affiliate, the Participant's Employment will be deemed to have terminated when the entity ceases to be an Affiliate, unless the Participant transfers Employment to the Company or any of its remaining Affiliates.

"Exchange Act": The Securities Exchange Act of 1934, as amended.

"Fair Market Value": As of any date (i) prior to the existence of a Public Market for the Stock, the value per share of Stock as reasonably determined in good faith by the Board, taking into account the fair market value of the entire equity of the Company determined on a going concern basis as between a willing buyer and a willing seller, and taking into account any relevant factors determinative of value, without, however, giving effect to any discount for any lack of liquidity attributable to a lack of a Public Market, any block discount or discount attributable to the size of any person's holdings of Stock, any minority interest or any voting rights or lack thereof; or (ii) on which a Public Market for the Stock exists, (a) closing price on such day of a share of Stock as reported on the principal securities exchange on which shares of

Stock are then listed or admitted to trading, or (b) if not so reported, the average of the closing bid and ask prices on such day as reported on the National Association of Securities Dealers Automated Quotation System, or (c) if not so reported, as furnished by any member of the National Association of Securities Dealers, Inc. ("NASD") selected by the Administrator. The Fair Market Value of a share of Stock as of any such date on which the applicable exchange or inter-dealer quotation system through which trading in the Stock regularly occurs is closed shall be the Fair Market Value determined pursuant to the preceding sentence as of the immediately preceding date on which the Stock is traded, a bid and ask price is reported or a trading price is reported by any member of NASD selected by the Administrator. In the event that the price of a share of Stock shall not be so reported or furnished, the Fair Market Value shall be determined by the Administrator in good faith to reflect the fair market value of a share of Stock.

"Good Reason": means any of the following: (i) a reduction by the Company in the Employee's base salary or benefits as in effect immediately prior to a Change in Control, unless a similar reduction is made in salary and benefits of all employees, or (ii) the Company requires the Employee to be based at or generally work from any location more than 50 miles from the location at which the Employee was based or generally worked immediately prior to a Change in Control. Notwithstanding the foregoing, if, as of the date of determination, the Participant is a party to an effective employment agreement or other written agreement with respect to the termination of a Participant's Employment or an Award that contains or operates under a different definition of the term "Good Reason" (or any derivation of such term), the definition used by (i) first, such employment agreement or (ii) second, absent an employment agreement, such other written agreement, shall be substituted for the definition set forth above for all purposes hereunder.

"ISO": A Stock Option intended to be an "incentive stock option" within the meaning of Section 422. Each option granted pursuant to the Plan will be treated as providing by its terms that it is to be a non-incentive stock option unless, as of the date of grant, it is expressly designated as an ISO.

"Participant": A person who is granted an Award under the Plan.

"Plan": The Kangaroo Holdings, Inc. 2007 Equity Incentive Plan, as from time to time amended and in effect.

"Public Market": A Public Market shall be deemed to exist for purposes of the Plan if the Stock is registered under Section 12(b) or 12(g) of the Exchange Act and trading regularly occurs in such Stock in, on or through the facilities of securities exchanges and/or inter-dealer quotation systems in the United States (within the meaning of Section 902(n) of the Securities Act) or any designated offshore securities market (within the meaning of Rule 902(a) of the Securities Act).

"Restricted Stock": Stock subject to restrictions requiring that it be redelivered or offered for sale to the Company if specified conditions are not satisfied.

"Section 409A": Section 409A of the Code.

"Section 422": Section 422 of the Code.

"Securities Act": The Securities Act of 1933, as amended.

"Stock": Common Stock of the Company, par value $ 0.01 per share.

"Stock Option": An option entitling the holder to acquire shares of Stock upon payment of the exercise price.

"Unrestricted Stock": Stock not subject to any restrictions under the terms of the Award.

FIRST AMENDMENT TO THE KANGAROO HOLDINGS, INC.

2007 EQUITY INCENTIVE PLAN

The Kangaroo Holdings, Inc. 2007 Equity Incentive Plan is hereby amended as follows:

Clause (b) of the definition of Change of Control is hereby amended in its entirety to read as follows:

"(b) any change in the ownership of the Stock if, immediately after giving effect thereto, the Investors and their Affiliates (each as defined in the Company's Stockholders Agreement dated as of June 14, 2007) shall own less than 25% of the Equivalent Shares (as defined in the Company's Stockholders Agreement dated as of June 14, 2007); provided, however, that this clause (b) shall not apply to any change in the ownership of the Stock that occurs while there is a Public Market (as defined in this Plan) for the Stock."

This amendment to the definition of Change of Control shall not apply to the existing Stock Option Award Agreements issued to Elizabeth Smith and Joseph Kadow.

Approved and adopted by the Kangaroo Holdings, Inc. Board of Directors on December 2, 2010.

Bloomin' Brands, Inc.

SECRETARY'S CERTIFICATE

The undersigned, being the duly elected and authorized Secretary of Bloomin' Brands, Inc., a Delaware corporation formerly known as Kangaroo Holdings, Inc. (the "Company"), hereby certifies that the following resolution amending the Company's 2007 Equity Incentive Plan (the "Equity Plan") was duly adopted by the Board of Directors of the Company on October 26, 2007:

> RESOLVED: The Equity Plan is hereby amended by deleting the first sentence of Section 4(a) of the Equity Plan and substituting in its place the following: "A maximum of 6,272,320 shares of Stock may be delivered in satisfaction of Awards under the Plan."

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of April 5, 2012.

/s/ Joseph J. Kadow
Joseph J. Kadow
Secretary

Bloomin' Brands, Inc.

SECRETARY'S CERTIFICATE

The undersigned, being the duly elected and authorized Secretary of Bloomin' Brands, Inc., a Delaware corporation formerly known as Kangaroo Holdings, Inc. (the "Company"), hereby certifies that the following resolution amending the Company's 2007 Equity Incentive Plan (the "Equity Plan") was duly adopted by the Board of Directors of the Company on July 29, 2011:

> RESOLVED: That the Equity Plan is hereby amended by deleting the first sentence of Section 4(a) of the Equity Plan and substituting in its place the following: "A maximum of 11,700,000 shares of Stock may be delivered in satisfaction of Awards under the Plan."

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of April 5, 2012.

/s/ Joseph J. Kadow
Joseph J. Kadow
Secretary

Bloomin' Brands, Inc.

SECRETARY'S CERTIFICATE

The undersigned, being the duly elected and authorized Secretary of Bloomin' Brands, Inc., a Delaware corporation formerly known as Kangaroo Holdings, Inc. (the "Company"), hereby certifies that the following resolution amending the Company's 2007 Equity Incentive Plan (the "Plan") was duly adopted by the Board of Directors of the Company on December 9, 2011:

> RESOLVED, that the number of shares of KHI common stock that may be delivered in satisfaction of awards under the Plan is hereby increased from 11,700,000 to 12,350,000 shares.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of April 5, 2012.

/s/ Joseph J. Kadow
Joseph J. Kadow
Secretary

Exhibit 10.3

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND ARE BEING OFFERED AND SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE SECURITIES ACQUIRED HEREUNDER ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND RESALE UNDER A STOCKHOLDERS AGREEMENT AND A REGISTRATION RIGHTS AGREEMENT, AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND OTHER APPLICABLE LAWS PURSUANT TO REGISTRATION OR EXEMPTION FROM REGISTRATION REQUIREMENTS THEREUNDER AND UNDER SUCH STOCKHOLDERS AGREEMENT AND REGISTRATION RIGHTS AGREEMENT.

UNRESTRICTED STOCK ROLLOVER AGREEMENT

This Unrestricted Stock Rollover Agreement (this "Agreement") is made as of June 14, 2007 between Kangaroo Holdings, Inc. (the "Company") and the stockholder of OSI Restaurant Partners, Inc. ("OSI" or the "Target") listed on Schedule 1 hereto as holding the "Rollover Shares" listed thereon (the "Rollover Stockholder").

RECITALS

The Company has entered into an Agreement and Plan of Merger, dated as of November 5, 2006 (the "Merger Agreement"), by and between the Company, a Delaware corporation, Kangaroo Acquisition, Inc. (the "Merger Sub"), a Delaware corporation, and the Target, a Delaware corporation, pursuant to which the Merger Sub will merge with and into Target (the "Merger") on the terms and subject to the conditions set forth in the Merger Agreement.

The Company owns all of the common stock of Merger Sub.

Under the Amended and Restated Certificate of Incorporation of the Company, as in effect on the date hereof (the "Company's Charter"), the Company is authorized to issue shares of common stock, par value $0.01 per share (the "Company Stock").

The Rollover Stockholder holds shares in the Target. As contemplated under Section 2.1(b) of the Merger Agreement, the Rollover Stockholder is willing to acquire, and the Company is willing to issue and transfer to the Rollover Stockholder, the number of shares of Company Stock set forth opposite the name of the Rollover Stockholder on Schedule 1 hereto in exchange for the Rollover Stockholder's Rollover Shares, all on the terms and subject to conditions set forth in this Agreement.

On the date hereof, the Company, the Rollover Stockholder, Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., BCIP TCV, LLC, Bain Capital Integral Investors 2006, LLC, BCIP Associates - G, Catterton Partners VI - Kangaroo, L.P., Catterton Partners VI - Kangaroo Coinvest, L.P. and all other stockholders of the Company are entering into both a stockholders agreement (the "Stockholders Agreement") and a registration rights agreement (the "Registration Rights Agreement"), each dated as of the date hereof and together setting forth certain agreements with respect to, among other things, the management of the Company and transfers of its shares in various circumstances.

AGREEMENT

In consideration of the foregoing, and the representations, warranties, covenants and conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions. Capitalized terms defined in the Merger Agreement and used but not otherwise defined in this Agreement are used herein as so defined in the Merger Agreement.

2. Sale and Acquisition of Rollover Securities.

2.1. On the terms and subject to the conditions hereof, the Company hereby agrees to issue to the Rollover Stockholder, and by his acceptance hereof the Rollover Stockholder agrees to acquire from the Company for investment, on the Closing Date immediately prior to the Effective Time, the number of shares of Company Common Stock set forth opposite the name of the Rollover Stockholder on Schedule 1 hereto in consideration for the surrender of the Rollover Shares set forth opposite the name of the Rollover Stockholder on Schedule 1 hereto (the "Exchange"). The shares of Company Common Stock being acquired by the Rollover Stockholder in the Exchange are referred to herein as the " Rollover Securities."

2.2. The Exchange will take place at the same time and location as, and will be substantially contemporaneous with, but immediately prior to, the Effective Time under the Merger Agreement. If, prior to the closing hereunder, the Merger Agreement is terminated, this Agreement will automatically terminate and be without further force and effect.

2.3. The Exchange is intended to qualify as a tax-free exchange with respect to the Rollover Stockholder under Section 351 of the Internal Revenue Code of 1986, as amended (the "Code"). No party hereto will take a position inconsistent with the preceding sentence on any tax return or otherwise unless required pursuant to a final determination (as defined in Section 1313 of the Code).

2.4. Immediately prior to the Effective Time, against delivery to the Company by the Rollover Stockholder of the Rollover Shares contemplated by Section 2.1 hereof, the Company will deliver to the Rollover Stockholder a certificate or certificates for the Rollover Securities to be acquired by the Rollover Stockholder, registered in the name of the Rollover Stockholder.

2.5. The Rollover Securities will be subject to the terms and conditions of the Stockholders Agreement and the Registration Rights Agreement as "Management Shares;" provided, however, that the Rollover Securities will not be subject to the "Management Call Option" set forth in Section 5 of the Stockholders Agreement or any similar right set forth therein.

3. Representations and Warranties of the Company. The Company represents and warrants to the Rollover Stockholder, as of the date hereof and as of the Closing Date, that:

3.1. The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has delivered to the Rollover Stockholder true

and complete copies of the Company's Charter and the By-Laws of the Company as in effect on the date hereof. Such documents will be in effect in such form as delivered from and after the Closing Date.

3.2. The Company has, or prior to the Closing Date will have, taken all corporate action required to authorize the execution and delivery of this Agreement and the issuance of the Rollover Securities. The Company has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including issuing the Rollover Securities.

3.3. The Rollover Securities, when issued in exchange for the Rollover Shares as contemplated by Section 2.1 hereof, will be duly authorized, validly issued, fully paid and non-assessable.

3.4. Neither the Company nor any of its subsidiaries has conducted any material business or entered into any material transactions or incurred any material liability other than in connection with the formation of the Company, the Merger Agreement, the transactions contemplated hereby and thereby and the financing thereof.

3.5. Each of the Stockholders Agreement, the Registration Rights Agreement and this Agreement is, or at or prior to the Closing will be, duly executed and delivered by, and a legal, valid and binding obligation of, the Company and Merger Sub, or such of them as are a party thereto, enforceable in accordance with its respective terms.

3.6. Following the consummation of the transactions contemplated by the Merger Agreement, the shares of stock and other equity interests of the Company will be owned, beneficially and of record, by the persons and in the amounts set forth in Schedule 2 hereto.

4. Representations and Warranties of the Rollover Stockholder. The Rollover Stockholder represents and warrants to the Company as of the date hereof and as of the Closing Date, that:

4.1. The Rollover Stockholder has full legal capacity, power and authority to execute and deliver this Agreement and to perform his obligations hereunder. This Agreement has been duly executed and delivered by the Rollover Stockholder, and is the legal, valid and binding obligation of the Rollover Stockholder, enforceable against him in accordance with the terms hereof.

4.2. The Rollover Stockholder is the record and beneficial owner of the outstanding Rollover Shares set forth opposite the Rollover Stockholder's name on Schedule 1 hereto, and has good and marketable title to such Rollover Shares, free and clear of all encumbrances except as are imposed by applicable securities laws. The Rollover Stockholder has, or as of the effectiveness of the Exchange will have, full right, power and authority to transfer and deliver to the Company valid title to the Rollover Shares held by the Rollover Stockholder, free and clear of all encumbrances. Immediately following the Exchange, the Company will be the record and beneficial owner of such Rollover Shares, and have good and marketable title to such Rollover Shares, free and clear of all encumbrances except as are imposed by applicable securities laws or created by the Company. Except pursuant to this Agreement,

there is no contractual obligation pursuant to which the Rollover Stockholder has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any Rollover Shares.

4.3. The Rollover Stockholder has been advised that the Rollover Securities have not been registered under the Securities Act or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws, or unless an exemption from such registration requirements is available. The Rollover Stockholder is aware that the Company is under no obligation to effect any such registration with respect to the Rollover Securities (except solely to the extent provided in the Registration Rights Agreement) or to file for or comply with any exemption from registration.

4.4. The Rollover Stockholder is aware that he may sell, transfer or otherwise dispose of the Rollover Securities only in a manner consistent with the Securities Act and the terms and conditions set forth in this Agreement, the Stockholders Agreement and the Registration Rights Agreement.

4.5. The Rollover Stockholder (a) is acquiring the Rollover Securities for his own account, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof in violation of the Securities Act, (b) has no present intention of selling, granting any participation in or otherwise distributing the Rollover Securities and (c) is under no obligation, contractual or otherwise, to sell, transfer or pledge any Rollover Securities, or grant any participation interest in any Rollover Securities, to any person or entity.

4.6. The Rollover Stockholder either (a) is an "Accredited Investor" within the meaning of Regulation D under the Securities Act or (b) either on his own or with the assistance of a qualified "purchaser representative" (as defined in Regulation D under the Securities Act), has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. An " Accredited Investor" includes any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person: (a) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000 and (b) any natural person who had an individual income in excess of $200,000 in each of the two most recent years, or joint income with that person's spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.

4.7. The Rollover Stockholder's financial condition is such that he is able to (a) bear the economic risk of holding the Rollover Securities for an indefinite period of time, and (b) incur a complete loss of his entire investment in such Rollover Securities.

4.8. The Rollover Stockholder has such knowledge and experience in financial and business matters that he is capable, either on his own or with the assistance of a qualified "purchaser representative" (as defined in Regulation D under the Securities Act), of evaluating the merits and risks of such investment.

4.9. The Rollover Stockholder has been afforded the opportunity to ask questions and receive answers concerning the terms and conditions of the offering of Rollover Securities, and to obtain information reasonably necessary for him to evaluate the offering.

4.10. The Rollover Stockholder agrees that his acceptance of the Rollover Securities constitutes an acknowledgement and waiver of any right that he may have to rescind this or any other transaction in the Company's securities based upon any previous offers to buy such securities.

5. Conditions to Acquisition and Issuance of Rollover Securities .

5.1. The Company's obligation to issue and sell the Rollover Securities is subject to the satisfaction of the following conditions:

(a) all material representations and warranties of the Rollover Stockholder contained in this Agreement will be true and correct as of the Closing, and consummation of the subscriptions contemplated hereby will constitute a reaffirmation by the Rollover Stockholder that all material representations and warranties of the Rollover Stockholder contained in this Agreement are true and correct as of the Closing;

(b) on the Closing Date, following (but substantially contemporaneously with) the Exchange, all conditions to the Company's obligation to close under the Merger Agreement will have been satisfied or waived by the Company; and

(c) on or before the Closing Date, substantially contemporaneously with the Exchange, the Rollover Stockholder will have duly executed and delivered to the Company a counterpart of the Stockholders Agreement and the Registration Rights Agreement.

5.2. The Rollover Stockholder's obligation to deliver the Rollover Shares to the Company and to acquire the Rollover Securities in exchange therefor is subject to the satisfaction of the following conditions:

(a) all representations and warranties of the Company contained in this Agreement will be true and correct as of the Closing, and consummation of the Closing will constitute a reaffirmation by the Company that all the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing; and

(b) at or prior to the Exchange, each party other than the Rollover Stockholder will have duly executed and delivered to the Rollover Stockholder a counterpart of the Stockholders Agreement and the Registration Rights Agreement.

6. Indemnities.

6.1. The Company will indemnify, exonerate and hold the Rollover Stockholder and each of his affiliates, fiduciaries, employees and agents and each of the partners, members, shareholders, affiliates, directors, officers, fiduciaries, employees and agents of each of the foregoing (collectively, the "Indemnitees") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities and damages and expenses in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, but excluding punitive damages (collectively, the "Indemnified Liabilities"), incurred by the Indemnitees or any of them as a result of, arising out of or relating to any breach of any representation, warranty or agreement in this Agreement by the Company. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of such Indemnified Liabilities that is permissible under applicable law.

6.2. The Rollover Stockholder will indemnify, exonerate and hold the Company harmless from and against any and all Indemnified Liabilities as a result of, arising out of or relating to any breach of any representation, warranty or agreement in this Agreement by the Rollover Stockholder; provided, that the Rollover Stockholder shall be liable only to the extent of the value of his Rollover Securities. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Rollover Stockholder hereby agrees to make the maximum contribution to the payment and satisfaction of each of such Indemnified Liabilities that is permissible under applicable law, subject to the limitation in the proviso to the immediately preceding sentence.

7. Restrictions on Transfer.

7.1. Restrictive Securities Act Legend. All certificates representing Rollover Securities will bear a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED IN A PRIVATE PLACEMENT, WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE ACT COVERING THE TRANSFER OR AN OPINION OF COUNSEL, SATISFACTORY TO THE ISSUER, THAT REGISTRATION UNDER THE ACT IS NOT REQUIRED."

7.2. Termination of 7.1 Restrictions. The restrictions imposed by Section 7.1 hereof upon the transferability of Rollover Securities will cease and terminate as to any particular Rollover Securities (a) when, in the reasonable opinion of Ropes & Gray LLP or other counsel reasonably acceptable to the Company, such restrictions are no longer required in order to assure compliance with the Securities Act, or (b) when the Rollover Securities have been registered under the Securities Act or transferred pursuant to Rule 144 thereunder. Whenever such restrictions cease and terminate as to any Rollover Securities, or such Rollover Securities are transferable under paragraph (k) of Rule 144, the holder thereof will be entitled to receive from the Company, without expense, new certificates not bearing the legend set forth in Section 7.1 hereof.

8. Miscellaneous.

8.1. Entire Agreement. This Agreement and the other agreements referred to herein set forth the entire understanding among the parties with respect to the subject matter hereof and thereof.

8.2. Notices. Any notices and other communications required or permitted in this Agreement will be effective if in writing and delivered as provided in Section 11.2 of the Stockholders Agreement.

8.3. Amendment.

(a) This Agreement can be amended or modified only by an instrument in writing signed by the party against whom enforcement of such change is sought.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein provided will be cumulative and not exclusive of any rights or remedies provided by law.

8.4. Expenses. The Company shall bear its and the Rollover Stockholder's costs and expenses in connection with or relating to the preparation, negotiation and execution of this Agreement, and the consummation of the transactions contemplated hereby. Each of the Company and the Rollover Stockholder will bear its and his own costs and expenses in connection with or relating to any and all amendments, modifications, restructurings and waivers, and exercises and preservations of rights and remedies hereunder and the operations of the Company and any of its Subsidiaries.

8.5. Successors; Assignment. This Agreement will bind and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and representatives. Prior to the Closing, the Rollover Stockholder may not assign any of his rights hereunder, and, after the Closing, the Rollover Stockholder may assign any of his rights hereunder only in connection with a transfer of the Rollover Securities in compliance with the terms and conditions of the Stockholders Agreement and the Registration Rights Agreement.

8.6. Survival. All covenants, agreements, representations and warranties made herein will survive the execution and delivery hereof and transfer of any Rollover Securities.

8.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which will together constitute one and the same instrument.

9. Governing Law; Disputes.

9.1. Governing Law. This Agreement and all claims arising in whole or in part out of, based on or in connection with this Agreement will be governed by and construed in accordance with the domestic substantive laws of the State of New York, without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

9.2. Consent to Jurisdiction. Each party to this Agreement, by its or his execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, City of New York, County of New York for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement, or relating to the subject matter hereof, (b) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it or he is not subject personally to the jurisdiction of the above-named courts, that its or his property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court and (c) hereby agrees neither to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof or thereof other than before one of the above-named courts, nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts, whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which it or he may assert indemnification rights set forth in this agreement, the court in which such litigation is being heard shall be deemed to be included in clause (a) above. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by New York law, and agrees that service of process by registered or certified mail, return receipt requested, at its or his address specified pursuant to Section 11.2 of the Stockholders Agreement is reasonably calculated to give actual notice.

9.3. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT IT OR HE WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, CAUSE OF ACTION, ACTION, SUIT OR PROCEEDING ARISING IN WHOLE OR IN PART OUT OF, BASED ON OR IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (IN CONTRACT, TORT OR OTHERWISE), IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT OR OTHERWISE. ANY OF THE PARTIES HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9.3 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF THE PARTIES HERETO TO THE WAIVER OF ITS OR HIS RIGHT TO TRIAL BY JURY.

9.4. Reliance. Each of the parties hereto acknowledges that it or he has been informed by each other party that the provisions of this Section 9 constitute a material inducement upon which such party is relying and will rely in entering into this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the terms hereof, have caused this Agreement to be executed, under seal, as of the date first above written by their officers or other representatives thereunto duly authorized.

THE COMPANY:

KANGAROO HOLDINGS, INC.

By: /s/ Ian Blasco
Name: Ian Blasco
Title: Vice President

THE ROLLOVER STOCKHOLDER:

/s/ Steven T. Shlemon

Steven T. Shlemon

THE ROLLOVER STOCKHOLDER:

/s/ Steven T. Shlemon

Steven T. Shlemon as
CUST Steven Michael Shlemon
UNDER THE FL UNIF TRAN MIN ACT

Schedule 1 to
Unrestricted Stock Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Steven T. Shlemon	74,400	306,156
Steven T. Shlemon as CUST for Steven Michael Shlemon UNDER THE FL TRAN MIN ACT	1,608	6,617

Schedule 2 to
Unrestricted Stock Rollover Agreement

POST-CLOSING EQUITY OWNERSHIP IN KANGAROO HOLDINGS, INC.

Name / Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Bain Capital (OSI) IX, L.P.	54,006,581.7				54,006,581.7	49.39%
Bain Capital (OSI) IX Coinvestment, L.P.	15,295,202.8				15,295,202.8	13.99%
BCIP TCV, LLC	126,959.0				126,959.0	0.12%
Bain Capital Integral Investors 2006, LLC	637,456.1				637,456.1	0.58%
BCIP Associates - G	8,800.4				8,800.4	0.01%
Catterton Partners VI - Kangaroo, L.P.	10,000,000				10,000,000	9.15%
Catterton Partners VI - Kangaroo Coinvest, L.P.	4,500,000				4,500,000	4.12%
CTS Equities Limited Partnership (BOA)	1,126,104				1,126,104	1.03%
CTS Equities Limited Partnership (Wach.)	1,200,000				1,200,000	1.10%
CTS Equities Limited Partnership (Sun)	2,991,812				2,991,812	2.74%
Chris T. Sullivan Foundation	611,415				611,415	0.56%
Ashley Sullivan Irrevocable Trust	146,214				146,214	0.13%
Alexander Sullivan Irrevocable Trust	142,099				142,099	0.13%
Ashley Sullivan	5,280				5,280	0.00%
Alexander Sullivan	5,284				5,284	0.00%
RDB Equities Limited Partnership	8,604,652				8,604,652	7.87%
JTG Equities Limited Partnership	1,200,000				1,200,000	1.10%
Mark Aaron	100,000				100,000	0.09%
A. William Allen, III			1,851,750	497,482	2,349,232	2.15%
Stephanie L. Amberg	5,000		8,230		13,230	0.01%
Paul E. Avery			1,234,500	459,214	1,693,714	1.55%
Richard J. Beach			16,460		16,460	0.02%
Jody Bilney			102,875		102,875	0.09%
Karen C. Bremer	5,000				5,000	0.00%
Michael W. Coble	100,000				100,000	0.09%
John W. and Trudy I. Cooper	100,000				100,000	0.09%
William A. Daniel			61,725		61,725	0.06%
Stephen C. Erickson	50,000				50,000	0.05%
Donald R. Everts	80,000				80,000	0.07%
Curtis H. Fox	5,000				5,000	0.00%
Randy Graham	15,000				15,000	0.01%
Matthew P. Halme	5,000		16,460		21,460	0.02%
Joseph W. Hartnett	5,000		41,150		46,150	0.04%
Dennis L. Hood	10,000				10,000	0.01%
Joseph Larry Jackson			20,575		20,575	0.02%
Joseph J. Kadow			308,625	319,810	628,435	0.57%
Joseph Kadow CUST for Emily Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%

Name / Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Joseph Kadow CUST for Katherine Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%
William J. Kadow	20,000		82,300		102,300	0.09%
Gregory A. Laney	5,000		16,460		21,460	0.02%
William G. Leahy	10,000				10,000	0.01%
Kelly M. Lefferts	5,000		20,575		25,575	0.02%
C. Howard Leigh			41,150		41,150	0.04%
John A. Massari			24,690		24,690	0.02%
Richard E. Meyer	100,000				100,000	0.09%
Dirk A. Montgomery			411,500	153,071	564,571	0.52%
James Morey			102,875		102,875	0.09%
Stephen S. Newton	15,000				15,000	0.01%
Steven A. Overholt	100,000				100,000	0.09%
James Pollard	30,000				30,000	0.03%
Dennis L. Prescott	20,000		41,150		61,150	0.06%
Martin Reichenthal	50,000		61,725		111,725	0.10%
Richard Renninger			102,875		102,875	0.09%
Lindon D. Richardson	10,000		41,150		51,150	0.05%
Mark Running	25,000				25,000	0.02%
Amanda L. Shaw			4,115		4,115	0.00%
Steven T. Shlemon	30,000	306,156			336,156	0.31%
Steven T. Shlemon CUST Steven Michael Shlemon UNDER THE FL UNIF TRAN MIN ACT		6,617			6,617	0.01%
Jeffrey S. Smith	45,000				45,000	0.04%
Steven C. Stanley			41,150		41,150	0.04%
Irene Wenzel	10,000		20,575		30,575	0.03%
Fred T. Williams			32,920		32,920	0.03%
Current Option Pool				483,814	483,814	0.44%
Options res'd for later issuance				820,025	820,025	0.75%
Total	**101,582,860**	**312,773**	**4,707,560**	**2,733,415**	**109,336,608**	**100.00%**
Total Shares issued at close	106,603,193					97.5%
Option Pool	2,733,415					2.5%
Total Fully Diluted Shares	**109,336,608**					**100.0%**

Exhibit 10.4

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND ARE BEING OFFERED AND SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE SECURITIES ACQUIRED HEREUNDER ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND RESALE UNDER A STOCKHOLDERS AGREEMENT AND A REGISTRATION RIGHTS AGREEMENT, AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND OTHER APPLICABLE LAWS PURSUANT TO REGISTRATION OR EXEMPTION FROM REGISTRATION REQUIREMENTS THEREUNDER AND UNDER SUCH STOCKHOLDERS AGREEMENT AND REGISTRATION RIGHTS AGREEMENT.

EMPLOYEE ROLLOVER AGREEMENT

This Employee Rollover Agreement (this "Agreement") is made as of June 14, 2007 between Kangaroo Holdings, Inc. (the "Company") and the stockholder of OSI Restaurant Partners, Inc. ("OSI" or the "Target") listed on Schedule 1 hereto as holding the "Rollover Shares" listed thereon (the "Rollover Stockholder").

RECITALS

The Company has entered into an Agreement and Plan of Merger, dated as of November 5, 2006 (the "Merger Agreement"), by and between the Company, a Delaware corporation, Kangaroo Acquisition, Inc. (the "Merger Sub"), a Delaware corporation, and the Target, a Delaware corporation, pursuant to which the Merger Sub will merge with and into Target (the "Merger") on the terms and subject to the conditions set forth in the Merger Agreement.

The Company owns all of the common stock of Merger Sub.

Under the Amended and Restated Certificate of Incorporation of the Company, as in effect on the date hereof (the "Company's Charter"), the Company is authorized to issue shares of common stock, par value $0.01 per share (the "Company Stock").

The Rollover Stockholder holds shares in the Target. As contemplated under Section 2.1(b) of the Merger Agreement, the Rollover Stockholder is willing to acquire, and the Company is willing to issue and transfer to the Rollover Stockholder, the number of shares of Company Stock set forth opposite the name of the Rollover Stockholder on Schedule 1 hereto in exchange for the Rollover Stockholder's Rollover Shares, all on the terms and subject to conditions set forth in this Agreement.

On the date hereof, the Company, the Rollover Stockholder, Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., BCIP TCV, LLC, Bain Capital Integral Investors 2006, LLC, BCIP Associates - G, Catterton Partners VI - Kangaroo, L.P., Catterton Partners VI - Kangaroo Coinvest, L.P. and all other stockholders of the Company are entering into both a stockholders agreement (the "Stockholders Agreement") and a registration rights agreement (the "Registration Rights Agreement"), each dated as of the date hereof and together setting forth certain agreements with respect to, among other things, the management of the Company and transfers of its shares in various circumstances.

AGREEMENT

In consideration of the foregoing, and the representations, warranties, covenants and conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions. Capitalized terms defined in the Merger Agreement and used but not otherwise defined in this Agreement are used herein as so defined in the Merger Agreement.

2. Sale and Acquisition of Rollover Securities.

2.1. On the terms and subject to the conditions hereof, the Company hereby agrees to issue to the Rollover Stockholder, and by his acceptance hereof the Rollover Stockholder agrees to acquire from the Company for investment, on the Closing Date immediately prior to the Effective Time, the number of shares of Company Common Stock set forth opposite the name of the Rollover Stockholder on Schedule 1 hereto in consideration for the surrender of the Rollover Shares set forth opposite the name of the Rollover Stockholder on Schedule 1 hereto (the "Exchange"). The shares of Company Common Stock being acquired by the Rollover Stockholder in the Exchange are referred to herein as the " Rollover Securities" and Rollover Securities subject to forfeiture pursuant to Section 3 hereof are referred to herein as " Restricted Stock."

2.2. The Exchange will take place at the same time and location as, and will be substantially contemporaneous with, but immediately prior to, the Effective Time under the Merger Agreement. If, prior to the closing hereunder, the Merger Agreement is terminated, this Agreement will automatically terminate and be without further force and effect.

2.3. The Exchange is intended to qualify as a tax-free exchange with respect to the Rollover Stockholder under Section 351 of the Internal Revenue Code of 1986, as amended (the "Code"). No party hereto will take a position inconsistent with the preceding sentence on any tax return or otherwise unless required pursuant to a final determination (as defined in Section 1313 of the Code).

2.4. Immediately prior to the Effective Time, against delivery to the Company by the Rollover Stockholder of the Rollover Shares contemplated by Section 2.1 hereof, the Company will deliver to the Rollover Stockholder a certificate or certificates for the Rollover Securities to be acquired by the Rollover Stockholder, registered in the name of the Rollover Stockholder.

3. Rollover Securities.

3.1. Forfeiture Risk. If the Rollover Stockholder ceases to be employed by the Company and its subsidiaries for any reason, then (subject to any contrary provision of Section 3.2 below or any subsequent written agreement between the Company and the Rollover Stockholder) any and all outstanding Restricted Stock (except to the extent that such Restricted Stock becomes "Vested" as a result of such termination) shall be automatically and immediately forfeited by the holder thereof.

3.2. Vesting. Notwithstanding anything in this Agreement or in any other agreement between the Rollover Stockholder and the Company, Target or any of their respective Affiliates, Rollover Securities acquired hereunder shall cease to be subject to forfeiture pursuant to Section 3.1 above (" Vest"), and, thus, shall cease to be Restricted Stock:

(a) during the Rollover Stockholder's employment by the Company or its subsidiaries, in five equal installments on each of the first, second, third, fourth and fifth anniversaries of the Closing Date;

(b) immediately upon termination of the Rollover Stockholder's employment by the Company or its subsidiaries (i) upon the death or Disability (as defined in the Rollover Stockholder's employment agreement with the Company or its subsidiaries (the " Employment Agreement")), (ii) by the Company or its subsidiaries other than for Cause (as defined in the Employment Agreement) or (iii) by the Rollover Stockholder for Good Reason (as defined in the Employment Agreement); or

(c) upon a Change of Control (as defined in the Stockholders Agreement).

3.3. Vesting Date Liquidity. From time to time, no later than each date upon which Rollover Securities Vest hereunder, the Company will, at its option, (a) offer to purchase (or cause a designee to offer to purchase) shares of Company Stock granted hereunder that will have Vested on or before the applicable date, and/or (b) make a loan to the Rollover Stockholder with a rate of interest no greater than the Applicable Federal Rate and on such other commercially reasonable terms determined by the Company. The aggregate amount of the fair market value of Rollover Securities to be purchased and/or the loan to be made under this Section 3.3 will be no more than the statutory minimum aggregate amount of the federal, state, local and foreign withholding tax liability (and related employment or other payroll taxes) payable by the Rollover Stockholder as a result of the applicable Vesting of Rollover Securities.

3.4. Power of Attorney. The Rollover Stockholder hereby (a) appoints the Company as the attorney-in-fact of the Rollover Stockholder to take such actions as may be necessary or appropriate to effectuate a transfer of the record ownership of any such Restricted Stock that is forfeited or repurchased hereunder, (b) agrees to deliver to the Company, as a precondition to the issuance of any certificate or certificates with respect to Restricted Stock hereunder, one or more stock powers, endorsed in blank, with respect to such Stock and (c) agrees to sign such other powers and take such other actions as the Company may reasonably request to accomplish the forfeiture or transfer of any Restricted Stock that are forfeited or repurchased hereunder.

3.5. Other Agreements. The Rollover Securities will be subject to the terms and conditions of the Stockholders Agreement and the Registration Rights Agreement as "Management Shares;" provided, however, that the Rollover Securities will not be subject to the "Management Call Option" set forth in Section 5 of the Stockholders Agreement or any similar right set forth therein.

3.6. Dividends. The Rollover Stockholder shall be entitled to (a) receive any and all dividends or other distributions paid with respect to the Rollover Securities of which the Rollover Stockholder is the record owner on the record date for such dividend or other distribution, and (b) subject to the terms of the Stockholders Agreement, vote any Shares of which the Rollover Stockholder is the record owner on the record date for such vote; provided, however, that any property (other than cash) distributed with respect to a share of Stock (the " Associated Share") acquired hereunder, including, without limitation, a distribution of Stock by reason of a stock dividend, stock split or otherwise, or a distribution of other securities with respect to an Associated Share, shall be subject to the restrictions of this Agreement in the same manner and for so long as the Associated Share remains subject to such restrictions, and shall be promptly forfeited if and when the Associated Share is so forfeited.

4. Representations and Warranties of the Company. The Company represents and warrants to the Rollover Stockholder, as of the date hereof and as of the Closing Date, that:

4.1. The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has delivered to the Rollover Stockholder true and complete copies of the Company's Charter and the By-Laws of the Company as in effect on the date hereof. Such documents will be in effect in such form as delivered from and after the Closing Date.

4.2. The Company has, or prior to the Closing Date will have, taken all corporate action required to authorize the execution and delivery of this Agreement and the issuance of the Rollover Securities. The Company has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including issuing the Rollover Securities.

4.3. The Rollover Securities, when issued in exchange for the Rollover Shares as contemplated by Section 2.1 hereof, will be duly authorized, validly issued, fully paid and non-assessable.

4.4. Neither the Company nor any of its subsidiaries has conducted any material business or entered into any material transactions or incurred any material liability other than in connection with the formation of the Company, the Merger Agreement, the transactions contemplated hereby and thereby and the financing thereof.

4.5. Each of the Stockholders Agreement, the Registration Rights Agreement and this Agreement is, or at or prior to the Closing will be, duly executed and delivered by, and a legal, valid and binding obligation of, the Company and Merger Sub, or such of them as are a party thereto, enforceable in accordance with its respective terms.

4.6. Following the consummation of the transactions contemplated by the Merger Agreement, the shares of stock and other equity interests of the Company will be owned, beneficially and of record, by the persons and in the amounts set forth in Schedule 2 hereto.

5. Representations and Warranties of the Rollover Stockholder. The Rollover Stockholder represents and warrants to the Company as of the date hereof and as of the Closing Date, that:

5.1. The Rollover Stockholder has full legal capacity, power and authority to execute and deliver this Agreement and to perform his obligations hereunder. This Agreement has been duly executed and delivered by the Rollover Stockholder, and is the legal, valid and binding obligation of the Rollover Stockholder, enforceable against him in accordance with the terms hereof.

5.2. The Rollover Stockholder is the record and beneficial owner of the outstanding Rollover Shares set forth opposite the Rollover Stockholder's name on Schedule 1 hereto, and has good and marketable title to such Rollover Shares, free and clear of all encumbrances except as are imposed by applicable securities laws or as result from vesting conditions or transfer restrictions imposed on such Rollover Shares at the time of grant or thereafter by OSI or its affiliates. The Rollover Stockholder has, or as of the effectiveness of the Exchange will have, the full right, power and authority to transfer and deliver to the Company valid title to the Rollover Shares held by the Rollover Stockholder, free and clear of all encumbrances. Immediately following the Exchange, the Company will be the record and beneficial owner of such Rollover Shares, and have good and marketable title to such Rollover Shares, free and clear of all encumbrances except as are imposed by applicable securities laws or created by the Company. Except pursuant to this Agreement, there is no contractual obligation pursuant to which the Rollover Stockholder has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any Rollover Shares.

5.3. The Rollover Stockholder has been advised that the Rollover Securities have not been registered under the Securities Act or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws, or unless an exemption from such registration requirements is available. The Rollover Stockholder is aware that the Company is under no obligation to effect any such registration with respect to the Rollover Securities (except solely to the extent provided in the Registration Rights Agreement) or to file for or comply with any exemption from registration.

5.4. The Rollover Stockholder is aware that the Rollover Stockholder may sell, transfer or otherwise dispose of the Rollover Securities only in a manner consistent with the Securities Act and the terms and conditions set forth in this Agreement, the Stockholders Agreement and the Registration Rights Agreement.

5.5. The Rollover Stockholder (a) is acquiring the Rollover Securities for his own account, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof in violation of the Securities Act, (b) has no present intention of selling, granting any participation in or otherwise distributing the Rollover Securities and (c) is under no obligation, contractual or otherwise, to sell, transfer or pledge any Rollover Securities, or grant any participation interest in any Rollover Securities, to any person or entity.

5.6. The Rollover Stockholder either (a) is an "Accredited Investor" within the meaning of Regulation D under the Securities Act or (b) either on his own or with the assistance of a qualified "purchaser representative" (as defined in Regulation D under the Securities Act), has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. An " Accredited Investor" includes any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person: (a) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000 and (b) any natural person who had an individual income in excess of $200,000 in each of the two most recent years, or joint income with that person's spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.

5.7. The Rollover Stockholder's financial condition is such that the Rollover Stockholder is able to (a) bear the economic risk of holding the Rollover Securities for an indefinite period of time, and (b) incur a complete loss of his entire investment in such Rollover Securities.

5.8. The Rollover Stockholder has such knowledge and experience in financial and business matters that he is capable, either on his own or with the assistance of a qualified "purchaser representative" (as defined in Regulation D under the Securities Act), of evaluating the merits and risks of such investment.

5.9. The Rollover Stockholder has been afforded the opportunity to ask questions and receive answers concerning the terms and conditions of the offering of Rollover Securities, and to obtain information reasonably necessary for him to evaluate the offering.

5.10. The Rollover Stockholder agrees that his acceptance of the Rollover Securities constitutes an acknowledgement and waiver of any right that he may have to rescind this or any other transaction in the Company's securities based upon any previous offers to buy such securities.

6. Conditions to Acquisition and Issuance of Rollover Securities .

6.1. The Company's obligation to issue and sell the Rollover Securities is subject to the satisfaction of the following conditions:

(a) all material representations and warranties of the Rollover Stockholder contained in this Agreement will be true and correct as of the Closing, and consummation of the subscriptions contemplated hereby will constitute a reaffirmation by the Rollover Stockholder that all material representations and warranties of the Rollover Stockholder contained in this Agreement are true and correct as of the Closing;

(b) on the Closing Date, following (but substantially contemporaneously with) the Exchange, all conditions to the Company's obligation to close under the Merger Agreement will have been satisfied or waived by the Company; and

(c) on or before the Closing Date, substantially contemporaneously with the Exchange, the Rollover Stockholder will have duly executed and delivered to the Company a counterpart of the Stockholders Agreement and the Registration Rights Agreement.

6.2. The Rollover Stockholder's obligation to deliver the Rollover Shares to the Company and to acquire the Rollover Securities in exchange therefor is subject to the satisfaction of the following conditions:

(a) all representations and warranties of the Company contained in this Agreement will be true and correct as of the Closing, and consummation of the Closing will constitute a reaffirmation by the Company that all the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing; and

(b) at or prior to the Exchange, each party other than the Rollover Stockholder will have duly executed and delivered to the Rollover Stockholder a counterpart of the Stockholders Agreement and the Registration Rights Agreement.

7. Indemnities.

7.1. The Company will indemnify, exonerate and hold the Rollover Stockholder and each of his affiliates, fiduciaries, employees and agents and each of the partners, members, shareholders, affiliates, directors, officers, fiduciaries, employees and agents of each of the foregoing (collectively, the "Indemnitees") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities and damages and expenses in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, but excluding punitive damages (collectively, the "Indemnified Liabilities"), incurred by the Indemnitees or any of them as a result of, arising out of or relating to any breach of any representation, warranty or agreement in this Agreement by the Company. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of such Indemnified Liabilities that is permissible under applicable law.

7.2. The Rollover Stockholder will indemnify, exonerate and hold the Company harmless from and against any and all Indemnified Liabilities as a result of, arising out of or relating to any breach of any representation, warranty or agreement in this Agreement by the Rollover Stockholder; provided, that the Rollover Stockholder shall be liable only to the extent of the value of his Rollover Securities. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Rollover Stockholder hereby agrees to make the maximum contribution to the payment and satisfaction of each of such Indemnified Liabilities that is permissible under applicable law, subject to the limitation in the proviso to the immediately preceding sentence.

8. Restrictions on Transfer.

8.1. Restrictive Securities Act Legend. All certificates representing Rollover Securities will bear a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED IN A PRIVATE PLACEMENT, WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE ACT COVERING THE TRANSFER OR AN OPINION OF COUNSEL, SATISFACTORY TO THE ISSUER, THAT REGISTRATION UNDER THE ACT IS NOT REQUIRED."

8.2. Termination of 8.1 Restrictions. The restrictions imposed by Section 8.1 hereof upon the transferability of Rollover Securities will cease and terminate as to any particular Rollover Securities (a) when, in the reasonable opinion of Ropes & Gray LLP or other counsel reasonably acceptable to the Company, such restrictions are no longer required in order to assure compliance with the Securities Act, or (b) when the Rollover Securities have been registered under the Securities Act or transferred pursuant to Rule 144 thereunder. Whenever such restrictions cease and terminate as to any Rollover Securities, or such Rollover Securities are transferable under paragraph (k) of Rule 144, the holder thereof will be entitled to receive from the Company, without expense, new certificates not bearing the legend set forth in Section 8.1 hereof.

8.3. Additional Legend. All certificates representing Rollover Securities will bear a legend in substantially the following form:

"THE TRANSFERABILITY OF THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) OF AN EMPLOYEE ROLLOVER AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND KANGAROO HOLDINGS, INC. A COPY OF SUCH AGREEMENT IS ON FILE AT THE OFFICES OF KANGAROO HOLDINGS, INC."

8.4. Termination of 8.3 Restrictions. Upon the request of the Rollover Stockholder, as soon as practicable following the Vesting of any such Rollover Securities, the Company shall cause a certificate or certificates covering such Rollover Securities, without the aforesaid legend, to be issued and delivered to the Rollover Stockholder. If any Rollover Securities are held in book-entry form, the Company may take such steps as it deems necessary or appropriate to record and manifest the restrictions applicable to such Rollover Securities.

9. Miscellaneous.

9.1. Entire Agreement. This Agreement and the other agreements referred to herein set forth the entire understanding among the parties with respect to the subject matter hereof and thereof.

9.2. Notices. Any notices and other communications required or permitted in this Agreement will be effective if in writing and delivered as provided in Section 11.2 of the Stockholders Agreement.

9.3. Amendment.

(a) This Agreement can be amended or modified only by an instrument in writing signed by the party against whom enforcement of such change is sought.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein provided will be cumulative and not exclusive of any rights or remedies provided by law.

9.4. Expenses. The Company shall bear its and the Rollover Stockholder's costs and expenses in connection with or relating to the preparation, negotiation and execution of this Agreement, and the consummation of the transactions contemplated hereby. Each of the Company and the Rollover Stockholder will bear its and his own costs and expenses in connection with or relating to any and all amendments, modifications, restructurings and waivers, and exercises and preservations of rights and remedies hereunder and the operations of the Company and any of its Subsidiaries.

9.5. Successors; Assignment. This Agreement will bind and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and representatives. Prior to the Closing, the Rollover Stockholder may not assign any of his rights hereunder, and, after the Closing, the Rollover Stockholder may assign any of his rights hereunder only in connection with a transfer of the Rollover Securities in compliance with the terms and conditions of the Stockholders Agreement and the Registration Rights Agreement.

9.6. Survival. All covenants, agreements, representations and warranties made herein will survive the execution and delivery hereof and transfer of any Rollover Securities.

9.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which will together constitute one and the same instrument.

10. Governing Law; Disputes.

10.1. Governing Law. This Agreement and all claims arising in whole or in part out of, based on or in connection with this Agreement will be governed by and construed in accordance with the domestic substantive laws of the State of New York, without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

10.2. Consent to Jurisdiction. Each party to this Agreement, by its or his execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, City of New York, County of New York for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement, or relating to the subject matter hereof, (b) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it or he is not subject personally to the jurisdiction of the above-named courts, that its or his property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper or that this Agreement or the subject matter hereof or thereof may

not be enforced in or by such court and (c) hereby agrees neither to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof or thereof other than before one of the above-named courts, nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts, whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which it or he may assert indemnification rights set forth in this agreement, the court in which such litigation is being heard shall be deemed to be included in clause (a) above. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by New York law, and agrees that service of process by registered or certified mail, return receipt requested, at its or his address specified pursuant to Section 11.2 of the Stockholders Agreement is reasonably calculated to give actual notice.

10.3. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT IT OR HE WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, CAUSE OF ACTION, ACTION, SUIT OR PROCEEDING ARISING IN WHOLE OR IN PART OUT OF, BASED ON OR IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (IN CONTRACT, TORT OR OTHERWISE), IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT OR OTHERWISE. ANY OF THE PARTIES HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.3 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF THE PARTIES HERETO TO THE WAIVER OF ITS OR HIS RIGHT TO TRIAL BY JURY.

10.4. Reliance. Each of the parties hereto acknowledges that it or he has been informed by each other party that the provisions of this Section 10 constitute a material inducement upon which such party is relying and will rely in entering into this Agreement and the transactions contemplated hereby.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the terms hereof, have caused this Agreement to be executed, under seal, as of the date first above written by their officers or other representatives thereunto duly authorized.

THE COMPANY:

KANGAROO HOLDINGS, INC.

By: /s/ Ian Blasco
Name: Ian Blasco
Title: Vice President

THE ROLLOVER STOCKHOLDER:

/s/ Bill Allen

Bill Allen

/s/ Stephanie Amberg

Stephanie Amberg

/s/ Richard J. Beach

Richard J. Beach

/s/ Jody Bilney

Jody Bilney

/s/ William A. Daniel

William A. Daniel

/s/ Matthew P. Halme

Matthew P. Halme

/s/ Joseph W. Hartnett

Joseph W. Hartnett

/s/ Joseph Larry Jackson

Joseph Larry Jackson

THE ROLLOVER STOCKHOLDER:

/s/ Joe Kadow

Joe Kadow

/s/ William J. Kadow

William J. Kadow

/s/ Gregory A. Laney

Gregory A. Laney

/s/ Kelly M. Lefferts

Kelly M. Lefferts (f/k/a Braun)

/s/ Clive Howard Leigh

Clive Howard Leigh

/s/ John A Massari

John A. Massari

THE ROLLOVER STOCKHOLDER:

/s/ Dirk Montgomery

Dirk Montgomery

/s/ James Morey

James Morey

/s/ Dennis L. Prescott

Dennis L. Prescott

/s/ Martin E. Reichenthal

Martin E. Reichenthal

/s/ Richard Renninger

Richard Renninger

/s/ Lindon D. Richardson

Lindon D. Richardson

/s/ Amanda L. Shaw

Amanda L. Shaw

/s/ Steven C. Stanley

Steven C. Stanley

/s/ Irene D. Wenzel

Irene D. Wenzel

/s/ Fred T. Williams

Fred T. Williams

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
A. William Allen III	450,000	1,851,750

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Stephanie L. Amberg	2,000	8,230

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Richard J. Beach	4,000	16,460

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Jody Bilney	25,000	102,875

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
William A. Daniel	15,000	61,725

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Matthew P. Halme	4,000	16,460

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Joseph W. Hartnett	10,000	41,150

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Joseph Larry Jackson	5,000	20,575

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Joseph J. Kadow	75,000	308,625

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
William J. Kadow	20,000	82,300

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Gregory A. Laney	4,000	16,460

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Kelly M. Lefferts	5,000	20,575

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
C. Howard Leigh	10,000	41,150

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
John A. Massari	6,000	24,690

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Dirk A. Montgomery	100,000	411,500

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
James Morey	25,000	102,875

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Dennis L. Prescott	10,000	41,150

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Martin Reichenthal	15,000	61,725

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Richard Renninger	25,000	102,875

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Lindon D. Richardson	10,000	41,150

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Amanda L. Shaw	1,000	4,115

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Steven C. Stanley	10,000	41,150

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Irene Wenzel	5,000	20,575

Schedule 1 to
Employee Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
Fred T. Williams	8,000	32,920

Schedule 2 to
Employee Rollover Agreement

POST-CLOSING EQUITY OWNERSHIP IN KANGAROO HOLDINGS, INC.

Name / Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Bain Capital (OSI) IX, L.P.	54,006,581.7				54,006,581.7	49.39%
Bain Capital (OSI) IX Coinvestment, L.P.	15,295,202.8				15,295,202.8	13.99%
BCIP TCV, LLC	126,959.0				126,959.0	0.12%
Bain Capital Integral Investors 2006, LLC	637,456.1				637,456.1	0.58%
BCIP Associates - G	8,800.4				8,800.4	0.01%
Catterton Partners VI - Kangaroo, L.P.	10,000,000				10,000,000	9.15%
Catterton Partners VI - Kangaroo Coinvest, L.P.	4,500,000				4,500,000	4.12%
CTS Equities Limited Partnership (BOA)	1,126,104				1,126,104	1.03%
CTS Equities Limited Partnership (Wach.)	1,200,000				1,200,000	1.10%
CTS Equities Limited Partnership (Sun)	2,991,812				2,991,812	2.74%
Chris T. Sullivan Foundation	611,415				611,415	0.56%
Ashley Sullivan Irrevocable Trust	146,214				146,214	0.13%
Alexander Sullivan Irrevocable Trust	142,099				142,099	0.13%
Ashley Sullivan	5,280				5,280	0.00%
Alexander Sullivan	5,284				5,284	0.00%
RDB Equities Limited Partnership	8,604,652				8,604,652	7.87%
JTG Equities Limited Partnership	1,200,000				1,200,000	1.10%
Mark Aaron	100,000				100,000	0.09%
A. William Allen, III			1,851,750	497,482	2,349,232	2.15%
Stephanie L. Amberg	5,000		8,230		13,230	0.01%
Paul E. Avery			1,234,500	459,214	1,693,714	1.55%
Richard J. Beach			16,460		16,460	0.02%
Jody Bilney			102,875		102,875	0.09%
Karen C. Bremer	5,000				5,000	0.00%
Michael W. Coble	100,000				100,000	0.09%
John W. and Trudy I. Cooper	100,000				100,000	0.09%
William A. Daniel			61,725		61,725	0.06%
Stephen C. Erickson	50,000				50,000	0.05%
Donald R. Everts	80,000				80,000	0.07%
Curtis H. Fox	5,000				5,000	0.00%
Randy Graham	15,000				15,000	0.01%
Matthew P. Halme	5,000		16,460		21,460	0.02%
Joseph W. Hartnett	5,000		41,150		46,150	0.04%
Dennis L. Hood	10,000				10,000	0.01%
Joseph Larry Jackson			20,575		20,575	0.02%
Joseph J. Kadow			308,625	319,810	628,435	0.57%
Joseph Kadow CUST for Emily Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%

Name / Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Joseph Kadow CUST for Katherine Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%
William J. Kadow	20,000		82,300		102,300	0.09%
Gregory A. Laney	5,000		16,460		21,460	0.02%
William G. Leahy	10,000				10,000	0.01%
Kelly M. Lefferts	5,000		20,575		25,575	0.02%
C. Howard Leigh			41,150		41,150	0.04%
John A. Massari			24,690		24,690	0.02%
Richard E. Meyer	100,000				100,000	0.09%
Dirk A. Montgomery			411,500	153,071	564,571	0.52%
James Morey			102,875		102,875	0.09%
Stephen S. Newton	15,000				15,000	0.01%
Steven A. Overholt	100,000				100,000	0.09%
James Pollard	30,000				30,000	0.03%
Dennis L. Prescott	20,000		41,150		61,150	0.06%
Martin Reichenthal	50,000		61,725		111,725	0.10%
Richard Renninger			102,875		102,875	0.09%
Lindon D. Richardson	10,000		41,150		51,150	0.05%
Mark Running	25,000				25,000	0.02%
Amanda L. Shaw			4,115		4,115	0.00%
Steven T. Shlemon	30,000	306,156			336,156	0.31%
Steven T. Shlemon CUST Steven Michael Shlemon UNDER THE FL UNIF TRAN MIN ACT		6,617			6,617	0.01%
Jeffrey S. Smith	45,000				45,000	0.04%
Steven C. Stanley			41,150		41,150	0.04%
Irene Wenzel	10,000		20,575		30,575	0.03%
Fred T. Williams			32,920		32,920	0.03%
Current Option Pool				483,814	483,814	0.44%
Options res'd for later issuance				820,025	820,025	0.75%
Total	**101,582,860**	**312,773**	**4,707,560**	**2,733,415**	**109,336,608**	**100.00%**
Total Shares issued at close	106,603,193					97.5%
Option Pool	2,733,415					2.5%
Total Fully Diluted Shares	**109,336,608**					**100.0%**

Exhibit 10.5

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND ARE BEING OFFERED AND SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE SECURITIES ACQUIRED HEREUNDER ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND RESALE UNDER A STOCKHOLDERS AGREEMENT AND REGISTRATION RIGHTS AGREEMENT AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND OTHER APPLICABLE LAWS PURSUANT TO REGISTRATION OR EXEMPTION FROM REGISTRATION REQUIREMENTS THEREUNDER AND UNDER SUCH STOCKHOLDERS AGREEMENT AND REGISTRATION RIGHTS AGREEMENT.

FOUNDER ROLLOVER AGREEMENT

This Founder Rollover Agreement (this "Agreement") is made as of June 14, 2007 among Kangaroo Holdings, Inc. (the "Company") and each of the stockholders of OSI Restaurant Partners, Inc. (the "Target") listed on Schedule 1 hereto as holding the "Rollover Shares" listed thereon (each, a "Rollover Investor" and, collectively, the "Rollover Investors").

RECITALS

The Company has entered into an Agreement and Plan of Merger, dated as of November 5, 2006 (the "Merger Agreement"), by and between the Company, a Delaware corporation, Kangaroo Acquisition, Inc. (the "Merger Sub"), a Delaware corporation, and the Target, pursuant to which the Merger Sub will merge with and into the Target (the "Merger") on the terms and subject to the conditions set forth in the Merger Agreement.

The Company owns all of the common stock of Merger Sub.

Under the Amended and Restated Certificate of Incorporation of the Company, as in effect on the date hereof (the "Company's Charter"), the Company is authorized to issue shares of common stock, par value $0.01 per share (the "Company Common Stock").

Each Rollover Investor holds shares in the Target. As contemplated under Section 2.1(b) of the Merger Agreement, each Rollover Investor is willing to acquire, and the Company is willing to issue and transfer to such Rollover Investor, the number of shares of Company Common Stock set forth opposite the name of such Rollover Investor on Schedule 1 hereto in exchange for the contribution of such Rollover Investor's Rollover Shares to the Company, all on the terms and subject to conditions set forth in this Agreement.

Each Rollover Investor will contribute such Rollover Investor's Rollover Shares to the Company contemporaneously with the acquisition of shares of the Company Common Stock by Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., BCIP TCV, LLC, Bain Capital Integral Investors 2006, LLC, BCIP Associates - G, Catterton Partners VI - Kangaroo, L.P., Catterton Partners VI - Kangaroo Coinvest, L.P. and certain other persons in a single, integrated transaction.

On the date hereof, the Company, each Rollover Investor, Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., BCIP TCV, LLC, Bain Capital Integral Investors 2006, LLC, BCIP Associates - G, Catterton Partners VI - Kangaroo, L.P., Catterton Partners VI -

Kangaroo Coinvest, L.P. and all other stockholders of the Company are entering into both a stockholders agreement (the " Stockholders Agreement") and a registration rights agreement (the "Registration Rights Agreement"), each dated as of the date hereof and together setting forth certain agreements with respect to, among other things, the management of the Company and transfers of its shares in various circumstances.

AGREEMENT

In consideration of the foregoing, and the representations, warranties, covenants and conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions. Capitalized terms defined in the Merger Agreement and used but not otherwise defined in this Agreement are used herein as so defined in the Merger Agreement.

2. Sale and Acquisition of Rollover Securities .

2.1. In consideration for the contribution to the Company of the Rollover Shares set forth opposite the name of such Rollover Investor on Schedule 1 hereto, and on the terms and subject to the conditions hereof, the Company hereby agrees to issue to each Rollover Investor, and, by acceptance hereof, such Rollover Investor agrees to acquire from the Company for investment, on the Closing Date immediately prior to the Effective Time, the number of shares of Company Common Stock set forth opposite the name of such Rollover Investor on Schedule 1 hereto (the "Exchange"). The shares of Company Common Stock being acquired in the Exchange by a Rollover Investor hereunder are referred to herein as such Rollover Investor's "Rollover Securities."

2.2. The Exchange will take place at the same time and location as, and will be substantially contemporaneous with, the acquisition of shares of Company Common Stock by Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., BCIP TCV, LLC, Bain Capital Integral Investors 2006, LLC, BCIP Associates - G, Catterton Partners VI - Kangaroo, L.P. and Catterton Partners VI - Kangaroo Coinvest, L.P., and the Exchange and such acquisition will occur immediately prior to the Effective Time under the Merger Agreement. If the Merger Agreement is terminated, this Agreement will automatically terminate and be without further force and effect. In the event that the Exchange has taken place and this Agreement is subsequently terminated pursuant to the preceding sentence, the Company shall promptly redeem from each Rollover Investor the Rollover Securities in exchange for a return of the Rollover Shares.

2.3. The Exchange is intended to qualify as a tax-free exchange with respect to each Rollover Investor under Section 351 of the Internal Revenue Code of 1986, as amended (the "Code"). No party hereto will take a position inconsistent with the preceding sentence on any tax return or otherwise unless required pursuant to a final determination (as defined in Section 1313 of the Code).

2.4. Immediately prior to the Effective Time, against delivery to the Company by a Rollover Investor of his, her or its Rollover Shares contemplated by Section 2.1 hereof duly endorsed, the Company will deliver to such Rollover Investor certificates for the Rollover Securities to be acquired by such Rollover Investor, registered in the name of such Rollover Investor.

2.5. The Rollover Securities will be subject to the terms and conditions of the Stockholders Agreement as "Founder Shares," and to the terms and conditions of the Registration Rights Agreement.

3. Representations and Warranties of the Company. The Company represents and warrants to each Rollover Investor, as of the date hereof and as of the Closing Date, that:

3.1. The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has delivered to the Rollover Investors true and complete copies of the Company's Charter and the By-Laws of the Company as in effect on the date hereof. Such documents will be in effect in such form on the Closing Date. The Company is not in material violation of any of the provisions of such documents. The Company has the corporate power and authority necessary to carry on its business as now being conducted and as proposed to be conducted immediately after the Merger.

3.2. The Company has taken all corporate action required to authorize the execution and delivery of this Agreement, the Stockholders Agreement, the Registration Rights Agreement and the issuance of the Rollover Securities. The Company has the corporate power and authority to execute and deliver this Agreement, the Stockholders Agreement and the Registration Rights Agreement, and to perform its obligations hereunder and thereunder, including, without limitation, issuing the Rollover Securities. Each of this Agreement, the Stockholders Agreement and the Registration Rights Agreement has been duly executed and delivered by the Company, and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

3.3. The Rollover Securities, when issued in exchange for the Rollover Shares as contemplated by Section 2.1 hereof, will be duly authorized, validly issued, fully paid and non-assessable, free and clear of restrictions on transfer, other than those set forth in the Stockholders Agreement, the Registration Rights Agreement and applicable federal and state securities laws.

3.4. Neither the Company nor any of its subsidiaries has conducted any material business or entered into any material transactions or incurred any material liability other than in connection with the formation of the Company, the Merger Agreement, the transactions contemplated hereby and thereby and the financing thereof.

3.5. On the Closing Date, following the consummation of the transactions contemplated by the Merger Agreement, and after giving effect to the issuance of Company Common Stock to the Investors, Other Investors, Founders and Managers (each as defined in the Stockholders Agreement), 129,518,594 shares of Company Common Stock will be issued and outstanding, no other shares of capital stock of the Company will be issued and outstanding and such shares of Company Common Stock will be owned, beneficially and of record, by the persons and in the amounts set forth in Schedule 2 hereto. On the Closing Date, all of the issued and outstanding shares of Company Common Stock will have been

duly authorized and validly issued and will be fully paid and non-assessable. Except as set forth on Schedule 2, and as set forth in this Agreement, the Employee Rollover Agreements with certain employees of the Company, dated as of the date hereof (the "Employee Rollover Agreements"), the Subscription Agreements with certain employees of the Company, dated as of the date hereof (the "Employee Subscription Agreements") and the Investor Subscription Agreement by and among the Company and Bain Capital (OSI) IX, L.P., Bain Capital (OSI) IX Coinvestment, L.P., BCIP TCV, LLC, Bain Capital Integral Investors 2006, LLC, BCIP Associates - G, Catterton Partners VI - Kangaroo, L.P. and Catterton Partners VI - Kangaroo Coinvest, L.P., dated as of the date hereof (the "Investor Subscription Agreement"), and except pursuant to the Kangaroo Holdings, Inc. 2007 Equity Incentive Plan and grants thereunder, the Company has not granted any outstanding options, rights or other securities convertible into or exchangeable or exercisable for shares of Company Common Stock or other equity securities of the Company, or made or entered into any other commitments or agreements providing for the issuance of additional shares, the sale of treasury shares or for the repurchase or redemption of shares of Company Common Stock or other equity securities of the Company, and there are no agreements of any kind which may obligate the Company to issue, purchase, redeem or otherwise acquire any shares of Company Common Stock or other equity securities of the Company except as reflected on Schedule 2. Except as set forth on Schedule 2, and as set forth in this Agreement, the Employee Rollover Agreements, the Employee Subscription Agreements, the Investor Subscription Agreement, the Stockholders Agreement and the Registration Rights Agreement, there are no stockholder agreements, voting trusts, proxies or other agreements or understandings with respect to or concerning the purchase, sale or voting of the Company Common Stock to which the Company is a party or by which the Company is bound. The Company has delivered to the Rollover Investors true and complete copies of the Employee Rollover Agreements and the Investor Subscription Agreement as in effect on the date hereof. Such agreements will be in effect in such form on the Closing Date.

4. Representations and Warranties of the Rollover Investors. Each Rollover Investor (severally, on behalf of himself only, and not jointly) represents and warrants to the Company, as of the date hereof and as of the Closing Date, that:

4.1. Such Rollover Investor has full legal capacity, power and authority to execute and deliver this Agreement, the Stockholders Agreement, the Registration Rights Agreement and to perform such Rollover Investor's obligations hereunder and thereunder. Each of this Agreement, the Stockholders Agreement and the Registration Rights Agreement has been duly executed and delivered by such Rollover Investor, and each of this Agreement, the Stockholders Agreement and the Registration Rights Agreement constitutes the legal, valid and binding obligation of such Rollover Investor, enforceable against him in accordance with its terms.

4.2. Such Rollover Investor is the record and beneficial owner of the outstanding Rollover Shares set forth opposite such Rollover Investor's name on Schedule 1 hereto, and has good and marketable title to such Rollover Shares, free and clear of all encumbrances except as are imposed by applicable securities laws. Such Rollover Investor has full right, power and authority to transfer and deliver to the Company valid title to the Rollover Shares held by such Rollover Investor, free and clear of all encumbrances. Immediately following

the Exchange, the Company will be the record and beneficial owner of such Rollover Shares, and have good and marketable title to such Rollover Shares, free and clear of all encumbrances except as are imposed by applicable securities laws or created by the Company. Except pursuant to this Agreement, there is no contractual obligation pursuant to which such Rollover Investor has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any Rollover Shares.

4.3. Such Rollover Investor has been advised that the Rollover Securities have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws, or unless an exemption from such registration requirements is available. Such Rollover Investor is aware that the Company is under no obligation to effect any such registration with respect to the Rollover Securities (except solely to the extent provided in the Registration Rights Agreement) or to file for or comply with any exemption from registration.

4.4. Such Rollover Investor is aware that such Rollover Investor may sell, transfer or otherwise dispose of the Rollover Securities only in a manner consistent with the Securities Act and the terms and conditions set forth in this Agreement, the Stockholders Agreement and the Registration Rights Agreement.

4.5. Such Rollover Investor (a) is acquiring the Rollover Securities for such Rollover Investor's own account, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof in violation of the Securities Act, (b) has no present intention of selling, granting any participation in or otherwise distributing the Rollover Securities and (c) is under no obligation, contractual or otherwise, to sell, transfer or pledge any Rollover Securities, or grant any participation interest in any Rollover Securities, to any person.

4.6. Such Rollover Investor is an accredited investor within the meaning of Regulation D under the Securities Act.

4.7. Such Rollover Investor's financial condition is such that such Rollover Investor is able (a) to bear the economic risk of holding the Rollover Securities for an indefinite period of time, and (b) to incur a complete loss of such Rollover Investor's entire investment in such Rollover Securities.

4.8. Such Rollover Investor has such knowledge and experience in financial and business matters that he or she is capable of evaluating the risks and merits of such investment.

4.9. Such Rollover Investor has been afforded the opportunity to ask questions and receive answers concerning the terms and conditions of the offering of Rollover Securities, and to obtain information reasonably necessary for him to evaluate the offering.

4.10. Such Rollover Investor agrees to accept the Rollover Securities in the condition they are in immediately prior to the Effective Time based upon such Rollover Investor's own inspection, examination and determination with respect to such Rollover Securities as to all

matters, and without reliance upon any express or implied representations or warranties of any nature, whether in writing, orally or otherwise, made by or on behalf of or imputed to the Company, Merger Sub, Target or any of their respective affiliates, except as expressly set forth herein.

5. Conditions to Acquisition and Issuance of Rollover Securities .

5.1. The Company's obligation to issue and sell Rollover Securities to a Rollover Investor is subject to the satisfaction of the following conditions with respect to such Rollover Investor:

(a) all representations and warranties of such Rollover Investor contained in this Agreement will be true and correct as of the Closing, and consummation of the subscriptions contemplated hereby will constitute a reaffirmation by such Rollover Investor that all representations and warranties of such Rollover Investor contained in this Agreement are true and correct as of the Closing;

(b) no supranational, national, provincial, federal, state, local or other government, regulatory or administrative authority, or any court, tribunal, or judicial or arbitral body (a "Governmental Authority") will have enacted, issued, promulgated, enforced or entered any injunction, order, decree or ruling (whether temporary, preliminary or permanent) which is then in effect and has the effect of making consummation of the subscriptions contemplated hereby illegal, or otherwise preventing or prohibiting consummation of the subscription contemplated hereby;

(c) on the Closing Date, following (but substantially contemporaneously with) the Exchange, all conditions to the Company's obligation to close under the Merger Agreement will have been satisfied or waived by the Company; and

(d) on or before the Closing Date, substantially contemporaneously with the Exchange, each Rollover Investor will have duly executed and delivered to the Company a counterpart of the Stockholders Agreement and the Registration Rights Agreement.

5.2. Each Rollover Investor's obligation to contribute Rollover Shares to the Company and to acquire Rollover Securities in exchange therefor is subject to the satisfaction of the following conditions:

(a) all representations and warranties of the Company contained in this Agreement will be true and correct as of the Closing, and consummation of the Closing will constitute a reaffirmation by the Company that all the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing;

(b) no Governmental Authority will have enacted, issued, promulgated, enforced or entered any injunction, order, decree or ruling (whether temporary, preliminary or permanent) which is then in effect and has the effect of making consummation of the subscriptions contemplated hereby illegal, or otherwise preventing or prohibiting consummation of the subscription contemplated hereby;

(c) all conditions to the consummation of the transactions contemplated by the Merger Agreement and the Investor Subscription Agreement will have been met or waived by the applicable parties entitled to waive such conditions on or before the Closing Date, other than such conditions as are to be satisfied at the closing of such transactions or such conditions as will be satisfied upon the contribution to the Company of the equity contemplated by the Investor Subscription Agreement;

(d) on the Closing Date, substantially contemporaneously with the Exchange, the Investors and the Other Investors shall have purchased the shares of Company Common Stock pursuant to the Investor Subscription Agreement; and

(e) at or prior to the Exchange, each party other than such Rollover Investor will have duly executed and delivered to such Rollover Investor a counterpart of the Stockholders Agreement and the Registration Rights Agreement.

6. Information Rights.

6.1. Financial and Other Information. The Company shall provide, or cause to be provided, to each Rollover Investor, the following information:

6.1.1 Annual Reports. As soon as available, and in any event within 90 days after the end of each fiscal year, the consolidated balance sheet of the Company and its subsidiaries as at the end of such fiscal year, and the consolidated statements of income, cash flows and stockholders' equity for such fiscal year of the Company and its subsidiaries, accompanied by the audit report of independent certified public accountants of recognized national standing with respect thereto.

6.1.2 Quarterly Reports. As soon as available, and in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year, the unaudited consolidated balance sheet of the Company and its subsidiaries as at the end of such fiscal quarter, and the consolidated statements of income, cash flows and stockholder's equity for such fiscal quarter and the portion of the fiscal year then ended with such fiscal quarter of the Company and its subsidiaries.

6.1.3 Monthly Reports. As soon as available, and in any event within 30 days after the end of each fiscal month, other than the last month of any fiscal quarter or of the fiscal year, the unaudited consolidated balance sheet of the Company and its subsidiaries as at the end of such fiscal month, and the consolidated statements of income, cash flows and stockholder's equity for such fiscal month and the portion of the fiscal year then ended with such fiscal month of the Company and its subsidiaries.

If, at any time, the Company is required by the rules and regulations of the SEC to file annual and quarterly reports electronically with the SEC through the SEC's Electronic Data Gathering, Analysis and Retrieval System (or any successor system), or is voluntarily filing such reports, then the obligations of the Company under Sections 6.1.1 and 6.1.2 above shall be satisfied by the making of such filings.

6.2. Confidentiality. Each Rollover Investor covenants and agrees that if he, she or it receives information under this Section 6, he, she or it shall keep confidential all information, materials and documents concerning the business of the Company and its subsidiaries furnished by, or on behalf of, the Company or its subsidiaries, or otherwise acquired by him (the " Confidential Information"). Notwithstanding the foregoing, a Rollover Investor shall be permitted to disclose Confidential Information: (a) to the extent required by applicable laws and regulations, or by any subpoena or similar legal process, or to the extent requested by any governmental agency or authority; (b) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Agreement by such Rollover Investor, (ii) becomes available to such Rollover Investor on a non-confidential basis from a source other than the Company or its subsidiaries or (iii) was available to such Rollover Investor on a non-confidential basis prior to its disclosure to such Rollover Investor by the Company or its subsidiaries; or (c) to the extent the Company or its subsidiaries shall have consented to such disclosure in writing.

6.3. Period. The provisions of Section 6.1 hereof shall expire on the closing of the initial underwritten public offering and sale of Company Common Stock for cash pursuant to an effective registration statement under the Securities Act, after which the Company Common Stock is listed on a national securities exchange (the "Initial Public Offering").

7. Indemnities.

7.1. The Company will indemnify, exonerate and hold each Rollover Investor and each of his, her or its respective partners, members, and equityholders, affiliates, directors, officers, fiduciaries, employees and agents and each of the partners, members, shareholders, affiliates, directors, officers, fiduciaries, employees and agents of each of the foregoing (collectively, the " Indemnitees") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities and damages, and expenses in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Indemnified Liabilities"), incurred by the Indemnitees or any of them as a result of, arising out of or relating to any breach of any representation, warranty or agreement in this Agreement by the Company. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of such Indemnified Liabilities that is permissible under applicable law.

7.2. Each Rollover Investor (severally and not jointly) will indemnify, exonerate and hold the Company and its shareholders (other than such Rollover Investor), and their respective Indemnitees (other than those of such Rollover Investor and such Rollover Investor's affiliates) harmless from and against any and all Indemnified Liabilities incurred by any of them as a result of, arising out of or relating to any breach of any representation, warranty or agreement in this Agreement by such Rollover Investor; provided, that each Rollover Investor shall be liable only to the extent of the value of such Rollover Investor's Rollover Securities. If and to the extent that the foregoing undertaking may be unenforceable for any reason, such Rollover Investor hereby agrees to make the maximum contribution to the payment and satisfaction of each of such Indemnified Liabilities that is permissible under applicable law.

8. Restrictions on Transfer.

8.1. Restrictive Securities Act Legend. All certificates representing Rollover Securities will bear a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED IN A PRIVATE PLACEMENT, WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE ACT COVERING THE TRANSFER OR AN OPINION OF COUNSEL, SATISFACTORY TO THE ISSUER, THAT REGISTRATION UNDER THE ACT IS NOT REQUIRED."

8.2. Termination of 8.1 Restrictions. The restrictions imposed by Section 8 hereof upon the transferability of Rollover Securities will cease and terminate as to any particular Rollover Securities (a) when, in the reasonable opinion of Ropes & Gray LLP or other counsel reasonably acceptable to the Company, such restrictions are no longer required in order to assure compliance with the Securities Act, or (b) when such Rollover Securities have been registered under the Securities Act or transferred pursuant to Rule 144 thereunder. Whenever such restrictions cease and terminate as to any Rollover Securities, or such Rollover Securities are transferable under paragraph (k) of Rule 144, the holder thereof will be entitled to receive from the Company, without expense, new certificates not bearing the legend set forth in Section 8.1 hereof.

9. Miscellaneous.

9.1. Entire Agreement. This Agreement and the other agreements referred to herein set forth the entire understanding among the parties with respect to the subject matter hereof and supersede all agreements and understandings between the parties or their respective affiliates relating to equity securities of the Company, Target or their affiliates or any rights or obligations relating thereto, including, without limitation, any stock redemption agreement between a Rollover Investor and Target.

9.2. Notices. Any notices and other communications required or permitted in this Agreement will be effective if in writing and delivered as provided in Section 11.2 of the Stockholders Agreement.

9.3. Amendment.

(a) This Agreement can be amended or modified only by an instrument in writing signed by the party against whom enforcement of such change is sought.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein provided will be cumulative and not exclusive of any rights or remedies provided by law.

9.4. Expenses. The Company shall bear its and the Rollover Investors' costs and expenses in connection with or relating to the preparation, negotiation and execution of this Agreement, and the consummation of the other transactions contemplated hereby (and any and all amendments, modifications, restructurings and waivers, and exercises and preservations of rights and remedies hereunder).

9.5. Successors; Assignment. This Agreement will bind and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and representatives. Prior to the Closing, no Rollover Investor may assign any of such Rollover Investor's rights hereunder, and, after the Closing, each Rollover Investor may assign any of such Rollover Investor's rights hereunder only in connection with a transfer of such Rollover Investor's Rollover Securities in compliance with the terms and conditions of the Stockholders Agreement and the Registration Rights Agreement.

9.6. Stock Redemption Agreements. Each of the Founders acknowledges and agrees that any Stock Redemption Agreement to which he, she or it and the Target (or any of its affiliates) are party (or other right in effect prior to the Closing Date to require the Company or its Affiliates to purchase any equity securities that he, she or it may hold) will be of no further force and effect from and after the Closing (except to the extent set forth in the Stockholders Agreement).

9.7. Survival. All covenants, agreements, representations and warranties made herein will survive the execution and delivery hereof and the transfer of any Rollover Securities.

9.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which will together constitute one and the same instrument.

10. Governing Law; Disputes.

10.1. Governing Law. This Agreement and all claims arising in whole or in part out of, based on or in connection with this Agreement will be governed by and construed in accordance with the domestic substantive laws of the State of New York, without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

10.2. Consent to Jurisdiction. Each party to this Agreement, by his, her or its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, City of New York, County of New York for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement, or relating to the subject matter hereof, (b) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that he, she or it is not subject personally to the jurisdiction of the above-named courts, that his, her or its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper or that this Agreement or the subject matter hereof may

not be enforced in or by such court and (c) hereby agrees neither to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement, or relating to the subject matter hereof other than before one of the above-named courts, nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which he, she or it may assert indemnification rights set forth in this agreement, the court in which such litigation is being heard shall be deemed to be included in clause (a) above. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by New York law, and agrees that service of process by registered or certified mail, return receipt requested, at his, her or its address specified pursuant to Section 11.2 of the Stockholders Agreement is reasonably calculated to give actual notice.

10.3. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT HE, SHE OR IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, CAUSE OF ACTION, ACTION, SUIT OR PROCEEDING ARISING IN WHOLE OR IN PART OUT OF, BASED ON OR IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (IN CONTRACT, TORT OR OTHERWISE), IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT OR OTHERWISE. ANY OF THE PARTIES HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.3 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF THE PARTIES HERETO TO THE WAIVER OF HIS, HER OR ITS RIGHT TO TRIAL BY JURY.

10.4. Reliance. Each of the parties hereto acknowledges that he, she or it has been informed by each other party that the provisions of this Section 10 constitute a material inducement upon which such party is relying and will rely in entering into this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the terms hereof, have caused this Agreement to be executed, under seal, as of the date first above written by their officers or other representatives thereunto duly authorized.

THE COMPANY:

KANGAROO HOLDINGS, INC.

By: /s/ Ian Blasco
Name: Ian Blasco
Title: Vice President

ROLLOVER INVESTOR:

CTS EQUITIES LIMITED PARTNERSHIP
By: CTS EQUITIES, LLC
Its: General Partner
By: /s/ Chris T. Sullivan
Name: Chris T. Sullivan
Its: Manager

ROLLOVER INVESTOR:

CHRIS T. SULLIVAN FOUNDATION

By: /s/ Chris T. Sullivan
Name: Chris T. Sullivan
Its: President

ASHLEY SULLIVAN IRREVOCABLE TRUST

/s/ Ava Forney
Ava Forney, Trustee

ALEXANDER SULLIVAN IRREVOCABLE TRUST

/s/ Ava Forney
Ava Forney, Trustee

/s/ Ashley Sullivan
ASHLEY SULLIVAN

/s/ Alexander Sullivan
ALEXANDER SULLIVAN

ROLLOVER INVESTOR:

RDB EQUITIES LIMITED PARTNERSHIP

By: RDB EQUITIES, LLC
Its: General Partner

By: /s/ Robert D. Basham
Name: Robert D. Basham
Its: manager

ROLLOVER INVESTOR:

JTG EQUITIES LIMITED PARTNERSHIP

By: JTG EQUITIES, LLC
Its: General Partner

By: /s/ John T. Gannon
Name: John T. Gannon
Its: Manager

Schedule 1 to
Founder Rollover Agreement

ROLLOVER SHARES AND ROLLOVER SECURITIES

Name of Rollover Investor	Number of Rollover Shares	Number of Rollover Securities
CTS Equities Limited Partnership	1,329,479	5,317,916
Chris T. Sullivan Foundation	148,582	611,415
Ashley Sullivan Irrevocable Trust	35,532	146,214
Alexander Sullivan Irrevocable Trust	34,532	142,099
Ashley Sullivan	1,283	5,280
Alexander Sullivan	1,284	5,284
RDB Equities Limited Partnership	2,151,163	8,604,652
JTG Equities Limited Partnership	300,000	1,200,000

Schedule 2 to
Founder Rollover Agreement

POST-CLOSING EQUITY OWNERSHIP IN KANGAROO HOLDINGS, INC.

Name / Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Bain Capital (OSI) IX, L.P.	54,006,581.7				54,006,581.7	49.39%
Bain Capital (OSI) IX Coinvestment, L.P.	15,295,202.8				15,295,202.8	13.99%
BCIP TCV, LLC	126,959.0				126,959.0	0.12%
Bain Capital Integral Investors 2006, LLC	637,456.1				637,456.1	0.58%
BCIP Associates - G	8,800.4				8,800.4	0.01%
Catterton Partners VI - Kangaroo, L.P.	10,000,000				10,000,000	9.15%
Catterton Partners VI - Kangaroo Coinvest, L.P.	4,500,000				4,500,000	4.12%
CTS Equities Limited Partnership (BOA)	1,126,104				1,126,104	1.03%
CTS Equities Limited Partnership (Wach.)	1,200,000				1,200,000	1.10%
CTS Equities Limited Partnership (Sun)	2,991,812				2,991,812	2.74%
Chris T. Sullivan Foundation	611,415				611,415	0.56%
Ashley Sullivan Irrevocable Trust	146,214				146,214	0.13%
Alexander Sullivan Irrevocable Trust	142,099				142,099	0.13%
Ashley Sullivan	5,280				5,280	0.00%
Alexander Sullivan	5,284				5,284	0.00%
RDB Equities Limited Partnership	8,604,652				8,604,652	7.87%
JTG Equities Limited Partnership	1,200,000				1,200,000	1.10%
Mark Aaron	100,000				100,000	0.09%
A. William Allen, III			1,851,750	497,482	2,349,232	2.15%
Stephanie L. Amberg	5,000		8,230		13,230	0.01%
Paul E. Avery			1,234,500	459,214	1,693,714	1.55%
Richard J. Beach			16,460		16,460	0.02%
Jody Bilney			102,875		102,875	0.09%
Karen C. Bremer	5,000				5,000	0.00%
Michael W. Coble	100,000				100,000	0.09%
John W. and Trudy I. Cooper	100,000				100,000	0.09%
William A. Daniel			61,725		61,725	0.06%
Stephen C. Erickson	50,000				50,000	0.05%
Donald R. Everts	80,000				80,000	0.07%
Curtis H. Fox	5,000				5,000	0.00%
Randy Graham	15,000				15,000	0.01%
Matthew P. Halme	5,000		16,460		21,460	0.02%
Joseph W. Hartnett	5,000		41,150		46,150	0.04%
Dennis L. Hood	10,000				10,000	0.01%
Joseph Larry Jackson			20,575		20,575	0.02%
Joseph J. Kadow			308,625	319,810	628,435	0.57%
Joseph Kadow CUST for Emily Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%

Name / Entity	Issued Shares	Rollover Shares	Restricted Stock	Options	Fully Diluted Shares	Fully Diluted Ownership %
Joseph Kadow CUST for Katherine Kadow UNDER FLORIDA UTMA	10,000				10,000	0.01%
William J. Kadow	20,000		82,300		102,300	0.09%
Gregory A. Laney	5,000		16,460		21,460	0.02%
William G. Leahy	10,000				10,000	0.01%
Kelly M. Lefferts	5,000		20,575		25,575	0.02%
C. Howard Leigh			41,150		41,150	0.04%
John A. Massari			24,690		24,690	0.02%
Richard E. Meyer	100,000				100,000	0.09%
Dirk A. Montgomery			411,500	153,071	564,571	0.52%
James Morey			102,875		102,875	0.09%
Stephen S. Newton	15,000				15,000	0.01%
Steven A. Overholt	100,000				100,000	0.09%
James Pollard	30,000				30,000	0.03%
Dennis L. Prescott	20,000		41,150		61,150	0.06%
Martin Reichenthal	50,000		61,725		111,725	0.10%
Richard Renninger			102,875		102,875	0.09%
Lindon D. Richardson	10,000		41,150		51,150	0.05%
Mark Running	25,000				25,000	0.02%
Amanda L. Shaw			4,115		4,115	0.00%
Steven T. Shlemon	30,000	306,156			336,156	0.31%
Steven T. Shlemon CUST Steven Michael Shlemon UNDER THE FL UNIF TRAN MIN ACT		6,617			6,617	0.01%
Jeffrey S. Smith	45,000				45,000	0.04%
Steven C. Stanley			41,150		41,150	0.04%
Irene Wenzel	10,000		20,575		30,575	0.03%
Fred T. Williams			32,920		32,920	0.03%
Current Option Pool				483,814	483,814	0.44%
Options res'd for later issuance				820,025	820,025	0.75%
Total	**101,582,860**	**312,773**	**4,707,560**	**2,733,415**	**109,336,608**	**100.00%**
Total Shares issued at close	106,603,193					97.5%
Option Pool	2,733,415					2.5%
Total Fully Diluted Shares	**109,336,608**					**100.0%**

Exhibit 10.6

ROYALTY AGREEMENT

This ROYALTY AGREEMENT ("Agreement") is made and entered into this 1st day of April, 1995, by and among CARRABBA'S ITALIAN GRILL, INC., a Florida corporation having its principal office located at 550 North Reo Street, Suite 200, Tampa, Florida 33609 (hereinafter "CIGI"), OUTBACK STEAKHOUSE, INC., a Delaware corporation having its principal office located at 550 North Reo Street, Suite 200, Tampa, Florida 33609 (hereinafter "Outback"), MANGIA BEVE, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 (hereinafter "MBI"), CARRABBA, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 ("CI"), CARRABBA WOODWAY, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 ("CWI"), JOHN C. CARRABBA, III, an individual residing in the state of Texas ("Johnny Carrabba"), DAMIAN C. MANDOLA, an individual residing in the state of Texas ("Damian Mandola") and JOHN C. CARRABBA, JR., an individual residing in the state of Texas ("John C. Carrabba, Jr.").

W I T N E S S E T H:

WHEREAS, MBI is the sole and exclusive owner of a unique, distinctive system for the establishment of full service restaurants known as "Carrabba's Italian Grill®" which feature a specialized menu of Italian food and full bar service; and

WHEREAS, in consideration for the covenants of CIGI and the payments to be provided for herein, MBI desires to transfer said system to CIGI.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and after good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

1.1 Affiliate. The term "Affiliate" shall have the same meaning as such term has in the Securities and Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

1.2 Carrabba Entity(ies). The term "Carrabba Entity(ies)" shall mean each of MBI, CI, CWI, Johnny Carrabba, Damian Mandola and John Carrabba, Jr., individually and collectively, jointly and severally, and their Affiliates, heirs, administrators, representatives, successors and permitted assigns.

1.3 CI License Agreement. The term "CI License Agreement" shall mean that certain Amended and Restated Carrabba's Restaurant Licensing Agreement of even date herewith between CIGI, as Licensor, and CI, as Licensee, pursuant to which CI was granted the right to operate one Restaurant located at 3115 Kirby Drive, Houston, Texas 77098.

1.4 CWI License Agreement. The term "CWI License Agreement" shall mean that certain Amended and Restated Carrabba's Restaurant Licensing Agreement of even date herewith between CIGI, as Licensor, and CWI, as Licensee, pursuant to which CWI was granted the right to operate one Restaurant located at 1399 South Voss, Houston, Texas.

1.5 Florida License Agreement. The term "Florida License Agreement" shall mean that certain License Agreement of even date herewith between MBI as successor to the Joint Venture, as Licensor, and the Florida Partnership, as Licensee, pursuant to which the Florida Partnership was granted the exclusive right to operate an unlimited number of Restaurants in certain counties in the state of Florida.

1.6 Florida Partnership. The term "Florida Partnership" shall mean Carrabba's of West Florida, Ltd., a Florida limited partnership.

1.7 Joint Ventures. The term "Joint Ventures" shall mean collectively Carrabba/Outback Joint Venture, a Florida general partnership and Carrabba/Texas Joint Venture, a Florida general partnership.

1.8 Joint Venture License Agreements. The term "Joint Venture License Agreements" shall mean those certain Carrabba's Restaurant Licensing Agreements of even date herewith between MBI, as Licensor, and the Joint Ventures, as Licensees, pursuant to which the Joint Ventures were granted the right to operate an unlimited number of Restaurants in the state of Texas.

1.9 Net Product Sales. The term "Net Product Sales" shall mean all monetary compensation received from the sale of products and services which are not sold at or from a Restaurant, whether for cash or credit and regardless of collection in the case of credit, reduced by (i) discounts, rebates and complimentary food and beverages, (ii) returns and exchanges, (iii) sales and other taxes and surcharges collected for transmittal to taxing authorities and (iv) revenue from catering activities done for charitable, marketing or community involvement purposes.

1.10 Net Restaurant Sales. The term "Net Restaurant Sales" shall mean, with respect to any Restaurant, all monetary compensation received for the sale of all products and services at or from such Restaurant, whether for cash or credit and regardless of collection in the case of credit, including the face value of gift certificates redeemed by customers, reduced by (i) discounts and complimentary food and beverages, (ii) sales and other taxes and surcharges collected for transmittal to taxing authorities, (iii) revenue received from the sale of gift certificates and (iv) revenue from catering activities done for charitable, marketing or community involvement purposes.

1.11 Outback. The term "Outback" shall mean Outback Steakhouse, Inc., a Delaware corporation.

1.12 Outback Entities. The term "Outback Entities" shall mean each of CIGI and Outback, individually and collectively, and their Affiliates, successors and permitted assigns.

1.13 Proprietary Marks. The term "Proprietary Marks" shall mean, collectively and individually, Federal Trademark/Service Mark Reg. No. 1,795,108 for Carrabba's with design; Federal Trademark/Service Mark Reg. No. 1,804,367 for Carrabba's with Pizza Chef Design; Federal Trademark/Service Mark Reg. No. 1,843,015 for Pizza Chef Design; Federal Trademark/Service Mark Reg. No. 1,865,848 for Carrabba's Italian Grill (stylized); and all other copyrights, trademarks, trade names, service marks, logos, emblems and other indicia of origin used to identify the System; together with all goodwill associated with all of the foregoing.

1.14 Restaurant. The term "Restaurant" shall mean a restaurant utilizing the System, whether owned by CIGI, its Affiliates or by its licensees/franchisees.

1.15 System. The term "System" shall mean the Carrabba's Italian Grill® restaurant concept and system and all elements, characteristics and properties thereof, including, without limitation, recipes and menu items; motif, design, decor and furnishings; trade dress and the Propriety Marks, trade secrets, know-how and other intellectual property; uniform standards, specifications and procedures for operations, quality and uniformity of products and services offered; procedures for inventory and management control; training and assistance; employee testing programs; marketing, advertising and promotional programs; together with all goodwill associated therewith.

ARTICLE II
TRANSFER OF SYSTEM

2.1 Transfer of System. MBI hereby assigns, transfers and conveys outright and absolutely to CIGI all ownership, right, title and interest in and to the System and the Proprietary Marks and all elements, characteristics and property thereof, and all goodwill associated therewith, free and clear of any lien, claim, encumbrance or retained interest whatsoever, subject to and except only the following:

(a) CI's rights to operate one Restaurant pursuant to the CI License Agreement.

(b) CWI's rights to operate one Restaurant pursuant to the CWI License Agreement.

(c) The Florida Partnership's rights to operate Restaurants as licensees pursuant to the Florida License Agreement.

(d) The Joint Ventures' rights to operate Restaurants as a licensee pursuant to the Joint Venture License Agreements.

(e) MBI's contingent right of reversion specified in Section 8.5 hereof.

2.2 Transfer of Rights as Licensor. MBI hereby transfers, assigns and conveys to CIGI all right, title and interest of MBI as Licensor under the CI License Agreement, the CWI License Agreement, the Florida License Agreement and the Joint Venture License Agreement. CIGI hereby accepts such assignment and agrees to be bound by, and hereby assumes the obligations of Licensor under the CI License Agreement, the CWI License Agreement, the Florida License Agreement and the Joint Venture License Agreement.

2.3 Limitation. Notwithstanding the foregoing, CIGI shall not use the Proprietary Marks in connection with any product or service other than restaurant and catering services, food products, beverages, clothing and promotional items ancillary to the foregoing, except with the prior consent of MBI, which consent shall not be unreasonably withheld, delayed or conditioned. Nothing contained in this Section 2.3 shall be construed as a retention by MBI of any right to use the Proprietary Marks nor as a grant of any right to use the Proprietary Marks.

ARTICLE III
ROYALTIES

3.1 Restaurant Royalties. For each Restaurant owned by CIGI or a franchisee/licensee of CIGI (other than the Joint Venture, CI or CWI) which Restaurant first opens to the public after January 1, 1995, CIGI shall pay to MBI an annual royalty fee during the term of this Agreement as follows:

(a) For Restaurants whose annual Net Restaurant Sales are Two Million Seven Hundred Thousand Dollars ($2,700,000) or less, a royalty fee of one percent (1%) of Net Restaurant Sales;

(b) For Restaurants whose annual Net Restaurant Sales exceed Two Million Seven Hundred Thousand Dollars ($2,700,000) but are less than Three Million Dollars ($3,000,000), a royalty fee of one and one quarter percent (1 1/4%) of Net Restaurant Sales;

(c) For Restaurants whose annual Net Restaurant Sales exceed Three Million Dollars ($3,000,000), a royalty fee of one and one half percent (1 1/2%) of Net Restaurant Sales.

3.2 Payment. For each Restaurant CIGI shall pay to MBI a monthly royalty fee at the rate of one percent (1%) of Net Restaurant Sales for each of the first six months of such Restaurant's operation. After the first six months of operation, such Restaurant's Net Restaurant Sales shall be annualized and the royalty fee shall be paid for the remainder of the calendar year based on annualized Net Restaurant Sales for the calendar year ending on the first December 31 after the Restaurant has completed its first six months of operation ("Initial Calendar Year"). For each calendar year after the Initial Calendar Year, such Restaurant shall pay a monthly royalty fee based on the Net Restaurant Sales of the preceding calendar year (annualized for Restaurants open less than twelve months in the previous calendar year). Within thirty (30) days of the end of each calendar year, each Restaurant's actual Net Restaurant Sales for such calendar year shall be determined and CIGI shall pay to MBI, or MBI shall refund to CIGI, as the case may be, any amounts necessary so that the actual royalty paid for such calendar year is as provided in Section 3.1. No royalty shall be paid on Net Restaurant Sales which occur after expiration or termination of this Agreement.

3.3 Product Royalties. For each calendar year during the term of this Agreement (beginning with 1995) CIGI shall pay to MBI a monthly royalty fee of one percent (1%) of Net Product Sales, payable as provided in Section 3.4. No royalty shall be paid on Net Product Sales which occur after expiration or termination of this Agreement.

3.4 Payments and Reports. All monthly payments to MBI required by this Article III shall be paid by the tenth (10th) day of each month in respect of operations during the preceding calendar month, and shall be submitted, together with any reports or statements required under Section 4.5 hereof, to MBI at the address provided in Section 10.4 hereof. Any payment or report not actually received by MBI on or before such date shall be deemed overdue. If any payment is overdue, CIGI shall pay MBI, in addition to the overdue amount, interest on such amount from the date it was due until payment is received by MBI at the rate of eighteen percent (18%) per annum, or the maximum rate permitted by law, whichever is less.

ARTICLE IV
COVENANTS OF OUTBACK ENTITIES

The Outback Entities covenant and agree with the Carrabba Entities as follows:

4.1 Development of Restaurants. CIGI shall use its best reasonable efforts to successfully promote and develop the System and to establish and operate, by itself and through licensees and franchisees, as many Restaurants as CIGI deems prudent, in its sole discretion.

4.2 Payments of Royalties. CIGI shall use its best reasonable efforts to maximize the Net Sales of each Restaurant and shall promptly pay or cause to be paid to MBI the royalties provided for in Article III.

4.3 Improvement of System. CIGI shall use its best reasonable efforts to modify and improve the System and to protect and defend the Proprietary Marks; provided, however, nothing contained herein shall be construed as obligating CIGI to initiate any legal action against any particular infringer of any Proprietary Mark. All improvements, modifications and changes to the System or any element thereof shall be the sole and exclusive property of CIGI.

4.4 Obligations as Licensor. CIGI shall fully perform all obligations of CIGI as Licensor under the CI License Agreement, the CWI License Agreement, the Florida License Agreement and the Joint Venture License Agreements, and CIGI will comply with all terms thereof and CIGI shall hold the Carrabba Entities harmless from all obligations of Licensor to licensees and franchisees and all other obligations of Licensor.

4.5 Accounting and Records.

(a) Monthly Reporting. CIGI shall maintain during the term of this Agreement, and shall preserve for at least five (5) years from the dates of their preparation, full, complete, and accurate books, records, and accounts prepared in accordance with generally accepted accounting principles and in sufficient detail to document the calculation of royalties hereunder.

(b) Monthly Reports. CIGI shall submit to MBI no later than the tenth (10th) day of each month during the term of this Agreement, a remittance report accurately reflecting all Net Restaurant Sales and Net Product Sales during the preceding calendar month and such other data or information as MBI may reasonably request. In addition, and without limiting the foregoing, CIGI shall submit a monthly and fiscal year-to-date profit and loss statement (which may be unaudited) for CIGI and the Restaurants, and shall submit copies of all state sales tax returns for CIGI and the Restaurants.

(c) Quarterly Reports. CIGI shall submit to MBI a quarterly balance sheet (which may be unaudited) within thirty (30) days after the end of each quarter of the fiscal year of the CIGI. Each such statement shall be signed by CIGI or by CIGI's treasurer or chief financial officer attesting that it is true and correct.

(d) Annual Reports. CIGI shall submit to MBI complete audited annual financial statements of CIGI prepared by an independent certified public accountant satisfactory to MBI, within ninety (90) days after the end of each fiscal year of CIGI, showing the results of operations of CIGI and the Restaurant during said fiscal year. Such statements shall include, at a minimum, a balance sheet, profit and loss statement and statement of sources and uses of funds.

(e) Additional Reports. CIGI shall submit to MBI, for review or auditing, such other forms, reports, records, information, and data as MBI may reasonably request in order to verify the calculation of royalties payable pursuant to this Agreement.

(f) Inspection Rights. MBI or its designated agents shall have the right at all reasonable times to examine and copy, at MBI's expense, the books, records, and tax returns of CIGI. MBI shall also have the right, at any time, to have an independent audit made of the books of CIGI. If an inspection should reveal that any payments have been understated in any report to MBI, then CIGI shall immediately pay to MBI the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of ten percent (10%) per annum, or the maximum rate permitted by law, whichever is less. If an inspection discloses an understatement in any report of five percent (5%) or more, CIGI shall pay interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, and in addition, shall reimburse MBI for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages expenses and reasonable accounting and legal costs). The foregoing remedies shall be in addition to any other remedies MBI may have.

(g) Expenses. All reports, forms and other information required by this Section 4.5 shall be prepared at CIGI's expense and shall be submitted to MBI at the address indicated in Section 10.4 hereof.

(h) Other Users of System. CIGI will cause all franchisees, licensees and other users of the System to maintain and provide records of the type necessary to support and document the reports to be provided hereunder.

4.6 Non-Competition. Each Outback Entity covenants to MBI that, except as otherwise approved in writing by MBI, it shall not, during the term of this Agreement, directly or indirectly, for itself or through, on behalf of, or in conjunction with any person, persons, partnership, limited liability company, corporation or any other entity, own, maintain, operate, engage in, license, franchise, be employed by or have any interest in, any Italian food restaurant utilizing any material proprietary component, element or property of the System other than Restaurants licensed to use the System and for which royalties are paid hereunder. Without limiting the generality of the foregoing, the parties further agree that for any such Italian food restaurant utilizing one or more material proprietary components, elements or properties of the System, CIGI shall remain obligated to pay royalties on sales of such restaurant to the same extent as if such restaurant were a licensee or a franchisee of CIGI and utilizing the System.

4.7 Right of First Refusal.

(a) Restriction. The Outback Entities hereby covenant and agree that no Outback Entity shall, directly or indirectly, in any manner whatsoever, transfer or offer to transfer the System (hereinafter referred to as a "Transfer"), except in accordance with the provisions of this Section 4.7. Any purported Transfer, no matter how effected, which does not

comply with the terms, conditions and procedures of this Section 4.7 shall be null and void and shall transfer no interest in the System. This Section 4.7 shall not apply to the grant in the ordinary course of business of licenses and franchises to use the System.

(b) Termination of Restrictions. Notwithstanding any contrary provision hereof, the restrictions on Transfer and rights of first refusal contained in this Section 4.7 shall terminate and thereafter be forever null and void if at any time on or before January 1, 2000 there are fifty (50) or more Restaurants open for business.

(c) Right of First Refusal. In the event any Outback Entity ("Transferor") desires to Transfer the System (and any Restaurants owned by CIGI or its Affiliates) or a majority of the vote or value of the capital stock of CIGI, to any person or entity, the Transferor shall, prior to any such Transfer, give MBI written notice of such desire ("Notice of Transfer"), which notice shall specify the property to be transferred ("Property"), the identity of the proposed transferee, and the purchase price, including payment terms and the treatment of liabilities related to the Property ("Purchase Price"). Any purported Notice of Transfer that does not comply with the requirements of this subsection (c) shall be null and void and of no effect hereunder. Upon receipt of a proper Notice of Transfer, MBI shall thereupon have the right to acquire all, but not less than all, of the Property specified in the Notice of Transfer on terms identical to the Purchase Price. In the event the Purchase Price contains terms which MBI cannot reasonably duplicate, MBI shall have the right to substitute the reasonable cash equivalent thereof.

MBI shall exercise the right of first refusal contained herein by giving written notice thereof ("Notice of Election") to the Transferor within thirty-five (35) days of the date of the Notice of Transfer. In the event MBI fails to give a Notice of Election to the Transferor within the thirty-five (35) day period, the purchase option contained herein shall lapse, and, if so requested by the Transferor, MBI shall give an affirmative written statement of non-exercise of the right of first refusal within five (5) days of request by the Transferor.

The closing for any purchase hereunder shall be consummated and closed in CIGI's principal office on a date and at a time designated by MBI in a notice to the Transferor, provided such consummation and closing date shall occur within ninety (90) days from the date of the Notice of Election. At such closing the Transferor shall execute and deliver all documents and instruments as are necessary and appropriate, in the opinion of counsel for MBI, to effectuate the transfer of the Property to MBI in accordance with the terms of the Notice of Transfer, and MBI shall deliver the Purchase Price.

(d) Limitation. The right of first refusal contained in subsection (c) shall not apply to transfers to Outback or any Affiliate of Outback.

(e) Transfer Permitted After Failure to Elect. In the event MBI does not elect pursuant to subsection (c) to exercise the purchase option specified therein, or in the event the closing for any purchase pursuant to subsection (c) does not occur within the time

limits specified therein, then the Transferor shall be free to transfer the Property as was specified in the Notice of Transfer to the person or entity identified in the Notice of Transfer in exchange for the exact Purchase Price as was specified in the Notice of Transfer; provided, however, that the closing and consummation of such transfer shall occur on or before the earlier of (i) sixty (60) days from the date of the Notice of Transfer if no Notice of Election was given; or (ii) one hundred twenty (120) days from the date of the Notice of Election; and provided further that such transfer must comply with all other requirements of this Section 4.7. In the event such transfer is not so closed and consummated within such period, the purchase option granted to MBI in subsection (c) shall again be exercisable and the Transferor shall make no Transfer of the Property, or any right, title or interest therein, until he has again complied with all terms and provisions of this Section 4.7. In the event MBI does not elect pursuant to Section 4.7 to exercise the purchase option contained therein and the Transferor makes a permitted Transfer in compliance with the terms and provisions of this Section 4.7, then the person or entity to whom such Property is transferred shall, as a condition to such transfer, agree in writing to be bound by all terms and provisions of this Agreement.

(f) Effect of Transfer. Notwithstanding any Transfer of the System or any portion thereof, unless MBI (or any Permitted Successor entitled to royalties hereunder at the time of such transfer) otherwise agrees in writing, no Transfer shall relieve Outback, CIGI or any other transferring person or entity from any liability to pay royalties hereunder, which liabilities and obligations shall be joint and several as to such parties; and, unless otherwise so agreed by MBI or its Permitted Successor, all transferees of the System shall be and remain jointly and severally liable for the payment of such royalties and the performance of such liabilities and obligations hereunder.

ARTICLE V
COVENANTS OF CARRABBA ENTITIES

5.1 Non-Disclosure; Non-Solicitation. Except as required by law or as necessary to protect its interests in legal proceedings involving the parties to this Agreement or thired parties, at no time during the term of this Agreement, or at any time thereafter, shall any Carrabba Entity, individually or jointly with others, for the benefit of any Carrabba Entity or any third party, publish, disclose, use, or authorize anyone else to publish, disclose, or use, any secret or confidential material or information relating to any aspect of the business or operations of CIGI, the System or the Restaurants, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes or know-how of CIGI, its Affiliates or the System. Moreover, during the term of this Agreement and for a period of two (2) years thereafter, no Carrabba Entity shall offer employment to any then-current employee of any of CIGI, its Affiliates or licensees (other than a Carrabba Entity), or otherwise solicit or induce any employee of any of CIGI, its Affiliates or licensees to terminate their employment, nor shall any Carrabba Entity act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, for any person or entity which solicits or otherwise induces any employee of any of CIGI, its Affiliates or licensees (other than a Carrabba Entity) to terminate their employment.

5.2 Competition. Each Carrabba Entity covenants to CIGI that, except for the Restaurants owned by the Joint Ventures, CI and CWI, and except as otherwise approved in writing by CIGI, each Carrabba Entity shall not, during the term of this Agreement and for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement, and continuing for two (2) years thereafter, directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any person, persons, partnership or corporation, own, maintain, operate, engage in, be employed by, or have any interest in, or lend any assistance to, any business which owns or operates one or more full service Italian food restaurants and which is, or is intended to be, located within thirty (30) miles of an existing or proposed Restaurant utilizing the System, whether owned by CIGI, its Affiliates or a licensee/franchisee of CIGI; provided, however, that during the term of this Agreement the foregoing geographic limitation shall not apply and, except for the Restaurants owned by the Joint Venture, CI and CWI, each Carrabba Entity shall be prohibited from such ownership and/or activity regardless of whether such other business is within or without of the thirty-mile radius; and provided further, that this Section 5.2 shall not apply to any Permitted Transferee who by the terms of Section 6.4(c) is entitled to own or operate not more than five restaurants. The term "proposed Restaurant" shall mean all locations for which CIGI (or its successor in interest as owner or the System), any Affiliate of CIGI, or any franchisee is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing thereon a restaurant utilizing the System.

This section shall not apply to ownership by a Carrabba Entity of less than one percent (1%) beneficial interest in the outstanding equity securities of any corporation required to file periodic reports under the Securities Exchange Act of 1934, as amended.

5.3 Independent Covenants. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Article V is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which CIGI is a party, each Carrabba Entity expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Article V.

5.4 Modification. Each Carrabba Entity understands and acknowledges that CIGI shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 5.1 and 5.2 of this Agreement, or any portion thereof, effective immediately upon receipt of written notice thereof; and each Carrabba Entity agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable against such Carrabba Entity.

5.5 Claims Not a Defense. Each Carrabba Entity expressly agrees that the existence of any claims they may have against any Outback Entity, whether or not arising from

this Agreement, shall not constitute a defense to the enforcement by CIGI of the covenants in this Article V. Each Carrabba Entity agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by CIGI in connection with any legal proceedings brought by CIGI to construe, interpret or enforce this Article V.

5.6 Reasonableness of Restrictions; Reformation; Enforcement . Each Carrabba Entity recognizes and acknowledges that the geographical and time limitations contained in this Article V are reasonable and properly required for the adequate protection of CIGI and the System. It is agreed by each Carrabba Entity that if any portion of the restrictions contained in this Article V be unreasonable, arbitrary or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time period or geographical area which is determined to be reasonable, nonarbitrary, and not against public policy may be enforced against each Carrabba Entity. If any Carrabba Entity shall violate any of the covenants contained herein and if any court action is instituted by CIGI to prevent or enjoin such violation, then the period of time during which the covenants of this Article V shall apply, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

5.7 Specific Performance. Each Carrabba Entity agrees that a breach of any of the covenants contained in this Article V will cause irreparable injury to CIGI for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or threatened breach of any such covenants, CIGI shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to obtain an injunction to restrain such Carrabba Entity from any threatened or actual activities in violation of any such covenants. Each Carrabba Entity hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings which might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event CIGI does apply for such an injunction, the Carrabba Entities shall not raise as a defense thereto that CIGI has an adequate remedy at law.

5.8 Personnel. Each of CI, CWI and MBI shall require and obtain execution of covenants similar to those set forth in this Article V (including covenants applicable during the term of a person's relationship with them and for two years after termination of such relationship) from any or all of the following persons: (a) all managers, kitchen managers and assistant kitchen managers of MBI, CI or CWI; (b) all officers, directors and holders of a beneficial interest of one percent (1%) or more of the securities of MBI, CI or CWI. Every

covenant required by this Section 5.8 shall be in a form reasonably satisfactory to CIGI, including, without limitation, specific identification of CIGI as a third-party beneficiary of such covenants with the independent right to enforce them. Failure by MBI, CI or CWI to obtain execution of a covenant required by this Section 5.8 shall constitute a default under this Agreement. Nothing contained in this Section 5.8 shall be construed as a guarantee by MBI of the enforceability of such covenants of such personnel.

5.9 Ownership of Improvements. Each Carrabba Entity acknowledges and agrees that any and all improvements, modifications or additions to the System developed by any Carrabba Entity (or their employees) shall constitute part of the System and shall be the sole and exclusive property of CIGI.

ARTICLE VI
RESTRICTIONS ON TRANSFER

6.1 Restriction Against Transfer. The Carrabba Entities hereby covenant and agree that no Carrabba Entity shall, directly or indirectly, in any manner whatsoever, transfer or encumber, or offer to transfer or encumber (hereinafter referred to as "Transfer") any of its interest in the royalties provided for in Article III hereof, or any right, title or interest therein, whether now owned or hereafter acquired ("Royalty Interest"), except in accordance with the provisions of this Article VI.

Any purported Transfer, no matter how effected, which does not comply with the terms, conditions and procedures of this Agreement shall be null and void and shall transfer no interest in the Royalty Interest, but such non-complying purported Transfer shall not relieve CIGI of any of its obligations under this Agreement.

For purposes of this Agreement, a Transfer of a Royalty Interest shall include any issuance, disposition or encumbrance, of any shares of any class of capital stock of MBI or other ownership or voting interest in MBI, and all provisions of this Article VI shall apply to any such disposition or encumbrance.

6.2 Transferees Bound. Any permitted transferee or assignee to whom a Royalty Interest (or capital stock or other ownership or voting interest in MBI or any successor to MBI) may be transferred under the terms of this Agreement who is not at the time of such transfer a party to this Agreement shall take such Royalty Interest subject to all of the terms and conditions of this Agreement and shall not be considered to have title to such Royalty Interest until the transferee or assignee shall have accepted and assumed the terms and conditions of this Agreement by a written agreement to that effect.

6.3 Transfers Subject to Rights of First Refusal. In the event MBI, or any shareholder of MBI, ("Transferor") desires to Transfer all or any part of its Royalty Interest or (i) in the case of MBI, issue additional shares of capital stock, or (ii) in the case of a shareholder

of MBI, Transfer capital stock or other ownership or voting interest in MBI] to any person or entity, the Transferor shall, prior to any such Transfer, give CIGI written notice of such desire ("Notice of Transfer"), which notice shall specify the Royalty Interest (or capital stock in MBI) to be transferred or issued, the identity of the proposed transferee, the purchase price for the Royalty Interest (or capital stock of MBI, as the case may be), and the terms for payment of the purchase price, ("Purchase Price"). Any purported Notice of Transfer that does not comply with the requirements of this Section shall be null and void and of no effect hereunder. Upon receipt of a proper Notice of Transfer, CIGI shall thereupon have the right to acquire the Transferor's entire Royalty Interest (or entire capital stock in MBI, as the case may be), or such portion thereof as is specified in the Notice of Transfer, on terms identical to the Purchase Price or proportionately identical if CIGI elects to purchase the entire Royalty Interest (or entire capital stock, as the case may be) of the Transferor. In the event the Purchase Price contains terms which CIGI cannot reasonably duplicate, CIGI shall have the right to substitute the reasonable cash equivalent thereof.

CIGI shall exercise the right of first refusal contained herein by giving written notice thereof ("Notice of Election") to the Transferor within thirty-five (35) days of the date of the Notice of Transfer. The Notice of Election shall specify whether CIGI elects to purchase the entire Royalty Interest (or entire capital stock, as the case may be) of the Transferor, or, if less, the portion thereof specified in the Notice of Transfer. In the event CIGI fails to give a Notice of Election to the Transferor within the thirty-five (35) day period, the purchase option contained herein shall lapse, and, if so requested by the Transferor, CIGI shall give an affirmative written statement of non-exercise of the right of first refusal within five (5) days of request by the Transferor.

The closing for any purchase hereunder shall be consummated and closed in CIGI's principal office on a date and at a time designated by CIGI in a notice to the Transferor, provided such consummation and closing date shall occur within ninety (90) days from the date of the Notice of Election. At such closing the Transferor shall execute and deliver all documents and instruments as are necessary and appropriate, in the opinion of counsel for CIGI, to effectuate the transfer of the Transferor's Royalty Interest (or capital stock of MBI, as the case may be) to CIGI in accordance with the terms of the Notice of Transfer and CIGI shall deliver the Purchase Price.

6.4 Limitation. Notwithstanding any other provision of this Agreement, shares of stock of MBI or interests in royalty payments hereunder may be transferred or assigned under the following circumstances, without giving rise to any right of first refusal under Section 6.3:

(a) MBI may transfer or assign its interest in royalty payments hereunder, or any portion thereof, to any organization, association or other entity (a "Successor"), so long as the capital stock of or other equity interests in such Successor are held only by or for the account of any one or more of the Carrabba Entities, or any other person or entity that would be permitted to own stock of or equity interests in MBI or a Permitted Successor pursuant to clauses (b) and (c) below, or any combination of the foregoing persons (all such Successors

referred to collectively as "Permitted Successors"), provided that in each case the transferee of such interest shall be subject to the same restrictions on further transfer as are contained in this Article VI including exceptions from such restrictions pursuant to this Section 6.4), and provided, further, that for a period of five (5) years from the date of this Agreement following each such transfer, Johnny Carrabba or Damian Mandola, if both are then alive, shall have the exclusive right to vote a number of shares of stock of MBI and any Permitted Successor sufficient to elect their entire Board of Directors and to exclusively determine all matters submitted to shareholder vote;

(b) In addition to transfers permitted by sections (a) or (c), shares of stock of, or other equity interests in, MBI or any Permitted Successor or any interest therein may be transferred to the spouse, children, grandchildren, nephews and nieces of Johnny Carrabba, Damian Mandola or John Carrabba, Jr., or to any trust for the benefit of one or more such persons (the foregoing collectively referred to as "Permitted Transferees"), provided that in each case the transferee of such shares or equity interests shall be subject to the same restrictions on further transfer as are contained in this Article VI; (including exceptions from such restrictions pursuant to this Section 6.4), and provided, further, that for a period of five (5) years from the date of this Agreement following each such transfer, Johnny Carrabba and Damian Mandola, if both are then alive, shall have the exclusive right to vote a number of shares of stock of MBI and any Permitted Successor sufficient to elect their entire Board of Directors and to exclusively determine all matters submitted to shareholder vote; and

(c) Shares of stock of, or other equity interest in, MBI or any Permitted Successor or any interest therein may be transferred to any person if, and only if (i) the transfer is a bona fide gift by the transferor for which no monetary or property consideration or other thing of value whatsoever is received, or a testamentary transfer or transfer by intestate succession or other transfer upon the transferor's death, and (ii) the donee is not in any manner, directly or indirectly, through ownership in other entities or otherwise, engaged in the operation or ownership of restaurants; provided, however, that if the donee is a family member of Johnny Carrabba, Damian Mandola or John Carrabba, Jr. such donee may be involved in the ownership or operation of not more than five (5) restaurants; provided, however, in the case of bona fide, recognized charitable organizations, ownership of stock in publicly traded corporations shall be allowed and in the case of all other donees, ownership of less than one percent (1%) of the outstanding shares of any class of securities of a publicly traded corporation shall be allowed (the foregoing also collectively referred to as "Permitted Transferees"). The parties further agree that any donee permitted to own or operate not more than five restaurants hereunder shall continue to be permitted to do so, notwithstanding any term or provision to the contrary in any other agreement between or among any of the Outback Entities and any of the Carrabba entities.

6.5 Transfer Permitted After Failure to Elect. In the event CIGI does not elect pursuant to Section 6.3 to exercise the purchase option specified therein, or in the event the closing for any purchase pursuant to Section 6.3 does not occur within the time limits specified therein, then the Transferor shall be free to transfer the exact portion of its Royalty Interest (or capital stock of MBI, as the case may be) as was specified in the Notice of Transfer to the

person or entity identified in the Notice of Transfer in exchange for the exact Purchase Price as was specified in the Notice of Transfer; provided, however, that the closing and consummation of such transfer shall occur on or before the earlier of (i) sixty (60) days from the date of the Notice of Transfer if no Notice of Election was given; or (ii) one hundred twenty (120) days from the date of the Notice of Election; and provided further that such transfer must comply with all other requirements of this Article VI. In the event such transfer is not so closed and consummated within such period, the purchase option granted to CIGI in Section 6.3 shall again be exercisable and the Transferor shall make no Transfer of any portion of its Royalty Interest (or capital stock in MBI), or any right, title or interest therein, until he has again complied with all terms and provisions of this Article. In the event CIGI does not elect pursuant to Section 6.3 to exercise the purchase option contained therein and the Transferor makes a permitted Transfer in compliance with the terms and provisions of this Article, then the person or entity to whom such Royalty Interest (or capital stock of MBI) is transferred shall nevertheless acquire such Royalty Interest (or capital stock) subject to the restrictions imposed on such Royalty Interest (or capital stock) under this Article VI as to further transfers of such Royalty Interest (or capital stock), and provided further that as a condition to such transfer any such transferee shall agree in writing to be bound by all terms and provisions of this Agreement.

6.6 Purchase Option on Bankruptcy of John C. Carrabba, III Damian C. Mandola and John C. Carrabba, Jr.

(a) For purposes of this Agreement, the term "Bankrupt" or "Bankruptcy" means, with respect to any person, a situation in which (i) such person shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable Federal, state or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such person or of all or any substantial part of its properties or its rights under this Agreement (the term "acquiesce", as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within twenty (20) days after entry of such order, judgment or decree); (ii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such person seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Act, or any other present or future applicable Federal, state or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, and such person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such person or of all or any substantial part of its property or its rights under this Agreement shall be appointed without the consent or acquiescence of such person and such appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); (iii) such person shall admit in writing its inability to pay its debts as they mature; (iv) such person shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; or (v) such person shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

(b) Options.

(i) Upon the Bankruptcy of John C. Carrabba, III ("Johnny Carrabba"), Damian C. Mandola ("Damian Mandola"), or John C. Carrabba, Jr. ("John Carrabba, Jr.") CIGI shall have an option to purchase all of the shares of capital stock of MBI (and any Successor) the bankrupt at his Bankruptcy (the "Bankrupt"), and if such option is exercised, the Bankrupt's estate (or legal representative, as the case may be), shall be obligated to sell to CIGI all of the shares of capital stock of MBI (and any Successor) owned by the Bankrupt (the "Shares").

(ii) In the event the Bankruptcy of both Johnny Carrabba and Damian Mandola occurs within one hundred twenty (120) days of each other, CIGI shall have an option to purchase the entire Royalty Interest owned by MBI, and if such option is exercised, the Bankrupts' estate (or legal representative, as the case may be), shall be obligated to cause MBI to sell to CIGI all of the Royalty Interest owned by MBI.

(c) Limitation. Notwithstanding any contrary provision of this Section 6.6, the purchase options granted to CIGI pursuant to this Section 6.6 shall not apply if, and to the extent, upon the death or Bankruptcy of Johnny Carrabba, Damian Mandola or John Carrabba, Jr., such Bankrupt person's Shares are devised or transferred to one or more persons, all of whom are Permitted Transferees as defined in Sections 6.4(b) and 6.4(c). If either of Johnny Carrabba or Damian Mandola shall become Bankrupt, then within the 120-day period described in Section 6.6(d), the one of Johnny Carrabba or Damian Mandola who is not bankrupt (or if such person is deceased the largest single transferee of his interest) shall have the right to purchase the shares of MBI owned by the Bankrupt and upon such purchase, CIGI shall not have any option to purchase such shares from the Bankrupt or his estate.

(d) Exercise. The purchase options granted in this Section 6.6 are exercisable at any time within one hundred twenty (120) days from the date of qualification of the executor, administrator, trustee, personal representative or other legal representative ("Representative") of the Bankrupt's estate (the "Exercise Period"), and if not exercised within such time period shall lapse. CIGI shall exercise the options by written notice to the Representative of its election to exercise.

(e) Purchase Price. The purchase price to be paid for the Bankrupt's Shares or MBI's Royalty Interest, as the case may be, shall be the Value thereof, determined as provided in Section 6.7 hereof. The purchase price to be paid by CIGI for the Royalty Interest or Shares purchased pursuant to this Section 6.6 shall be paid in cash or immediately available funds at Closing.

(f) Documentation. At the Closing of any purchase pursuant to this Section 6.6, the Representative or MBI, as the case may be, shall execute and deliver to CIGI such documents, affidavits and instruments of conveyance and warranty as are reasonably necessary, in the opinion of counsel for CIGI, to transfer, convey and validly vest in CIGI good, marketable and absolute title to the Royalty Interest or Shares being purchased, free and clear of any lien, claim, pledge, security interest, or other encumbrance of any kind or character whatsoever.

(g) Closing. The Closing for any purchase pursuant to this Section 6.6 shall be held at the principal office of CIGI at a date and time mutually acceptable to CIGI and the Representative, provided that if they are unable to agree on a mutually acceptable date, the Closing shall be held sixty (60) days following final determination of Value pursuant to Section 6.7.

6.7 Value. For purposes of this Article VI only, the term "Value" shall mean the fair market value (i.e., the value at which a willing purchaser and a willing seller would, under normal circumstances, purchase and sell, both cognizant of all relevant factors, and neither being under a compulsion to buy or sell) of the Property in question, as of the date of the notice exercising any right to purchase or sell under this Agreement, determined in the following manner:

(a) Agreement. In the event a determination of Value is required, such determination shall be made by agreement in writing of MBI or the Representative of a Bankrupt, as the case may be, (the "Seller"), on the one hand, and by CIGI (the "Purchaser"), on the other hand.

(b) Procedure. If the persons specified in paragraph (a) of this Section 6.7 fail to agree in writing upon the Value of the property in question within thirty (30) days of the date of any notice given exercising any right to purchase (the "Agreement Period"), then the Value of such property shall be determined as follows, which determination shall be final, binding, and conclusive upon all persons affected by such determination:

(i) The Seller and the Purchaser shall agree upon a mutually acceptable appraiser within ten (10) days following the end of the Agreement Period, or, in the event such persons fail to so agree, two (2) appraisers shall be appointed within fifteen (15) days following the end of the Agreement Period, one by the Seller, and a second by the Purchaser. If the Seller, on the one hand, or the Purchaser, on the other hand, fail to appoint an appraiser within the fifteen (15) day time period specified herein, the sole appraiser appointed within such fifteen (15) day time period shall be the sole appraiser of the Value of the property in question. Each of the Seller and the Purchaser shall promptly provide notice of the name of the appraiser so appointed by such parties, respectively, to the other. A third appraiser, if the initial two appraisers are appointed, shall be appointed by the mutual agreement of the first two appraisers so appointed, or, if such first two appraisers fail to agree upon a third appraiser within twenty (20) days following the end of the Agreement Period, either the Seller or the Purchaser may

demand that appointment of an appraiser be made by the then Director of the Regional Office of the American Arbitration Association located nearest to Tampa, Florida, in which event the appraiser appointed thereby shall be the third appraiser. Each of the three appraisers shall submit to each of the Seller and the Purchaser, within thirty (30) days after all appraisers have been appointed (the "Appraisal Period"), a written appraisal of the Value of the property in question.

(ii) In connection with any appraisal conducted pursuant to this Agreement, the parties hereto agree that any appraiser appointed hereunder shall be given full access during normal business hours to all books, records and files of the parties relevant to a valuation of the property in question.

(iii) If three appraisers are appointed, the Value of the property in question shall be equal to the numerical average of the three appraised determinations; provided, however, that if the difference between any two appraisals is not more than ten percent (10%) of the lower of the two, and the third appraisal differs by more than ten percent (10%) of the lower of the other two appraisals, the numerical average of such two appraisals shall be determinative.

(c) Qualifications. Any appraiser, to be qualified to conduct an appraisal hereunder, shall be an independent appraiser (i.e., not affiliated with the Seller or the Purchaser), who shall be reasonably competent as an expert to appraise the value of the property in question. If any appraiser initially appointed under this Agreement shall, for any reason, be unable to serve, a successor appraiser shall be promptly appointed in accordance with the procedures pursuant to which the predecessor appraiser was appointed.

(d) Time. Notwithstanding the foregoing, if the determination of the Value of the property in question by appraisal is not completed and all appraisal reports delivered as provided for herein within the Appraisal Period, then all closing, payment, and similar dates subsequent thereto shall be automatically extended one (1) day for each day delivery of the appraisal reports is delayed beyond the end of the Appraisal Period.

(e) Costs. The costs of the appraiser appointed by the Seller shall be borne by the Seller. The costs of the appraiser appointed by the Purchaser shall be borne by the Purchaser. The costs of the third appraiser, if any, or the sole appraiser, in the event the Seller and Purchaser mutually agree upon a single appraiser, shall be borne equally by the Seller and the Purchaser.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties. The Carrabba Entities represent and warrant to CIGI as follows:

(a) Organization and Standing. MBI is a corporation duly organized and validly existing under the laws of the state of Texas with its principal place of business at the address previously set forth in this Agreement and has the power and authority to carry on its businesses as presently conducted.

(b) Power and Authority. MBI has all necessary power and authority, corporate and otherwise, to (i) conduct its businesses as presently conducted, (ii) execute and deliver this Agreement and all other agreements required to be executed and delivered pursuant to this Agreement, and (iii) consummate the transactions provided for herein and therein.

(c) Due Authorization. The execution and delivery of this Agreement and the consummation of the transactions contemplated herein have been duly authorized by all necessary corporate action on the part of MBI, and this Agreement constitutes the valid and legally binding agreement of MBI enforceable in accordance with the terms hereof.

(d) Conflicts; Defaults. Neither the execution and delivery of this Agreement by MBI, nor the performance of its obligations hereunder, will violate, conflict with or constitute a default under, or result in the acceleration of any obligation under the Articles of Incorporation or Bylaws of MBI, nor any indenture, mortgage, agreement, contract, lien, instrument, permit, deed, lease, order, judgment, decree or other restriction or agreement to which MBI's assets are bound, and will not constitute an event which, after notice or lapse of time or both, will result in such violation, conflict, default or acceleration. The execution and delivery of this Agreement by MBI, and the performance by it of the transactions contemplated hereby, will not, except as specifically authorized herein, result in the creation or imposition of any liens or other rights, whether legal or equitable, in any third person or entity upon or against any of MBI's assets or against MBI, and will not violate any law, judgment, decree, order, rule or regulation (collectively "Law") of any governmental authority applicable to MBI or its assets.

(e) Legal Proceedings. Except for personal injury claims resulting from the operation of the Restaurants in the ordinary course of business, there is no litigation, action, suit, investigation, claim or proceeding (collectively "Litigation") pending or, to their best knowledge, threatened against MBI or affecting MBI's assets or the System. To the best knowledge of MBI, no condition, event, fact or circumstance exists which could give rise to such Litigation.

(f) Consents. With respect to the transaction contemplated by this Agreement, no consent, waiver, approval or authorization of or declaration or filing with, any governmental agency or authority or other public persons or entities is required in connection with execution or delivery by MBI of this Agreement or the consummation by MBI of the transactions contemplated hereby, the failure of which to be obtained would have a material adverse effect on the ability of MBI to consummate the transactions contemplated hereby.

(g) Ownership of MBI. Johnny Carrabba and Damian Mandola are the sole shareholders and sole directors of MBI. Johnny Carrabba and Damian Mandola each own

500 shares of Class A voting common stock in each of CI and CWI. The only other shareholder of the Carrabba Entities is John Carrabba, Jr., who owns One Hundred Eleven (111) shares of Class B Non-Voting common stock in each of CI and CWI.

(h) Ownership of the System. As of the date hereof, MBI is the sole owner of the System and all elements, characteristics and property thereof, and all goodwill associated therewith. Except for rights specifically granted pursuant to this Agreement, the CI License Agreement, the CWI License Agreements, the Florida License Agreement and the Joint Venture License Agreement, none of the Carrabba Entities or the Principals have any right, title, interest or claim in or to the System or any element, characteristic or property thereof, nor any goodwill associated therewith. Upon execution and delivery hereof, CIGI shall be the sole owner of the System and Proprietary Marks and all elements, characteristics and properties thereof, and all goodwill associated therewith, and no other person or entity shall have any right or claim thereto except pursuant to and as provided in the CI License Agreement, the CWI License Agreement, the Florida License Agreement and the Joint Venture License Agreements.

(i) Miscellaneous. No representation or warranty by the Carrabba Entities under this Agreement and no statement made by the Carrabba Entities in any closing document delivered pursuant to this Agreement contains or will contain any untrue statement of a material adverse fact or omits or will omit to state a material adverse fact necessary to make any such representation or warranty or statement not misleading.

7.2 Representations and Warranties. Each Outback Entity represents and warrants to the Carrabba Entities and the Principals as follows:

(a) Organization and Standing. CIGI is a corporation duly organized and existing in good standing under the laws of the State of Florida; Outback is a corporation duly organized and existing in good standing under the laws of the State of Delaware; and each has all necessary power to own its property and to carry on its business as presently conducted.

(b) Power and Authority. CIGI and Outback have all necessary power and authority, corporate and otherwise, to (i) conduct their businesses as presently conducted, (ii) execute and deliver this Agreement and all other agreements required to be executed and delivered pursuant to this Agreement, and (iii) consummate the transactions provided for herein and therein.

(c) Due Authorization. The execution and delivery of this Agreement, and the consummation of the transactions provided for herein, have been duly authorized by all necessary corporate action on the part of the Outback Entities and Outback. This Agreement constitutes the legally binding agreement of the Outback Entities and Outback, enforceable in accordance with its terms.

(d) Conflicts; Defaults. Neither the execution and delivery of this Agreement nor the consummation of any transaction herein contemplated is an event which of

itself, or with the giving of notice or the passage of time, or both, would constitute a violation of, conflict with or result in a breach of, or constitute a default under the Articles of Incorporation or Bylaws of the Outback Entities or any of the terms, conditions or provisions of any indenture, mortgage, lien, lease, agreement, contract, instrument, order, judgment, decree, or other restriction or agreement or instrument to which the Outback Entities or any subsidiary or affiliate of the Outback Entities is now a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any kind upon the property or assets of the Outback Entities or any subsidiary or affiliate of the Outback Entities pursuant to the terms of any such agreement or instrument.

(e) Consents. With respect to the transactions contemplated by this Agreement, no consent, waiver, approval, license or authorization of, or declaration or filing with, any governmental agency or authority or other public persons or entities is required in connection with execution or delivery by the Outback Entities of this Agreement or the consummation by the Outback Entities of the transactions contemplated hereby, the failure of which to be obtained would have a material adverse effect on the ability of the Outback Entities to consummate the transactions contemplated hereby.

(f) Miscellaneous. No representation or warranty by the Outback Entities under this Agreement and no statement made by the Outback Entities in any closing document delivered pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make any such representation or warranty or statement not misleading.

ARTICLE VIII
SURVIVAL, INDEMNIFICATION AND REMEDIES

8.1 Survival of Representations and Warranties. All representations, warranties and covenants made or given by the parties in this Agreement shall survive the consummation of all transactions contemplated herein, and shall continue in force throughout the term of this Agreement.

8.2 Indemnification by the Carrabba Entities. Each of the Carrabba Entities shall be obligated, jointly and severally, to indemnify the Outback Entities against, hold the Outback Entities harmless from, and reimburse the Outback Entities for, any and all claims, loss, damages, costs and expenses, including, without limitation, reasonable attorneys' fees, court costs (whether at trial or appeal, in arbitration, or otherwise) and the costs and expenses of investigation (collectively, "Liability" or "Liabilities," as appropriate), incurred by the Outback Entities and which arise out of or in connection with: (i) any breach by any of the Carrabba Entities of any representation or warranty made by the Carrabba Entities and contained in this Agreement.; or (ii) any failure by the Carrabba Entities to perform any covenant or agreement of the Carrabba Entities contained in this Agreement.

8.3 Indemnification by the Outback Entities. The Outback Entities shall indemnify the Carrabba Entities against, hold the Carrabba Entities harmless from, and reimburse the Carrabba Entities for, any and all Liabilities, as defined in Section 8.2 hereof, incurred by the Carrabba Entities and which arise out of or in connection with: (i) any breach by the Outback Entities of any representation or warranty of the Outback Entities contained in this Agreement; or (ii) any failure by the Outback Entities to perform any covenant or agreement of the Outback Entities contained in this Agreement.

8.4 Indemnification Procedures. In case any claim or proceeding (including, without limitation, any claim, investigation or proceeding by any governmental authority) shall be instituted affecting any indemnified person in respect of which indemnity will be sought pursuant to Section 8.2 or Section 8.3 hereof, such indemnified person shall promptly (considering the circumstances) notify the indemnifying person in writing, and the indemnifying person, within thirty (30) days following such notification from the indemnified person, shall retain counsel reasonably satisfactory to the indemnified person (which satisfaction shall not be unreasonably delayed, withheld or conditioned) to represent the indemnified person and any others the indemnifying person may designate in such proceeding, and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified person shall have the right to retain its own counsel, but the fees and disbursements of such counsel shall be at the expense of such indemnified person unless: (i) the indemnifying person shall have failed to retain counsel for the indemnified person as required herein; or, (ii) counsel retained by the indemnifying person for the indemnified person would be inappropriate due to actual or potential differing interests between such indemnified person and any other person represented by such counsel in such proceeding. It is understood that the indemnifying person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and disbursements of more than one separate firm qualified in such jurisdiction to act as counsel for the indemnified person. The indemnifying person shall not be liable for any settlement of any proceeding effected without its written consent, but, if settled with such consent, or upon a final judgment for the plaintiff, the indemnifying person shall, to the extent required pursuant to the terms of this Article VII, indemnify the indemnified person from and against any and all Liabilities by reason of such settlement or judgment. The indemnified person shall also have the right to consent in writing in advance of any such settlement, but such consent shall not be unreasonably withheld. If any third-party claim is made for which indemnification is asserted hereunder (a "Third-Party Claim"), or in the event any claim for indemnification is made directly by one party against the other (a "Direct Claim"), in the event such Third-Party Claim or Direct Claim is unsuccessful, the party against whom such claim for indemnification is made shall be entitled to recover from the party claiming a right to indemnification all Liabilities incurred by the party against whom such claim for indemnification is made in the defense of such Third-Party Claim or Direct Claim for indemnification. No pre-proceeding settlement of any item which will give rise to a claim for indemnification hereunder shall be effected in the absence of the prior written consent of the indemnifying person, which consent shall not be unreasonably withheld.

8.5 Remedies.

(a) The parties agree that the remedies available for any breach, default or invalidity or unenforceability of any representation, warranty, covenant or agreement contained in this Agreement shall be limited to one or more of: (i) monetary damages, (ii) declaratory relief, (iii) specific performance or (iv) other injunctive relief. Except in the case of actions seeking a declaration that this Agreement is terminated in accordance with the terms of Section 9.1, in no event shall the Outback Entities be entitled to a remedy which allows an Outback Entity to retain ownership of the System but terminates the obligation to pay royalties as provided in Article III (however, an offset of damages against royalties due or to become due shall be allowed). In no event shall the Carrabba Entities be entitled to a remedy which divests CIGI of ownership of the System or any element thereof, or which imposes any significant limitation on CIGI's absolute ownership rights to the System, or which grants any Carrabba Entity or any third party any rights to use the System or elements thereof except pursuant to existing Licensing Agreements, except for MBI's reversion rights under this Section 8.5.

(b) The parties acknowledge and agree that MBI's transfer and conveyance of the System to CIGI pursuant to Article II hereof constitutes the sole consideration for CIGI's (and its successors and assigns) obligations to pay royalties pursuant to Article III hereof. In accordance with the foregoing, from and after the date of this Agreement, CIGI's obligations to pay royalties pursuant to Article III hereof shall in no respect be conditioned upon the performance by MBI of any further act; and all obligations and covenants of MBI and the Carrabba's Entities hereunder constitute covenants and agreements that are independent of CIGI's obligations to pay royalties pursuant to Article III hereof (subject to CIGI's right of offset referred to in (c) below).

(c) In furtherance of the foregoing, in the event that notwithstanding the express intention and agreement of the parties as set forth herein, CIGI or any trustee for CIGI in bankruptcy or other representative, successor or assign of CIGI should ever obtain any court order, judgment, or ruling in any bankruptcy, receivership or other insolvency proceeding of which CIGI is the subject, or any other proceeding, permanently terminating CIGI's obligation to pay royalties when and as due pursuant to Article III hereof (but not including any temporary abatement during violation of non-competition covenants or as offset against damages), including as a result of a rejection of this Royalty Agreement as an executory contract or a discharge of such obligations or otherwise, the System, and all ownership rights therein shall immediately revert to and become the property of MBI and CIGI or such other party shall immediately take all steps necessary to effect such retransfer and reconveyance.

(d) If Licensor shall be delinquent in the payment of any amount (excluding bona fide amounts in controversy) (and not including any temporary abatement by reason of offset during violation of non-competition covenants or as offset against other damages) payable under Article III hereof for more than six months and either (i) Licensor or any of its Affiliates has granted to any party any interest in any revenues or assets of CIGI, any other Outback Entity or any Restaurant that is by its terms prior in right to payment to, or

otherwise prevents MBI's realization of, MBI's rights to receive royalties under Article III as due under this Agreement (excluding a mortgage, security interest or other encumbrance with respect to debt-financed assets (other than the System and elements thereof) which is granted to the lender who provided the funds to acquire such assets) or (ii) Licensor fails to commence and thereafter diligently pursue the termination of all license, franchise or other rights to use the System of any party that is three months or more delinquent in payment of royalties due from it (other than immaterial delinquencies resulting from miscalculations or oversights made in good faith), then in either such event the System and all ownership rights therein shall immediately revert to and become the property of MBI, and CIGI or such other party shall immediately take all steps necessary to effect such retransfer and reconveyance.

(e) CIGI will cooperate with MBI and take such actions as MBI shall reasonably request to grant and perfect a security interest to MBI to secure its reversionary interest in the System as specified in this Section 8.5.

8.6 Failure to Develop System. If (i) CIGI or any of its Affiliates publicly states that it no longer intends to increase the number of Restaurants or (ii) during any twelve consecutive calendar months, no new Restaurants become subject to the payment of royalties hereunder (except that if a Restaurant was reasonably scheduled to open during such twelve- month period but the opening of the Restaurant was delayed by circumstances beyond CIGI's control, then such Restaurant shall be treated as having been subject to the payment of royalties as of the date it was reasonably scheduled to open, provided that the Restaurant must actually become subject to the payment of royalties within one hundred eighty (180) days of the date it was reasonably scheduled to open), then (x) MBI (or any entity controlled by MBI, Johnny Carrabba or Damian Mandola) shall be permitted to own and operate Restaurants utilizing the System, (y) CIGI shall grant to the entity owning such Restaurants a no-fee license in substantially the same form as the Amended and Restated Licensing Agreement between CIGI and Carrabba's Inc. executed the date hereof which will enable the entity to utilize the System and (z) the first proviso of Section 5.2 of this Agreement shall not be applicable. Further, any restriction in any other agreement among all or some of the parties hereto which would restrict the ability of MBI, Johnny Carrabba or Damian Mandola to utilize this Section 8.6 shall be inapplicable to any of the activities permitted under this Section 8.6.

ARTICLE IX
TERMINATION; CONVERSION

9.1 Term. The term of this Agreement shall commence upon execution of this Agreement and shall continue in full force and effect until termination. This Agreement shall terminate upon the first to occur of: (i) agreement of CIGI and MBI (or their respective successor in interest) to terminate this Agreement or (ii) conversion of MBI's royalty rights pursuant to Section 9.2. Upon termination of this Agreement as a result of conversion of MBI's royalty rights pursuant to Section 9.2, Outback shall retain all ownership rights to the System, and all other obligations of the parties under this Agreement shall terminate (including all obligations to pay royalties) except for obligations which by their express terms continue in force beyond expiration or termination of this Agreement.

9.2 Conversion. In the event CIGI, or any successor to CIGI as owner of the System, determines to make an initial public offering of any class of its capital stock pursuant to a registration statement filed under the Securities Act of 1933, as amended (or any successor law), CIGI (or its successor) shall give prompt written notice thereof to MBI and shall provide MBI with such information as is then available to CIGI regarding the terms of the proposed offering. The Carrabba Entities agree to keep all such information confidential. CIGI shall promptly arrange a meeting among CIGI, MBI and the managing underwriter of the proposed offering.

At such meeting, CIGI, MBI and the managing underwriter shall attempt in good faith to establish the value of MBI's royalty rights immediately prior to the proposed offering. For a period of five business days following such meeting, MBI shall have the right (but not the obligation), exercisable by written notice which must be received by CIGI prior to 5:00 p.m. eastern time on the fifth business day, to convert its royalty rights under this Agreement into newly issued capital stock of CIGI (or its successor) of the same class as is to be sold in the proposed initial offering. MBI shall receive a number of shares of capital stock which have a value (based on the proposed initial offering price to the public) equal to the value of MBI's royalty rights as agreed upon by the parties, subject to no commission or other deduction.

This conversion option is a one-time only option available only in connection with CIGI's (or its successor's) initial public offering of any class of capital stock. If not timely exercised as provided in the preceding paragraph this conversion option shall forever lapse.

ARTICLE X
MISCELLANEOUS

10.1 Severability. Each section, subsection and lesser section of this Agreement constitutes a separate and distinct undertaking, covenant or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

10.2 Consents. Whenever any party's consent is required under this Agreement, such consent (unless otherwise specifically provided herein) shall not be unreasonably withheld, delayed or conditioned.

10.3 Good Faith. The parties hereto covenant to deal with each other fairly and in good faith.

10.4 Notices. Any notice, request, instruction or other document to be given hereunder by any party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, to:

To MBI, CI, Johnny Carrabba or John Carrabba, Jr.:	MANGIA BEVE, INC. 3125 Kirby Drive Houston, Texas 77098 Attention: John C. Carrabba, III
To CWI:	CARRABBA'S WOODWAY, INC. 1399 South Voss Houston, Texas 77057 Attention: John C. Carrabba, III
To Damian Mandola:	DAMIAN C. MANDOLA 2155 Addison Road Houston, Texas 77030
In each case with a copy to:	MAYOR, DAY, CALDWELL & KEETON, L.L.P. 700 Louisiana, Suite 1900 Houston, Texas 77002 Attn: Roy Bertolatus, Esq.
To CIGI or Outback:	CARRABBA'S ITALIAN GRILL, INC. 550 North Reo Street, Suite 204 Tampa, Florida 33609 Attention: General Counsel

10.5 Expenses. All expenses of the preparation of this Agreement and of the transactions provided for herein, including, without limitation, counsel fees, accounting fees, sales taxes, recording fees, investment advisors' fees and disbursements, shall be borne by the respective parties incurring such expense, whether or not such transactions are consummated.

10.6 Entire Agreement. **A CONTRACT IN WHICH THE AMOUNT INVOLVED EXCEEDS FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00) IN VALUE IS NOT ENFORCEABLE UNLESS THE AGREEMENT IS IN WRITING AND SIGNED BY THE PARTY TO BE BOUND OR BY THAT PARTY'S AUTHORIZED REPRESENTATIVE. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE DETERMINED SOLELY FROM WRITTEN AGREEMENTS, DOCUMENTS AND INSTRUMENTS, AND ANY PRIOR ORAL AGREEMENTS BETWEEN THE PARTIES ARE SUPERSEDED BY AND MERGED INTO SUCH WRITINGS. THIS AGREEMENT (AS AMENDED IN WRITING FROM TIME TO TIME), REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR**

SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS PARAGRAPH IS INCLUDED HEREIN PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, AS AMENDED FROM TIME TO TIME.

10.7 Language Construction. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10.8 Modification; Waiver. This Agreement shall not be modified except by an instrument in writing duly signed on behalf of the party against whom enforcement of such modification is sought. No waiver of any provision of this Agreement shall be effective unless in writing and similarly signed, nor shall any failure of any party to enforce any right or remedy hereunder be deemed a waiver of such right or remedy for the future in the same or any situation.

10.9 Captions. Captions have been inserted in this Agreement for reference only and shall not limit or otherwise affect any of its terms and provisions.

10.10 Enforcement. In the event it becomes necessary for any party to institute legal proceedings or to retain the services of an attorney to enforce, interpret or construe any provision hereof, the prevailing party shall be entitled to collect from the non-prevailing party, in addition to other remedies, all costs of such enforcement or legal proceedings, including reasonable attorneys' fees and including appellate proceedings, regardless of whether suit is filed.

10.11 Counterparts. This Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.12 Governing Law. This Agreement and its performance shall be governed and construed in accordance with the laws of the State of Florida, without giving effect to the principles or comity or conflicts of law thereof.

10.13 Jurisdiction and Venue. The parties agree that jurisdiction and venue for any legal proceedings instituted in connection with this Agreement shall lie in the state and federal courts having jurisdiction over Hillsborough County, Florida, and each waives the claim or defense that such courts constitute an inconvenient forum; provided, that such jurisdiction and venue shall not be exclusive.

10.14 Joint and Several Obligation of Outback. By its execution of this Agreement, Outback hereby agrees to be jointly and severally liable with CIGI for the full and timely performance by CIGI of each and every obligation and liability of CIGI hereunder, and CIGI may enforce such obligation against Outback without the necessity of pursuing any action or remedy against CIGI.

10.15 Parties Bound. This Agreement shall be binding upon and inure to the benefit of, the parties hereto and their respective successors, permitted assigns, heirs, personal representatives and administrators.

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

"CIGI"

Attest:

CARRABBA'S ITALIAN GRILL, INC., a Florida corporation

By: /s/ Joseph J. Kadow
Joseph J. Kadow

By: /s/ Robert D. Basham
Robert D. Basham

Title: Secretary

Title: President

"OUTBACK"

Attest:

OUTBACK STEAKHOUSE, INC., a Delaware corporation

By: /s/ Joseph J. Kadow
Joseph J. Kadow

By: /s/ Robert D. Basham
Robert D. Basham

Title: Secretary

Title: President

"MBI"

Attest:

MANGIA BEVE, INC., a Texas corporation

By: /s/ Damian C. Mandola

By: /s/ John C. Carrabba, III
John C. Carrabba, III

Title: Secretary

Title: President

"CI"

Attest:

CARRABBA, INC., a Texas corporation

By: /s/ Damian C. Mandola

By: /s/ John C. Carrabba, III
John C. Carrabba, III

Title: Secretary

Title: President

"CWI"

Attest:

CARRABBA'S WOODWAY, INC., a Texas corporation

By: /s/ Damian C. Mandola

By: /s/ John C. Carrabba, III
John C. Carrabba, III

Title: Secretary

Title: President

“Johnny Carrabba”

/s/ John C. Carrabba, III

JOHN C. CARRABBA, III

“Damian Mandola”

/s/ Damian C. Mandola

DAMIAN C. MANDOLA

“John Carrabba, Jr.”

/s/ John C. Carrabba, Jr.

JOHN C. CARRABBA, JR.

FIRST AMENDMENT TO ROYALTY AGREEMENT

THIS FIRST AMENDMENT TO ROYALTY AGREEMENT ("Agreement") is made and entered into this 1st day of January, 1997, by and among CARRABBA'S ITALIAN GRILL, INC., a Florida corporation having its principal office located at 405 North Reo Street, Suite 210, Tampa, Florida 33609 (hereinafter "CIGI"), OUTBACK STEAKHOUSE, INC., a Delaware corporation having its principal office located at 550 North Reo Street, Suite 200, Tampa, Florida 33609 (hereinafter "Outback"), MANGIA BEVE, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 (hereinafter "MBI"), MANGIA BEVE II, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 (hereinafter "MBI2"), CARRABBA, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 ("CI"), CARRABBA WOODWAY, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 ("CWI"), JOHN C. CARRABBA, III, an individual residing in the state of Texas ("Johnny Carrabba"), DAMIAN C. MANDOLA, an individual residing in the state of Texas ("Damian Mandola") and JOHN C. CARRABBA, JR., an individual residing in the state of Texas ("John C. Carrabba, Jr.").

W I T N E S S E T H:

WHEREAS, the parties entered into the Royalty Agreement; and

WHEREAS, simultaneously therewith Carrabba's Italian Grill, Inc. (successor by merger to Outback/Carrabba, Inc.) and Mangia Beve, Inc. entered into that certain amended and restated joint venture agreement of Outback/Carrabba Joint Venture; and

WHEREAS, simultaneously with the Royalty Agreement Carrabba's Italian Grill, Inc. (successor by merger to Outback/Carrabba, Inc.) and Mangia Beve II, Inc. entered into that certain joint venture known as Carrabba/Texas Joint Venture; and

WHEREAS, the parties desire to amend the Royalty Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other great and valuable considerations the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of stock options. The parties acknowledge that Carrabba/Outback Joint Venture and Carrabba/Texas Joint Venture have been formed for the purpose of operating Carrabba's Italian Grill restaurants in the State of Texas as a licensee of Carrabba's Italian Grill, Inc. (as successor to Mangia Beve, Inc.) The parties further acknowledge that Carrabba's Italian Grill, Inc. is a subsidiary of Outback Steakhouse, Inc., a Delaware corporation ("OSI"). The parties acknowledge and agree that as part of its standard compensation package for general managers of restaurants OSI shall grant certain stock options to each proprietor of Carrabba's Italian Grill restaurants (now open and hereafter opened) operated by Carrabba/Outback Joint Venture and Carrabba/Texas Joint Venture, and their respective successors Carrabba/Outback, Limited Partnership and Carrabba/Texas, Limited Partnership.

2. Reduction of Royalty. The parties agree that the royalties payable by CIGI to MBI pursuant to Article III of the Royalty Agreement shall be reduced each month during the term of the Royalty Agreement as follows:

(a). The royalties payable for any calendar month under Article III of the Royalty Agreement shall be reduced by an amount equal to (x) one-half of the excess of (i) the closing price of the OSI common stock (as reported on the NASDAQ national market system on the day of exercise) for which options to purchase have been exercised by restaurant proprietors, minus (ii) the purchase price per share to be paid by the restaurant proprietors pursuant to the exercise of such stock options, multiplied by (y) 1 minus the effective federal income tax rate of OSI for the tax year in which such stock options are exercised.

(b). For purposes of calculating the monthly royalty reduction provided for in (a) above, the parties shall use an estimated effective tax rate as determined by OSI's Chief Financial Officer. Within thirty (30) days of final determination of OSI's effective federal income tax rate for such tax year the parties shall reconcile the royalty reduction for such tax year. In the event of under or over reduction the appropriate party shall pay the difference to the other party within ten (10) days of such reconciliation.

3. Acknowledgment. The Carrabba Entities (as that term as defined in the Royalty Agreement), acknowledge and agree that the grant of stock options by OSI to the proprietors of partnership restaurants results in a direct benefit to the joint ventures and the Carrabba Entities. The parties further acknowledge the purpose of this royalty reduction is to compensate CIGI and its affiliates for the benefit received by the Carrabba Entities.

4. Ratification. The parties hereby ratify and confirm the Royalty Agreement and same shall remain in full force and effect except as specifically modified hereby.

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

"CIGI"

Attest:

CARRABBA'S ITALIAN GRILL, INC., a Florida corporation

By: /s/ Joseph J. Kadow
Joseph J. Kadow

By: /s/ Robert D. Basham
Robert D. Basham

Title: Secretary

Title: President

"OUTBACK"

Attest:

OUTBACK STEAKHOUSE, INC., a Delaware corporation

By: /s/ Joseph J. Kadow
Joseph J. Kadow

By: /s/ Robert D. Basham
Robert D. Basham

Title: Secretary

Title: President

"MBI"

Attest:

MANGIA BEVE, INC., a Texas corporation

By: /s/ Deana L. Davis
/s/ Gregorio O. Bedruz

By: /s/ John C. Carrabba, III
John C. Carrabba, III

Title: Secretary

Title: President

"MBI2"

Attest:

MANGIA BEVE II, INC., a Texas corporation

By: /s/ Damian C. Mandola
Damian C. Mandola

By: /s/ John C. Carrabba, III
John C. Carrabba, III

Title: Secretary

Title: President

"CI"

Attest:

CARRABBA, INC., a Texas corporation

By: /s/ Damian C. Mandola
Damian C. Mandola

By: /s/ John C. Carrabba, III
John C. Carrabba, III

Title: Secretary

Title: President

"CWI"

Attest:

CARRABBA'S WOODWAY, INC., a Texas corporation

By: /s/ Damian C. Mandola
Damian C. Mandola

By: /s/ John C. Carrabba, III
John C. Carrabba, III

Title: Secretary

Title: President

"Johnny Carrabba"

/s/ Deana L. Davis
Witness

/s/ John C. Carrabba, III
JOHN C. CARRABBA, III

/s/ Gregorio O. Bedruz
Witness

"Damian Mandola"

/s/ Deana L. Davis
Witness
/s/ Gregorio O. Bedruz
Witness

/s/ Damian C. Mandola
DAMIAN C. MANDOLA

"John Carrabba, Jr."

/s/ Deana L. Davis
Witness
/s/ Gregorio O. Bedruz
Witness

/s/ John C. Carrabba, Jr.
JOHN C. CARRABBA, JR.

SECOND AMENDMENT TO ROYALTY AGREEMENT

THIS SECOND AMENDMENT TO ROYALTY AGREEMENT ("Agreement") is made and entered into effective April 7, 2010, by and among CARRABBA'S ITALIAN GRILL, LLC, (formerly Carrabba's Italian Grill, Inc.) a Florida limited liability company having its principal office located at 2202 N. West shore Blvd., Suite 500, Tampa, Florida 33607 (hereinafter "CIGI"), OSI RESTAURANT PARTNERS, LLC, (formerly OSI Restaurant Partners, Inc.) a Delaware limited liability company having its principal office located at 2202 N. West Shore Blvd., Suite 500, Tampa, Florida 33607 (hereinafter "OSI"), MANGIA BEVE, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 (hereinafter "MBI"), MAGINA BEVE II, INC., a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 (hereinafter "MBI2"), ORIGINAL, INC. (formerly Carrabba, Inc.), a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 ("CI"), VOSS, INC. (formerly Carrabba Woodway, Inc.), a Texas corporation having its principal office at 3125 Kirby Drive, Houston, Texas 77098 ("CWI"), JOHN C. CARRABBA, III, an individual residing in the state of Texas ("Johnny Carrabba"), DAMIAN C. MANDOLA, an individual residing in the state of Texas ("Damian Mandola") and JOHN C. CARRABBA, JR., and individual residing in the state of Texas ("John C. Carrabba, Jr.").

RECITALS

A. The parties entered into that certain Royalty Agreement dated April, 1995 as amended by that certain First Amendment to Royalty Agreement dated January 1997 (collectively "Royalty Agreement"); and

B. Section 8.6 of the Royalty Agreement provides that if during any twelve consecutive calendar months no new Restaurant becomes subject to the payment of royalties under the Royalty Agreement, subject to certain exceptions, then, among other things, MBI will be permitted to own and operate restaurant utilizing the System, i.e., CIGI rights to the System will no longer be exclusive.

C. The parties desire to further amend the Royalty Agreement to provide for a waiver of the and modification of the provisions of Section 8.6 on the terms provided for herein;

Now Therefore, intending to be legally bound, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amendment to Section 8.6. The parties acknowledge that the last restaurant to become subject to payment of royalties under the Royalty Agreement opened on August 31, 2009.

Notwithstanding the provisions of Section 8.6 (or any other provision of the Royalty Agreement), the parties acknowledge and agree that CIGI shall be deemed in full compliance with Section 8.6 and CIGI's rights to the System shall remain exclusive so long as:

(a) at least one new Restaurant becomes subject to the payment of royalties under the Royalty Agreement on or before July 31, 2011; and

(b) at least one new Restaurant becomes subject to the payment or royalties under the Royalty Agreement during each twelve calendar month period ending on each anniversary of July 31 thereafter; and

(c) CIGI pays to MBI an additional royalty (in addition to all other royalties due under the Royalty Agreement) of Three Thousand Seven Hundred Fifty Dollars ($3,750.00) each month for sixty (60) consecutive months commencing with the month of August 2010 and ending with the month of July 2015. The additional royalty provided for in this subsection (c) shall be payable as provided for in Section 3.4 of the Royalty Agreement and shall be included with the normal monthly royalty payment.

So long as CIGI complies with the terms of this Section 1 of this Second Amendment, then Section 8.6 of the Royalty Agreement or any part thereof shall not be operative, including, but not limited to, clauses (x), (y), (z) and the last sentence of Section 8.6.

2. Ratification. The Royalty Agreement is hereby ratified and confirmed and shall remain in full force and effect as amended hereby. The provisions of Section 1 of this Second Amendment shall constitute an amendment to Section 8.6 of the Royalty Agreement.

CARRABBAS' ITALIAN GRILL, LLC
by its sole manager-member

OSI Restaurant Partners, LLC

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

OSI RESTAURANT PARTNERS, LLC

MANGIA BEVE, INC.

By: /s/ John C. Carrabba, III

Title: President

MANGIA BEVE II, INC.

By: /s/ John C. Carrabba, III

Title: President

ORIGINAL, INC.

By: /s/ John C. Carrabba, III

Title: President

VOSS, INC.

By: /s/ John C. Carrabba, III

Title: President

/s/ John C. Carrabba, III
JOHN C. CARRABBA, III, individually

/s/ Damian C. Mandola

DAMIAN C. MANDOLA, individually

/s/ John C. Carrabba, JR.

JOHN C. CARRABBA, JR., individually

Exhibit 10.7

JOINT VENTURE AGREEMENT

Article I. Introduction

This Agreement is entered into as of June 17, 1999, among RY-8, Inc., a Hawaii corporation (being a wholly owned subsidiary of Roy's Holdings, Inc., a Hawaii corporation) ("Roy's") and OS Pacific, Inc., a Florida corporation (being a wholly owned subsidiary of Outback Steakhouse, Inc., a Delaware corporation) ("Outback") for the purpose of carrying on a joint venture. The name of the joint venture shall be "Roy's/Outback Joint Venture."

Article II. Purpose of Joint Venture

The purpose of the joint venture shall be to develop, own and operate throughout the world (excluding Hawaii, Japan, Guam and certain markets in the United States where there are existing franchisees as of the date hereof to the extent such franchisees have been granted exclusive territories) a chain of casual, fine dining restaurants featuring Pacific Rim cuisine, the culinary style and concept having been originally developed by Chef Roy Yamaguchi and Hawaiian Pacific Restaurant Group, Inc. (a wholly owned subsidiary of Roy's Holdings, Inc.), and which are commonly referred to as "Roy's," followed by a geographic tag, e.g., Roy's at Pebble Beach, Roy's Scottsdale and Roy's Bonita Springs (the "Restaurants" or "Restaurant").

Article III. Duties of Parties

3.1. General Duties

Each Joint Venturer will devote such time and efforts as may be reasonably necessary to develop, own and operate as many Restaurants as are viable and feasible in the shortest period of time, provided, however, that (i) the quality of each new Restaurant and all existing Restaurants shall not be impaired, and (ii) mutually agreed upon rates of return are achieved.

3.2. Exclusive and Primary Obligations

3.2.1 Exclusive Obligations

Each Joint Venturer agrees that neither one shall engage in any activities that would conflict with the operations and business purpose of the Joint Venture. Notwithstanding the foregoing, the preceding sentence shall not be construed in any way to limit Outback's ability to expand its existing chain of Outback Steakhouse restaurants, nor to limit Outback's ability to acquire, invest in or otherwise be involved with other casual, fine dining concepts (or any other restaurant concepts) as long as such concepts are not considered to

feature Pacific Rim or Euro-Asian cuisine and Outback's involvement with such other concepts does not materially impair the growth and viability of the Joint Venture. Similarly, said first sentence shall not be construed in any way to limit Roy's ability to own and operate its existing Roy's restaurants in Hawaii and Denver (including reopening any existing restaurant that should close), nor to limit its activities as franchisor in relation to the existing Roy's franchises as of the date hereof and any renewals and extensions thereof. As to any new franchisees and locations worldwide (except as aforesaid), only the Joint Venture may grant the same. The rights and obligations of the Joint Venturers under this Section 3.2.1 shall extend to their affiliated companies ("Affiliates"). "Affiliates" mean a parent company, brother-sister company, subsidiary or other company in which the Joint Venturer's parent company or the Joint Venturer owns or controls over 50% of the voting interests of said company.

The parties acknowledge and agree that Roy Yamaguchi ("RY"), in his individual capacity, is free to pursue other business opportunities other than restaurant concepts, such as writing books, personal appearances (TV and other media) and any product endorsements which do not impair the image of the Restaurants. Any restaurant concept that RY wishes to be involved with must first be presented to the Joint Venture and only if the Joint Venture declines to become involved, then RY may pursue such opportunity, provided his involvement does not materially impair the growth and viability of the Joint Venture, as determined by the Joint Venture in its reasonable discretion. Notwithstanding the foregoing, RY agrees to exert his time, efforts and skill in such reasonable amounts as may be necessary to maximize the success and growth of the Joint Venture and the Restaurants.

3.2.2 Roy's Primary Duties and Obligations

Roy's shall be primarily responsible for consulting with the President regarding the training, development and supervision of all Joint Venture executive level and Restaurant managerial level employees relating to the quality and integrity of the Roy's concept to be sure it is being properly executed, maintained and enhanced, including but not limited to, developing the schematic and conceptual drawings for each Restaurant for approval by the Joint Venture, recommending to the Joint Venture for approval the appropriate "corporate" operations executives who will possess the necessary knowledge and skill to train the Restaurant managerial employees concerning the proper execution of the Roy's concept, hiring and firing of the executive chef, sous chef and pastry chef, training and supervision of said chefs, control over menu and recipe development, control over kitchen design, control over wine lists and training and supervision of the general manager and assistant managers. Notwithstanding the foregoing, the parties acknowledge and agree that the day-to-day implementation of the foregoing duties and obligations will be delegated to the President of the Joint Venture, as provided for in Section 8.1, below, except that said President and the Joint Venturers will recognize and give due consideration to the unique and specialized knowledge and skill of each Joint Venturer in its respective area of primary duties and obligations.

3.2.3 Outback's Primary Duties and Obligations

Outback shall be primarily responsible for consulting with the President regarding the training, development and supervision of all Joint Venture executive level and Restaurant managerial employees relating to the administrative, financial and other aspects of the Restaurants that do not materially impair the quality and integrity of the food and customer service at the Restaurants or the Roy's concept, including but not limited to, conducting preliminary site selection and negotiations with landlords, preparing development and operating budgets for approval by the Joint Venture, selection of and negotiations with the contractor(s) for the construction of each Restaurant, hiring and firing of the bookkeeper for each Restaurant, establishment of accounting and cash control policies and procedures, selection of and negotiation with all liability, property, health and workers' compensation insurers, preparation of all operating and financial statements for each Restaurant and the Joint Venture, preliminary selection of the general manager and assistant managers for each Restaurant for approval by the Joint Venture, and recommending to the Joint Venture for approval the appropriate general and administrative staff (executive, managerial and non-managerial) to support the Restaurants and the Joint Venture. Notwithstanding the foregoing, the parties acknowledge and agree that the day-to-day implementation of the foregoing duties and obligations will be delegated to the President of the Joint Venture, as provided for in Section 8.1, below, except that said President and the Joint Venturers will recognize and give due consideration to the unique and specialized knowledge and skill of each Joint Venturer in its respective area of primary duties and obligations.

Article IV. Contributions/Liabilities

4.1. Nature and Amount of Contributions

The amount and nature of the contributions of each Joint Venturer are as follows:

Outback	$1,000,000 cash
Roy's	$1,000,000 cash

In addition to the foregoing, Roy's shall grant or cause to be granted to the Joint Venture a royalty-free master license for the exclusive use in the world of the service mark "Roy's" and the Roy's system and shall contribute the services specified in Article III, above. Such license, however, shall expressly reserve unto Roy's the right to continue use and licensing of the service mark in connection with its existing Hawaii and franchise operations. Attached hereto as Exhibit "A" is a list of said existing Hawaii and franchise operations.

In addition to the foregoing, Outback agrees to cause its parent company, Outback Steakhouse, Inc. to provide the Joint Venture with financial guarantees for up to 50% of any debt of the Joint Venture where such guarantees will be beneficial to the Joint Venture, including but not limited to, Restaurant premises leases, any promissory notes or other indebtedness of the Joint Venture, and any lease for furniture, fixture and equipment. Outback shall also contribute the services described in Article III, above.

4.2. Time for Making Contributions

(a) The contributions of money by each party must be made on or before June 30, 1999.

(b) The contributions of services and skill must be made commencing immediately following the full execution of this Agreement.

4.3. Effect of Failure To Make Contributions

If any Joint Venturer fails to make that Joint Venturer's contribution within the time specified in this Agreement, the nondefaulting Joint Venturer shall have the right to enforce any and all remedies available at law or in equity, including but not limited to, rescinding this Agreement, seeking injunctive relief and/or recovering damages.

4.4. Subsequent Capital Contributions

In no event shall any Joint Venturer be obligated to make any additional capital contributions, except as otherwise expressly provided herein.

4.5. Interest on Capital Contributions

No Joint Venturer shall receive, or be entitled to receive, interest on its contributions to the capital of the Joint Venture

4.6 Liabilities

4.6.1. Liability for Certain Obligations

The parties acknowledge that the Joint Venture will incur certain material long term obligations, including, without limitation, liability as lessee under leases for Restaurant premises and liability on loans. Roy's and Outback covenant and agree that as to any debt, liability, or obligation of the

Joint Venture, including, without limitation, the liabilities described in the preceding sentence, Roy's and Outback shall each be proportionately liable to the third party creditor for only up to fifty percent (50%) of amounts outstanding under such obligations and shall not be jointly and severally liable therefor.

4.6.2. Documentation

Roy's and Outback covenant and agree that all documentation evidencing the Joint Venture's material, long term obligations, including, without limitation, a Restaurant premises lease, any promissory notes, and any lease for furniture, fixture and equipment, shall limit the liability of each of Roy's and Outback to proportionately fifty percent (50%) of any amounts outstanding under such obligations and shall specifically state that Roy's and Outback shall not be individually liable for the entire amount thereof, nor jointly and severally liable therefor.

4.6.3 Indemnification

Roy's and Outback each hereby indemnify and hold each other harmless from and against any liability, claim, damage, action or obligation for any material long term obligation of the Joint Venture, including, but not limited to, the liabilities described herein, in excess of fifty percent (50%) of amounts outstanding under such obligations.

Article V. Ownership of Venture Property

5.1. Title to Property

All property of the Joint Venture shall be held in the name of the Joint Venture.

5.2. Interest in Property

Except as provided below, the beneficial interest of each party in Joint Venture property, unless changed pursuant to the terms of this Agreement, shall be as follows: Fifty percent (50%) Roy's and Fifty percent (50%) Outback.

5.3 Interest in Recipes

All recipes developed by the Joint Venture shall be owned by the Joint Venture. All recipes developed by Roy's shall be owned by Roy's. Any recipes developed through the collaborative efforts of Roy's and the Joint Venture, shall be owned jointly by Roy's and the Joint Venture. During the continued existence of the Joint Venture, Roy's and the Joint Venture agree to license to the other use of each other's recipes.

Article VI. Term

The term of the Joint Venture will commence on the date first indicated above and shall terminate as provided in Article X, below.

Article VII. Distributions; Allocation of Profits and Losses

7.1. Division or Share of Profits

Any profits of the Joint Venture shall be allocated among the Joint Venturers in the following percentages unless that percentage is changed pursuant to the terms of this Agreement:

Roy's	50%
Outback	50%

7.2. Calculation of Profits

For the purposes of this Agreement, the profits of the Joint Venture shall be calculated as follows:

(a) The expenses of conducting the Joint Venture shall be deducted from the income of the Joint Venture. The expenses of conducting the Joint Venture shall include all expenses customarily incurred by businesses similar to the Joint Venture.

(b) In regards to the San Francisco, San Diego and Dallas Restaurants, after the payment of expenses as described above and retention of adequate operating and capital reserves, Roy's and Outback shall each be entitled to receive equal distributions of any remaining available cash. As to all other Restaurants, the parties agree that except for distributions necessary to enable each party to pay their respective income tax obligations, all available cash from operations shall be reinvested into new Restaurants.

7.3. Apportionment or Share of Loss

Should a loss be sustained by the Joint Venture, the parties shall bear the loss in the same percentages as profits.

7.4. Computation of Loss

In computing any loss as between the parties, deductions shall be made from any assets remaining in the same manner as computing profits in 7.2, that is, deductions shall first be made to pay expenses, and any remaining sums shall be allocated on a pro rata percentage basis to contributions, as set forth in

7.2 for computing profits. Should there be insufficient assets to pay expenses due and owing as a result of the conduct of the joint enterprise, each party shall contribute to the payment of those expenses in the percentage of losses attributed to that party in this Article.

Article VIII. Management Structure

8.1. Management of Joint Venture

The business and affairs of the Joint Venture shall be managed by a committee (the "Executive Committee") consisting of five (5) members appointed by the Joint Venturers. Outback shall name two (2) members of the committee, Roy's shall name two (2) members of the committee, and the fifth member (the "Wise Man") shall be named jointly by Outback and Roy's. The Wise Man must be (i) independent and not employed by or have any ownership interest in or licensing or franchise relationship with either Joint Venturer (or its Affiliates), and (ii) possess not less than ten (10) years of full-time executive level management experience in one or more casual, fine dining restaurants having at least ten (10) stores under his or her control or such other qualifications as Outback and Roy's may agree. Each individual named to the Executive Committee will serve as a member of the Executive Committee until his or her death, withdrawal or expulsion from the Executive Committee, or until his or her removal from the Executive Committee by the Joint Venturer who appointed him or her or in the case of the Wise Man, by the majority vote or consent of the Joint Venturers. All decisions as to the day to day operations of the Joint Venture shall be made by a President hired by the majority agreement of the Executive Committee, provided, that the President shall not, without the majority consent of all of the members of the Executive Committee:

(1) Confess a judgment against the Joint Venture;

(2) Admit any person as a Joint Venturer;

(3) Execute or deliver any assignment for the benefit of the creditors of the Joint Venture;

(4) Enter into any lease of real or personal property;

(5) Enter into any loan transaction or incur any indebtedness of the Joint Venture in excess of $25,000;

(6) Open any Restaurant;

(7) Purchase any real property;

(8) Fire Gordon Hopkins (Corporate Chef), Christian Maldonado (Operations Director), Randal Caparoso (Wine and Beverage Director), or hire/fire their respective successors; and

(9) Such other matter(s) as may be mutually agreed upon by the parties.

8.2. Composition of Committee

The following individuals are appointed as the initial members of the Executive Committee:

ROY'S APPOINTEES	OUTBACK APPOINTEES
Roy Yamaguchi	Chris Sullivan
Terrence Lee	Michael O'Donnell

The Wise Man shall be appointed by said members within sixty (60) days from the effective date hereof. Vacancies on the Executive Committee shall be filled by the Joint Venturer who appointed the member who created the vacancy, or in the case of the Wise Man, by vote or written consent of a majority of the Joint Venturers.

8.3. Actions by Majority Vote

Except as otherwise expressly provided in this Agreement, all actions taken by the Executive Committee shall be by majority vote of its members.

Article IX. Confidentiality

9.1. Definition

For the purpose of this Agreement, "Proprietary Information" shall include all information designated by any Joint Venturer, either orally or in writing, as confidential or proprietary, or which reasonably would be considered proprietary or confidential to the business contemplated by this Agreement, including but not limited to suppliers, marketing and technical plans, plans for products and ideas, recipes, menus, wine lists and proprietary techniques and other trade secrets. Notwithstanding the foregoing, "Proprietary Information" shall not include information which (i) has entered the public domain or became known other than due to a breach of any obligation of confidentiality owed to the owner of such information; (ii) was known prior to the disclosure of such information; (iii) became known to the recipient from a source other than a Joint Venturer or its Affiliate, provided there was no breach of an obligation of confidentiality owed to said Joint Venturer or its Affiliate; or (iv) was independently developed by the party receiving such information.

9.2. No Disclosure, Use, or Circumvention

No Joint Venturer or its Affiliates shall disclose any Proprietary Information to any third parties (other than existing or permitted franchisees) and will not use any Proprietary Information in that Joint Venturer's or Affiliates' business or any affiliated business without the prior written consent of the other Joint Venturer, and then only to the extent specified in that consent. Consent may be granted or withheld at the sole discretion of any Joint Venturer. No Joint Venturer shall contact any suppliers, customers, employees, affiliates or associates to circumvent the purposes of this provision.

9.3. Maintenance of Confidentiality

Each Joint Venturer shall take all steps necessary or appropriate to maintain the strict confidentiality of the Proprietary Information and to assure compliance with this Agreement.

Article X. Termination

10.1. Date of Termination

This Agreement shall be terminated on the earlier to occur of:

(a) The mutual agreement of all of the parties to this Agreement;

(b) Any act or event which makes the continuation of the business of the Joint Venture impossible or impracticable;

(c) The bankruptcy or insolvency of any of the parties to this Agreement; or

(d) Fifteen (15) years after the effective date hereof .

10.2. Effect of Termination

On the termination of this Joint Venture, the Joint Venture shall be dissolved and wound up in accordance with the provisions of the Florida Uniform Partnership Act, except as otherwise specifically provided in this Agreement or any amendment to this Agreement.

Article XI. Put Options/Maximization of Value

11.1 Put Options in Favor of Roy's

Roy’s shall have the right to require Outback to purchase up to 25% of Roy’s interests in the Joint Venture at anytime after the 5th anniversary of the effective date hereof. Additionally, at anytime after the 10th anniversary of the effective date hereof, Roy’s shall have the right to require Outback to purchase up to another 25% (total 50%) of Roy’s interests in the Joint Venture. The percentage interest in the entire Joint Venture being sold under these put options is referred to herein as the “Put Percentage”. The purchase price to be paid by Outback shall be equal to the fair market value of the Joint Venture as of the date Roy’s exercises its put option, multiplied by the Put Percentage.

11.2 Exercise of Put Options

11.2.1 Exercise Notice

Upon Roy’s exercising its put options, it shall give Outback written notice thereof. The written notice (the “Exercise Notice”) shall state the proposed fair market value of the Joint Venture, a detailed explanation of the valuation methodology and supporting information utilized by Roy’s in arriving at said fair market value and the Put Percentage.

11.2.2 Answering Notice

Within five (5) business days after receipt of such notice by Outback, it shall advise Roy’s in writing (the “Answering Notice”) if Outback either : (a) agrees with such valuation, or (b) disagrees with such valuation, in which case Outback shall propose its own valuation and a detailed explanation of the valuation methodology and supporting information utilized by Outback in arriving at its proposed value.

11.2.3 Responding Notice

Within five (5) business days after Roy’s receives the Answering Notice, Roy’s shall respond to Outback in writing (the “Responding Notice”) stating either: (a) Roy’s agreement with Outback’s valuation, or (b) Roy’s disagreement with such valuation and any revised value.

11.2.3 Resolution of Disputed Value by Wise Man

In the event Roy’s and Outback fail to reach agreement on the valuation of the Joint Venture within ten (10) business days following Outback’s receipt of the Responding Notice, then the value shall be determined by the Wise Man, who shall be limited to selecting either of the values most recently proposed in writing by Roy’s or Outback in the Exercise Notice, Answering Notice and/or Responding Notice. The Wise Man shall be empowered to engage such consultant(s) as he deems reasonable and prudent, at the expense of the Joint Venture, to assist him in selecting which of the two most recently proposed values best

represents the fair market value of the Joint Venture. The Wise Man shall notify each party in writing of his decision no later than twenty (20) days after the matter has been submitted to him. Upon the Wise Man rendering his written decision, the value established by said decision shall be final and binding upon Roy's and Outback.

11.2.4 Payment of Purchase Price

The purchase price shall be equal to the fair market value of the Joint Venture, as established by mutual agreement or by the decision of the Wise Man, multiplied by the Put Percentage. Within ten (10) business days after the purchase price is finally established, Outback shall pay Roy's the applicable purchase price in either cash or unrestricted Outback common stock or any combination of both. The term "unrestricted Outback common stock" means that there shall be no limitations or restrictions on Roy's ability to sell all of said stock on the stock exchange handling the buying and selling of such stock contemporaneously upon receipt of such stock.

11.3 Outback Right to Void Exercise of Option if Acquisition of Put Percentage is Dilutive

Notwithstanding the foregoing, in the event the final purchase price has the effect, upon Outback's acquisition of the Put Percentage at such price, of diluting the earnings per share for the next 12 months of Outback, Outback shall have the option of voiding Roy's exercise of its put option, which must be exercised by written notice to Roy's of Outback's election to void said exercise (the "Void Notice") prior to the expiration of the 10-day period to pay the purchase price. The purchase price will be considered to dilute the earnings per share of Outback if the accounting effect of the transaction, determined in accordance with generally accepted accounting principles, would cause a reduction in pro forma Basic Earnings Per Share and/or Diluted Earnings Per Share (or an increase in Net Loss Per Share) calculated in accordance with SFAS No. 128 "Earnings Per Share" for the 12 months following the purchase. Upon Roy's receipt of the Void Notice, Roy's may elect to accept a lower purchase price which has the effect of eliminating said dilutive effects of Outback's acquisition, which election must be exercised by written notice to Outback within five (5) business days after receipt of the Void Notice (the "Lower Price Notice"). Outback shall pay Roy's said lower purchase price amount in cash, stock or any combination thereof as aforesaid, within ten (10) business days after receipt of the Lower Price Notice.

11.4 Maximization of Value

The Joint Venturers agree that from time to time, they shall evaluate in good faith all available options to the Joint Venture to maximize the value of each Joint Venturer's ownership interests in the Joint Venture, such as but not limited to, an initial public offering, strategic sale or merger into Outback Steakhouse, Inc.

Article XII. Assignment

No Joint Venturer may assign its rights and obligations hereunder due to the unique expertise and qualifications of the Joint Venturers. It shall be permissible, however, to assign or pledge as collateral either Joint Venturer's interest in profit distributions and/or Roy's put options.

Article XIII. Arbitration

Any dispute arising under this Agreement, or under any instrument made to carry out the terms of this Agreement, shall be submitted to arbitration in accordance with the commercial dispute arbitration rules of the American Arbitration Association. The venue and situs for such arbitration proceedings shall be San Francisco, California.

Article XIV. Notices

All notices to the Joint Venturers pursuant to this Agreement shall be in writing and shall be deemed effective when given by personal delivery or by certified mail, express delivery service, or facsimile transmission.

Article XV. Applicable Law

To the extent not otherwise provided in the Agreement, the terms of this Joint Venture and the relationship of the Joint Venturers to each other shall be governed by the provisions of the Florida Uniform Partnership Act, and any amendments or successor statute to that Act.

Article XVI. Amendments

This Agreement may be amended only by the written agreement of all of the Joint Venturers.

Article XVII. Condition Subsequent

As a condition subsequent to each Joint Venturer's obligations under the Agreement, the Joint Venture must secure a credit facility for not less than $20 million dollars from a reputable lending institution on terms and conditions satisfactory to the Joint Venture to be used to finance the business purpose of the Joint Venture. If the Joint Venture is unable to secure such a credit facility within 90 days following the effective date hereof, either party may terminate the Agreement upon prior written notice to the other. Upon such termination, each party shall be released and discharged from any and all obligations under this Agreement.

Article XVIII. Tax Related Provisions

18.1 Composition of Capital Accounts

A separate capital account shall be maintained by the Joint Venture for each Joint Venturer in accordance with Section 704(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations promulgated thereunder. There shall be credited to each Joint Venturer's capital account (i) the amounts of money contributed by it to the Joint Venture, (ii) the fair market value of property contributed by it to the Joint Venture (net of liabilities secured by such contributed property that the Joint Venture is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations to it of Joint Venture income and gain (or items thereof), including income and gain exempt from tax, as computed for book purposes, in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g), as set forth pursuant to Article VII of this Agreement. Each Joint Venturer's capital account shall be decreased by (i) the amount of money distributed to it by the Joint Venture, (ii) the fair market value of property distributed to it by the Joint Venture (net of liabilities secured by such distributed property that such Joint Venturer is considered to assume or take subject to pursuant to Section 752 of the Code), (iii) allocations to such Joint Venturer of expenditures of the Joint Venture described in Section 705(a)(2)(B) of the Code, and (iv) allocations of Joint Venture loss and deduction (or items thereof), including loss or deduction, computed for book purposes, as described in Treasury Regulation Section 1.704-1(b)(2)(iv)(g), as set forth pursuant to Article VII of this Agreement.

18.2 Adjustments to Tax Basis

In the event of adjustment to the adjusted tax basis of Joint Venture property under Code Sections 732, 734 or 743, the capital accounts of the Joint Venturers shall be adjusted to the extent provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m).

18.3 Income Tax Elections

In the event of a distribution of property made in the manner provided under Section 734 of the Code, or in the event of a transfer of any Joint Venture Interest permitted by this Agreement made in the manner provided in Section 743 of the Code, Outback, on behalf of the Joint Venture, may, but shall not be required to, file an election under Section 754 of the Code in accordance with the procedures set forth in the applicable regulations promulgated thereunder.

18.4 Audits of Income Tax Returns

(a) Appointment of Tax Matters Partner. The tax matters partner (the "TMP"), as referred to in Code Section 6231(a)(7), for the Joint Venture shall be Outback.

(b) Employment of Advisors. The TMP shall employ experienced tax advisors to represent the Joint Venture in connection with any audit or investigation of the Joint Venture by the Internal Revenue Service and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses of such tax advisors shall be an expense of the Joint Venture. It shall be the responsibility of the Joint Venturers, at their own expense, to employ tax advisors to represent their respective separate interests.

(c) Notice and Expenses. The TMP shall keep the Joint Venturers reasonably informed of all administrative and judicial proceedings, as required by the Code, and shall furnish to each Joint Venturer who so requests in writing a copy of each notice or other communication received by the TMP from the Internal Revenue Service (except such notices or communications as are sent directly to such requesting Joint Venturer by the Internal Revenue Service). All expenses incurred by the TMP in serving as TMP shall be Joint Venture expenses and shall be paid by the Joint Venture. Any Joint Venturer has the right to participate in such administrative proceedings relating to the determination of Joint Venture items. Each Joint Venturer who elects to participate in such proceedings will be responsible for any such expenses incurred by such Joint Venturer in connection with such participation.

(d) Authority of Tax Matters Partner. The TMP shall have the authority to take any and all action reasonably required as TMP, including by way of example, any of the following: (i) enter into a settlement agreement with the Internal Revenue Service that purports to bind the Joint Venturers other than the TMP; (ii) file a Tax Court Petition as contemplated in Code Section 6226(a) or Section 6228; (iii) intervene in any action as contemplated in Code Section 6226(b); (iv) file any requests for administrative adjustment contemplated in Code Section 6227(b); or (v) enter into an agreement extending the limitations period as contemplated by Code Section 6229(b)(1)(B).

(e) Indemnification of TMP. The Joint Venture shall indemnify the TMP against any and all judgments, fines, amounts paid in settlement and expenses (including reasonable attorneys' fees, whether incurred before or at trial or during any appellate proceedings, and court costs) incurred by the TMP in any civil, criminal or investigative proceeding in which the TMP is involved or threatened to be involved by reason of being the TMP for the Joint Venture; PROVIDED, HOWEVER, that the TMP shall not be indemnified under this provision against any liability incurred by the Joint Venture or any Joint Venturer which arises out of fraud, by willful or intentional misconduct, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of its position as TMP.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first above written.

RY-8, INC.

By /S/ TERRENCE M. LEE
Name: Terrence M. Lee
Title: VP/Sec.

OS PACIFIC, INC.

By /S/ MICHAEL P. O'DONNELL
Name: Michael P. O'Donnell
Title:

Outback Steakhouse, Inc., a Delaware corporation ("OSSI"), does hereby acknowledge and irrevocably agree to perform the obligations provided for in Section 3.2.1 regarding not becoming involved with any Pacific Rim or Euro-Asian restaurant concept that would materially impair the viability of the Joint Venture and Section 4.1 regarding guaranteeing up to 50% of the debts of the Joint Venture. OSSI further irrevocably agrees to guaranty the payment obligations of [OUTBACK SUBSIDIARY] to pay Roy's the purchase price for the Put Percentage upon Roy's exercise of its put option(s) and provided such acquisition by Outback is not dilutive. OSSI hereby waives any and all surety defenses relating to its guaranty obligations hereunder. OSSI confirms that [OUTBACK SUBSIDIARY] is its wholly owned subsidiary and that OSSI shall be deemed to have actual or constructive knowledge of all matters known by [OUTBACK SUBSIDIARY] and shall be deemed to have ratified and approved all actions of [OUTBACK SUBSIDIARY] relating to Roy's exercise of it put option(s) unless OSSI shall expressly notify Roy's in writing of any objections it may have to any actions by [OUTBACK SUBSIDIARY] relating to said exercise of the put option(s) within five (5) business days after such action.

OUTBACK STEAKHOUSE, INC.

By /S/ MICHAEL P. O'DONNELL
Name: Michael P. O'Donnell
Title: President New Concepts

Roy Yamaguchi does hereby acknowledge and agree to perform his obligations provided for in Section 3.2.1 regarding his efforts to maximize the success of the Joint Venture and the Restaurants.

/S/ ROY YAMAGUCHI
ROY YAMAGUCHI

EXHIBIT “A”

EXISTING HAWAII AND FRANCHISE OPERATIONS

HAWAII

Roy’s Restaurant- Honolulu (Oahu)
Roy’s Kahana Bar & Grill (Maui)
Roy’s Nicolina Restaurant (Maui)
Roy’s Poipu Bar & Grill (Kauai)
Roy’s Waikoloa Bar & Grill (Big Island)
Roy’s Kihei Bar & Grill*

FRANCHISES

Roy’s Restaurant Guam (Guam)
Roy’s at Pebble Beach (CA)
Roy’s Aoyama Bar & Grill (Tokyo, Japan)
Roy’s Hiroo Bar & Grill (Tokyo, Japan)
Roy’s Seattle (WA)
Roy’s Scottsdale (AZ)
Roy’s Bonita Spring (FL)
Roy’s New York (NY)
Roy’s Newport Beach (CA)**
Roy’s Phoenix (AZ)***

* Anticipated opening date March 2000
** Anticipated opening date in July 1999
*** Anticipated opening date December 1999

FIRST AMENDMENT TO JOINT VENTURE AGREEMENT

THIS FIRST AMENDMENT TO JOINT VENTURE AGREEMENT ("Amendment") is entered into this 31st day of October, 2000, to be effective for all purposes as of June 17, 1999, by and between RY-8, INC., a Hawaii corporation (being a wholly-owned subsidiary of Roy's Holdings, Inc., a Hawaii corporation) ("Roy's") and OS PACIFIC, INC., a Florida corporation (being a wholly-owned subsidiary of Outback Steakhouse, Inc., a Florida corporation) ("Outback").

WHEREAS, Roy's and Outback entered into that certain Joint Venture Agreement dated June 17, 1999 (the "Agreement"), pursuant to which a Florida joint venture was formed under the name Roy's/Outback Joint Venture (the "Joint Venture"); and

WHEREAS, the parties desire to modify the Agreement to more accurately reflect the parties' intent at the time of forming the Joint Venture and to reflect amendments agreed to in consideration for Outback and its parent corporation, Outback Steakhouse, Inc. ("OSI"), guaranteeing a $12,000,000 Revolving Line of Credit issued to Roy's by Wachovia Bank (the "Line of Credit");

NOW THEREFORE, in consideration of the foregoing and the respective covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Recitals. The parties agree that the foregoing recitals are true and correct and incorporated herein by reference.

2. Modifications. The parties agree that the following modifications shall be made to the Agreement:

2.1 Guarantees of Debt by Outback. The second full paragraph of **Section 4.1** of the Agreement beginning with the phrase "In addition to the foregoing, Outback agrees…" shall be deleted in its entirety and replaced with the following:

Until such time as either (i) Roy's, using commercially reasonable efforts, can obtain financing secured by its interest in the Joint Venture from a third party financial institution on commercially reasonable terms in amounts sufficient to fund its share of additional capital contributions to the Joint Venture, or (ii) the Joint Venture can obtain such financing secured by the Joint Venturers' interests in the Joint Venture or the Joint Venture's assets, Outback shall cause its parent company Outback Steakhouse, Inc. ("OSI") to provide a guarantee of loans to Roy's from third party financial institutions in amounts sufficient to fund Roy's share of additional capital contributions to the Joint Venture ("Guaranteed Loans") and to refinance Guaranteed Loans to the extent either Roy's or the Joint Venture, using commercially reasonable efforts, cannot refinance the Guaranteed Loans without OSI's loan guarantee. The proceeds of all Guaranteed Loans shall be used solely to fund Roy's share of capital contributions to the Joint Venture and making the minimum required debt service payments to the lender of the

Guaranteed Loans. Neither Outback nor OSI shall charge Roy's any fee or other assessment for such guarantees. As a condition to such guarantees, Roy's shall and hereby does agree to indemnify and hold Outback and OSI harmless from any liability or loss either of them may incur from payments on such guarantees or otherwise arising from or as a result of such guarantees. Roy's shall also cause its parent company, Roy's Holdings, Inc. ("RHI") to indemnify and hold harmless Outback and OSI from any liability or loss either of them may incur from payments on such guarantees or otherwise arising from or as a result of such guarantees. Roy's shall secure its indemnity of Outback and OSI by granting to Outback and OSI a first priority security interest in Roy's entire interest in the Joint Venture. For so long as any guarantee by Outback or OSI is outstanding, Roy's shall not grant any other security interest in, or in any other manner otherwise pledge or encumber, its interest in the Joint Venture.

As part of the foregoing, promptly upon the execution of this Amendment, Outback agrees to cause its parent company, Outback Steakhouse, Inc. ("OSI") to arrange for a loan to Roy's for up to $12 million on commercially reasonable terms (taking into consideration OSI's loan guarantee) with Wachovia Bank, N.A. and to guarantee said loan as an accommodation guarantor. Roy's use of said loan proceeds will be limited to funding its capital contributions to the Joint Venture and making the minimum required debt service payments to Wachovia Bank. Further, Outback agrees that OSI will not charge Roy's any fee or other assessment for its accommodation guaranty of said loan.

2.2 Subsequent Capital Contributions. **Section 4.4** of the Agreement shall be deleted in its entirety and replaced with the following:

Each Joint Venturer shall be obligated to contribute to the Joint Venture such percentage as is equal to such Joint Venturer's Percentage Interest (initially 50%) of any additional capital contributions called for by majority vote of the Executive Committee. Such contributions shall be made within ten (10) business days of the call therefore by the Executive Committee. A Joint Venturer's failure to contribute its required share of additional capital contributions shall constitute a default under and breach of this Agreement. Notwithstanding the foregoing, Roy's shall only be obligated to contribute additional capital from, and to the extent of, financing provided pursuant to Section 4.1 hereof.

2.3 Liability for Certain Obligations. **Section 4.6.1** of the Agreement shall be deleted in its entirety and replaced with the following paragraph:

The parties acknowledge that the Joint Venture will incur certain material long term obligations, including, but not limited to, obligations as lessee under leases for Restaurant premises; provided however, the Joint Venture shall borrow no money and incur no liabilities for any loans other than loans from Outback or its affiliates for equipment for the Restaurants. Roy's and Outback agree that as to any obligation of the Joint Venture, including but not limited to liability under any lease, Roy's and Outback shall each be proportionately liable to any third party for only up to such percentage of any amounts outstanding of such obligation as is equal to the Joint Venturer's Percentage Interest. Roy's and Outback shall not be jointly and severally liable for any obligation.

2.4 Documentation. The phrase “proportionately fifty percent (50%) of any amounts outstanding under such obligations” in **Section 4.6.2** shall be deleted and replaced with “such percentage of any amounts outstanding under such obligations as is equal to the Joint Venturer’s Percentage Interest.”

2.5 Indemnification. **Section 4.6.3** shall be deleted in its entirety and replaced with the following:

In the event any Joint Venturer is liable to any third party for any material long term obligation in excess of such Joint Venturer’s proportionate share based on its Percentage Interest, the other Joint Venturer will indemnify and hold it harmless from and against any liability, claim, damage, action or obligation relating to said third party’s claim for such excess amounts.

2.6 Interest in Property. **Section 5.2** of the Agreement shall be deleted in its entirety and replaced with the following:

Each Joint Venturer’s ownership and voting interest in the Joint Venture (hereafter “Percentage Interest”) and in the Joint Venture’s assets, income, profits, losses and distributions shall be equal to a percentage, such percentage being the same percentage as such Joint Venturer’s Net Capital Contributions to the Joint Venture bears to the total Net Capital Contributions to the Joint Venture. For purposes of this Agreement, the term “Net Capital Contributions” shall mean the initial capital contributions of cash made by a Joint Venturer to the Joint Venture, ***increased*** by: (i) any additional capital contributions by such Joint Venturer; (ii) such Joint Venturer’s distributive share of Joint Venture profits and any items in the nature of income or gain which are specially allocated to such Joint Venturer; and (iii) the amount of any Joint Venture liabilities assumed by such Joint Venturer or which are secured by any Joint Venture property distributed to such Joint Venturer; and ***reduced*** by: (a) the amount of cash and the value of any Joint Venture property distributed to such Joint Venturer; (b) such Joint Venturer’s distributive share of Joint Venture losses and any items in the nature of expenses or losses which are specially allocated to such Joint Venturer; and (c) the amount of any liabilities of such Joint Venturer assumed by the Joint Venture or which are secured by any property contributed by such Joint Venturer to the Joint Venture.

The foregoing provisions are intended to comply with Treasury Regulation §1.704-1(b) and shall be interpreted and applied in a manner consistent with such regulation.

2.7 Division or Share of Profits. **Section 7.1** shall be deleted in its entirety and replaced with the following:

Any profits of the Joint Venture shall be allocated between the Joint Venturers in accordance with their respective Percentage Interests.

The amount and timing of distributions shall be determined by the Executive Committee in its sole discretion. Distributions shall be made to the Joint Venturers in accordance with the respective Percentage Interests; provided however, upon request of either Joint Venturer, the Executive Committee may approve, in its sole discretion, distributions to only one of the Joint Venturers. Any distribution made to only one of the Joint Venturers shall reduce the receiving Joint Venturer’s Net Capital Contributions, capital account, and Percentage Interest accordingly.

2.8 Effect of Termination. The following shall be added to the end of **Section 10.2**:

In the event the Joint Venture is terminated due to one party's acquisition, through purchase or otherwise of the entire Joint Venture interest of the other party, the acquiring party shall be entitled to the royalty-free master license described in **Section 4.1** and the license to use the recipes described in **Section 5.3**, for so long as any Restaurant remains in operation. In the event the Joint Venture is terminated due to one party's bankruptcy, insolvency or breach of the terms of this Agreement, the other party shall be entitled to the royalty-free master license described in **Section 4.1** and the license to use the recipes described in **Section 5.3**, for so long as any Restaurant remains in operation.

2.9 Put Options/Maximization of Value. In the first sentence of **Section 11.1**, after "Joint Venture" add "(being 12.5% of the entire Joint Venture)".

2.10 Pay Down of Line of Credit. The following paragraph shall be added after Section 11.2.4 as Section 11.2.5:

11.2.5 Pay Down of Line of Credit

In the event Roy's exercises its put options and as a result, Outback purchases a portion of Roy's interest in the Joint Venture, Roy's shall pay off a percentage of any amounts then outstanding under any and all Guaranteed Loans, as is equal to the percentage of Roy's interest in the Joint Venture that is being purchased by Outback.

2.12 Assignment. The second sentence of **Article XII** shall be deleted in its entirety and replaced with the sentence "Further, no Joint Venturer may assign or pledge as collateral its interest in profit distributions or its put options; except for a pledge by Roy's to First Hawaiian Bank securing a loan in the amount of $1,000,000, a pledge by Roy's to the financial institution providing financing guaranteed by Outback or OSI pursuant to Section 4.1 hereof, and a pledge by Roy's to Outback to secure obligations to Outback under indemnification agreements relating to Outback's guarantee of financing pursuant to Section 4.1 hereof."

2.13 Condition Subsequent. **Article XVII** shall be deleted in its entirety.

3. Ratification. The parties agree that the Joint Venture Agreement, as modified hereby, is in full force and effect, and all other terms are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the first date written above.

RY-8, INC.

a Hawaii corporation

By: /s/Terrence M. Lee
Name: Terrence M. Lee
Title: Vice President and Secretary

OS PACIFIC, INC.,

a Florida corporation

By: /s/Robert D. Basham
Name: Robert D. Basham
Title: President

Exhibit 10.8

AMENDED AND RESTATED
OPERATING AGREEMENT
FOR
OSI/FLEMING'S, LLC
(formerly known as OUTBACK/FLEMING'S, LLC)
A DELAWARE LIMITED LIABILITY COMPANY

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

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AMENDED AND RESTATED
OPERATING AGREEMENT
FOR
OSI/FLEMING'S, LLC
(formerly known as OUTBACK/FLEMING'S, LLC)
A DELAWARE LIMITED LIABILITY COMPANY

This Amended and Restated Operating Agreement is made as of June 4, 2010, by and among the parties listed on the signature pages hereof, with reference to the following facts:

A. On September 10, 1999, a Certificate of Formation for OUTBACK/FLEMING'S, LLC, a limited liability company organized under the laws of the State of Delaware (the "Company"), was filed with the Delaware Secretary of State.

B. On October 1, 1999, the parties adopted and approved a Limited Liability Company Operating Agreement for the Company (the "Original Operating Agreement), which was subsequently amended on October 1, 2000, September 1, 2004. July 21, 2005, December 18, 2007, January 1, 2008 and January 1, 2009 (collectively, the "Amendments").

C. In December of 2007, the Company was a party to an Agreement of Merger, whereby Blue Coral Seafood and Spirits, LLC merged with and into the Company and as a part of such merger, the Company's name was changed to OSI/Fleming's, LLC.

D. The parties desire to amend and restate the Original Operating Agreement, to reflect the changes made by the Amendments and to further modify the terms of the Original Operating Agreement as provided herein.

NOW, THEREFORE, the parties by this Agreement set forth the amended and restated operating agreement (the "Operating Agreement") for the Company under the laws of the State of Delaware upon the terms and subject to the conditions of this Agreement.

Article I. DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below (all terms used in this Agreement that are not defined in this **Article I** shall have the meanings set forth elsewhere in this Agreement):

(a) "Act" shall mean the Delaware Limited Liability Company Act, as the same may be amended from time to time.

(b) "Affiliate" of a Person shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Person, as applicable. The term "control," as used in the immediately preceding sentence, shall mean with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

(c) "Agreement" shall mean this Operating Agreement, as originally executed and as amended or amended and restated from time to time.

(d) "Annual Business Plan" shall mean the detailed business plan for the Company prepared by the President of the Company and approved by a Managing Interest of the Members, no less often than annually, which plan shall contain an operating budget, a capital budget, cash flow projections, sources of cash analysis (including analysis of any intended borrowings or financings), an operating plan (including plans related to the strategic business plan), and detailed quantifiable goals for the plan year.

(e) "Assignee" shall mean the owner of an Economic Interest who has not been admitted as a substitute Member in accordance with **Article VII**.

(f) "Bankruptcy" shall mean: (a) the filing of an application, or consent to, the appointment of a trustee, receiver, or custodian of other assets; (b) the filing of a voluntary petition in bankruptcy; (c) the entry of an order for relief in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (d) the making of a general assignment for the benefit of creditors; (e) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of assets unless the proceedings and the person appointed are dismissed within ninety (90) days; or (f) the failure to pay debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of inability to pay its debts as they become due.

(g) "Capital Account" shall mean with respect to any Member the capital account that the Company establishes and maintains for such Member pursuant to **Section 3.7**.

(h) "Capital Contribution" shall mean the total amount of cash and fair market value of property contributed to the capital of the Company by the Members.

(i) "Certificate" shall mean the Certificate of Formation for the Company originally filed with the Delaware Secretary of State and as amended from time to time.

(j) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

(k) [Removed and Reserved]

(l) "Company" shall mean OSI/FLEMING'S, LLC, a Delaware limited liability company (formerly known as OUTBACK/FLEMING'S, LLC).

(m) "Company Minimum Gain" shall have the meaning ascribed to the term "Partnership Minimum Gain" in the Regulations Section 1.704-2(d).

(n) "Distributable Cash" shall mean the amount of cash which a Managing Interest deems available for distribution to the Members, taking into account all debts, liabilities, and obligations of the Company then due, and working capital and other amounts which are described in the Annual Business Plan, and necessary for the Company's business or to place into reserves for customary and usual claims with respect to such business.

(o) "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

(p) "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

(q) "Fleming's" shall mean FPSH Limited Partnership, an Arizona limited partnership ("FPSH LP") and AWA III Steakhouses, Inc., a California corporation ("AWA INC"), individually and collectively.

(r) "Fleming's Principals" shall mean Paul M. Fleming and A. William Allen, III.

(s) "Majority Interest" shall mean those non-defaulting Members who hold at least fifty one percent (51%) of the Percentage Interests entitled to vote.

(t) "Managing Interest" shall mean at least fifty one percent (51%) of the Members entitled to vote, with FPSH LP being entitled to one (1) vote; AWA INC being entitled to one (1) vote; and Outback being entitled to two (2) votes.

(u) "Member" shall mean each Person who (a) is an initial signatory to this Agreement, has been admitted to the Company as a Member in accordance with the Certificate and this Agreement or is an Assignee who has become a Member in accordance with **Article VII**, and (b) has not ceased to be a Member in accordance with **Article VII,** or for any other reason.

(v) "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

(w) "Member Nonrecourse Deductions" shall mean items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures that are attributable to Member Nonrecourse Debt.

(x) "Membership Interest" shall mean a Member's entire interest in the Company including the Member's Economic Interest, the right to vote on or participate in the management, and the right to receive information concerning the business and affairs, of the Company.

(y) "Net Profits" and "Net Losses" shall mean the income, gain, loss and deductions of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the method of accounting at the close of each Fiscal Year on the Company's information tax return filed for federal income tax purposes.

(z) "Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

(aa) "Outback" shall mean OS PRIME, LLC, a Florida limited liability company (formerly known as OS Prime, Inc., a Florida corporation), and a wholly-owned subsidiary of OSI Restaurant Partners, LLC, a Delaware limited liability company (formerly known as Outback Steakhouse, Inc. ("OSI").

(bb) "Percentage Interest" shall mean the percentage ownership interest of a Member in the Company, as such percentage may be adjusted from time to time pursuant to the terms of this Agreement. The current Percentage Interests of the Members shall be as reflected on **Schedule 1**, attached hereto and incorporated herein;

(cc) "Person" shall mean an individual, partnership, limited partnership, limited liability company, corporation, trust, estate, association or any other entity.

(dd) "Proprietary Marks" shall mean any and all trade names, service marks and trademarks used in connection with the System.

(ee) "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code, and any successor regulations.

(ff) "Restaurant(s)" shall mean those certain upscale steakhouse restaurants developed, owned and/or operated by the Company utilizing the Fleming's Prime Steakhouse and Wine Bar concept and operating system.

(gg) "System" shall mean the Fleming's Prime Steakhouse and Wine Bar concept and operating system and all elements thereof including, without limitation, recipes, operating technologies and Proprietary Marks.

(hh) "Tax Matters Partner" (as defined in Code Section 6231) shall be Outback or its successor as designated pursuant to **Section 9.8**.

Article II. ORGANIZATIONAL MATTERS

2.1 Formation. The Members have formed a Delaware limited liability company under the laws of the State of Delaware by filing the Certificate with the Delaware Secretary of State and entering into this Agreement, which Agreement shall be deemed effective as of the date first listed above. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2 Name. The name of the Company shall be "OSI/FLEMING'S, LLC". The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that a Managing Interest of the Members deems appropriate or advisable. The officers of the Company shall file any fictitious name certificates and similar filings, and any amendments thereto, that the officers of the Company consider appropriate or advisable.

2.3 Term. The term of this Agreement commenced on the filing of the Certificate and shall continue until terminated as hereinafter provided.

2.4 Office and Agent. The Company shall continuously maintain a registered office and agent in the State of Delaware. The registered office and agent shall be as stated in the Certificate or as otherwise determined by a Managing Interest of the Members. The principal office of the Company shall be 2202 N. Westshore Blvd., Tampa, Florida 33607, or as a Managing Interest of the Members may determine. The Company may also have such offices, anywhere within and without the State of Delaware, as the officers of the Company may determine from time to time, or the business of the Company may require.

2.5 Addresses of the Members. The respective addresses of the Members are set forth on **Exhibit A**. A Member may change its address upon notice thereof to the Secretary of the Company.

2.6 Purpose and Business of the Company. The purpose of the Company is to engage in any lawful activity for which a limited liability company may be organized under the Act. Notwithstanding the foregoing, without the consent of a Majority Interest, the Company shall not engage in any business other than the following:

A. The establishment, ownership, operation and franchising of upscale steakhouse restaurants utilizing the System; and

B. Such other activities directly related to and in furtherance of the foregoing business as may be necessary, advisable, or appropriate as determined by a Managing Interest of the Members.

C. This Agreement shall not be deemed or construed to create a relationship between the Members with respect to any activities whatsoever except for those activities required for the accomplishment of the Company's purpose as specified in this **Section 2.6**. The Members acknowledge and agree that upon contribution of the System and Proprietary Marks by Fleming's pursuant to **Section 3.1** hereof, the Company shall be the sole and exclusive owner of the System and the Proprietary Marks and the Members shall have no right, title, or interest in or to the System or the Proprietary Marks, except as specifically provided in this Agreement.

Article III. CAPITAL CONTRIBUTIONS

3.1. Termination Fee. Outback shall be solely responsible for the $750,000 termination fee ("Termination Fee") for the termination of the Company's Blue Coral Newport Beach location lease. Neither FPSH LP nor AWA INC shall be required to contribute capital to cover any portion of the Termination Fee, nor will FPSH LP or AWA INC's capital accounts be reduced by any portion of the Termination Fee. Both FPSH LP and AWA INC shall remain responsible for their proportionate share of the negative cash flow and closing costs, other than the Termination Fee, for the Company's Blue Coral Newport Beach location.

3.2. [Removed and Reserved].

3.3 Interest on Capital Contributions. No Member shall receive, or be entitled to receive, interest on its contributions to the capital of the Company. Except as otherwise provided herein, no Member shall have the right to demand or to receive the return of all or any part of its Capital Account or of its contributions to the capital of the Company.

3.4 No Additional Capital Contributions. In no event shall any Member be obligated to make any additional capital contributions, except as otherwise expressly provided herein.

3.5 Liability for Certain Obligations. Fleming's Principals and Outback covenant and agree that as to any guaranty of any debt, liability, or obligation of the Company, including, without limitation, material long-term obligations, such as liability as lessee under leases for Restaurant premises and liability on loans (collectively "Obligations"), Fleming's Principals and Outback's parent company, OSI, shall guarantee such Obligations if required by the third party creditor; provided however, Fleming's Principals and OSI shall each be proportionately liable to any third party creditor for only up to the percentage of the outstanding balance under such Obligations as is equal to the applicable affiliated Member's Percentage Interest in the Company at the time in question, and shall not be jointly and severally liable therefor.

3.6 Documentation. Fleming's Principals and Outback covenant and agree that all documentation evidencing any guaranties of the Company's material, long term obligations, including, without limitation, a Restaurant premises lease, any promissory notes, and any lease for furniture, fixture and equipment, shall limit the liability of each of Fleming's Principals and OSI to such percentage of any amounts outstanding under such obligations as is equal to the applicable affiliated Member's Percentage Interest in the Company at the time in question, and shall specifically state that Fleming's Principals and OSI shall not be individually liable for the entire amount thereof, nor jointly and severally liable therefor. This provision may not be waived without the unanimous consent of all Members.

3.7 Capital Accounts. The Company shall establish and maintain an individual Capital Account for each Member in accordance with Regulations Section 1.704-1(b)(2)(iv). If a Member transfers all or a part of its Membership Interest in accordance with this Agreement, such Member's Capital Account attributable to the transferred Membership Interest shall carry over to the new owner of such Membership Interest pursuant to Regulations Section 1.704-1(b)(2)(iv)(1). FPSH LP shall receive a $250,000 credit to its Capital Account as a result of the funds received by the Company for the assignment to a third party of the lease for its prior Blue Coral La Jolla location.

3.8 Failure to Make Contributions. If a Member does not timely contribute capital when required, that Member shall be in default under this Agreement. In such event, a non-defaulting Member shall send the defaulting Member written notice of such default, giving such Member fourteen (14) days from the date such notice is given to contribute the entire amount of its required Capital Contribution. If the defaulting Member does not contribute its required capital to the Company within said fourteen (14)-day period, those non-defaulting Members who hold a majority of the Percentage Interests held by all non-defaulting Members may elect any one or more of the following remedies:

A. One or more non-defaulting Members may advance funds to the Company to cover those amounts that the defaulting Member fails to contribute. Amounts that a non-defaulting Member so advances on behalf of the defaulting Member shall become a loan due and owing from the defaulting Member to such non-defaulting Member and bear interest at the rate of ten percent (10%) per annum, payable monthly. All cash distributions otherwise distributable to the defaulting Member under this Agreement shall instead be paid to the non-defaulting Members making such advances until such advances and interest thereon are paid in full. In any event, any such advances shall be evidenced by a promissory note in a form reasonably acceptable to the non-defaulting Members and be due and payable by the defaulting Member one (1) year from the date that such advance was made. Any amounts repaid shall first be applied to costs of collection, then to interest and thereafter to principal. Effective upon a Member becoming a defaulting Member, each Member grants to the non-defaulting Members who advance funds under this **Section 3.8A** a security interest in its Membership Interest to secure its obligation to repay such advances and agrees to execute and deliver a promissory note as described herein together with a security agreement in a form reasonably acceptable to the non-defaulting Members and such UCC-1 financing statements and assignments of certificates of membership (or other documents of transfer) as such non-defaulting Members may reasonably request.

B. One or more non-defaulting Members may contribute funds to the capital of the Company to cover those amounts that the defaulting Member fails to contribute. In such event, the Percentage Interests of all Members shall be adjusted proportionately to reflect the cumulative total Capital Contributions each Member has contributed or, with respect to a non-defaulting Member, which such Member has agreed to contribute.

C. The non-defaulting Members who hold a majority of the Percentage Interests held by all non-defaulting Members may dissolve the Company, in which event the Company shall be wound-up, liquidated and terminated pursuant to **Article X.**

D. The defaulting Member shall lose its voting and approval rights under the Act, the Certificate and this Agreement.

E. The defaulting Member shall lose its ability to participate in the management and operations of the Company.

F. The Company or the non-defaulting Members may purchase the defaulting Member's entire Membership Interest for an amount equal to eighty percent (80%) of the Fair Market Value of the Membership Interest.

(i) Determination of Fair Market Value. For the purposes of this **Section 3.8F**, the "Fair Market Value" of the Membership Interest at issue shall be determined in the following manner:

(a) The defaulting Member and the non-defaulting Members shall agree upon the Fair Market Value of the defaulting Member's Membership Interest within ten (10) days following the date of the event of default. If there is no agreement on the Fair Market Value, the defaulting Member and the non-defaulting Members shall agree upon a mutually acceptable appraiser within fifteen (15) days following the date of the event of default, or, in the event such persons fail to so agree, two (2) appraisers shall be appointed within twenty (20) days following the date of the event of default, one by the defaulting Member, and one by the non-defaulting Members. If the defaulting Member, on the one hand, or the non-defaulting Members, on the other hand, fail to appoint an appraiser within the twenty (20) day period specified herein, the sole appraiser appointed within such twenty (20) day period shall be the sole appraiser for the purposes of determining Fair Market Value of the defaulting Member's Membership Interest to be purchased pursuant to this **Section 3.8F**. The defaulting Member and the non-defaulting Members shall promptly provide notice of the name of the appraiser so appointed by such party to the other. A third appraiser, if the initial two appraisers are appointed, shall be appointed by the mutual agreement of the first two appraisers so appointed, or, if such first two appraisers fail to agree upon a third appraiser within thirty (30) days following the date of the event of default, either the defaulting Member or the non-defaulting Members may demand the appointment of an appraiser be made by the then director of the Regional Office of the American Arbitration Association located nearest to the Company's principal office, in which event the appraiser appointed thereby shall be the third appraiser. Each of the appraisers shall submit to the defaulting Member and the non-defaulting Members, within thirty (30) days after the final appraiser has been appointed ("Appraisal Period"), a written appraisal (the "Appraisal") of the Fair Market Value of the defaulting Member's Membership Interest.

(b) In connection with any appraisal conducted pursuant to this Agreement, the parties hereto agree that any appraiser appointed hereunder shall be given full access during normal business hours to all information required and relevant to a valuation of the defaulting Member's Membership Interest.

(c) If three appraisers are appointed, the Fair Market Value of the defaulting Member's Interest in question shall be equal to the numerical average of three appraised determinations; provided, however, that if the difference between any two appraisals is not more than ten percent (10%) of the lower of the two, and the third appraisal differs by more than twenty-five percent (25%) of the lower of the other two appraisals, the numerical average of such two appraisals shall be determinative.

(d) Any appraiser, to be qualified to conduct an appraisal hereunder, shall be an independent appraiser (i.e., not affiliated with Outback or the Fleming's Principals), an M.A.I. appraiser or its equivalent, and shall be reasonably competent as an expert to appraise the value of the defaulting Member's Percentage Interest. If any appraiser initially appointed under this Agreement shall, for any reason, be unable to serve, a successor appraiser shall be promptly appointed in accordance with the procedures pursuant to which the predecessor appraiser was appointed.

Notwithstanding the foregoing, if the determination of the Fair Market Value of the defaulting Member's Percentage Interest by appraisal is not completed and all appraisal reports delivered as provided herein within the Appraisal Period, then all closing, payment, and similar dates subsequent thereto shall be automatically extended one (1) day for each day delivery of the appraisal reports is delayed beyond the end of the Appraisal Period.

(e) The cost of the appraiser appointed by each party shall be borne by each such party. The cost of the third appraiser, if any, or the sole appraiser, in the event the defaulting Member and the non-defaulting Members mutually agree upon a single appraiser, shall be borne equally by the defaulting Member and the non-defaulting Member.

(ii) Notice of Intent to Purchase. Within thirty (30) days after the determination of the purchase price of the defaulting Member's Membership Interest in accordance with **Section 3.8F(i),** each non-defaulting Member shall notify the defaulting Member in writing of its desire to purchase a portion of the defaulting Member's Membership Interest. The failure of any non-defaulting Member to submit a notice within the applicable period shall constitute an election on the part of the Member not to purchase any of the defaulting Member's Membership Interest. Each non-defaulting Member so electing to purchase shall be entitled to purchase a portion of the defaulting Member's Membership Interest in the same proportion that the Membership Interest of the non-defaulting Member bears to the aggregate of the Membership Interests of all of the non-defaulting Members electing to purchase the defaulting Member's Interest.

(iii) Election to Purchase Less Than All of the defaulting Member's Membership Interest . If any non-defaulting Member elects to purchase none or less than all of its pro rata share of the defaulting Member's Membership Interest, then the non-defaulting Members may elect to purchase more than their pro rata share. If the non-defaulting Members fail to purchase the entire Membership Interest of the defaulting Member, the Company may purchase any remaining share of the defaulting Member's Membership Interest. If the non-defaulting Members and the Company do not elect to purchase all of the defaulting Member's Membership Interest, such Membership Interest not purchased shall be that of an Economic Interest only.

(iv) Payment of Purchase Price. The purchase price shall be paid by the Company or the non-defaulting Members, as the case may be, by either of the following methods, each of which may be selected separately by the Company or the non-defaulting Members:

(a) The Company or the non-defaulting Members shall at the closing pay in cash the total purchase price for the defaulting Member's Membership Interest; or

(b) The Company or the non-defaulting Members shall pay at the closing one-fifth (1/5) of the purchase price and the balance of the purchase price shall be paid in four equal annual principal installments, plus accrued interest, and be payable each year on the anniversary date of the closing. The unpaid principal balance shall accrue interest at the current applicable federal rate as provided in the Code for the month in which the initial payment is made, but the Company and the non-defaulting Members shall have the right to prepay in full or in part at any time without penalty. The obligation of each purchasing non-defaulting Member, and the Company, as applicable, to pay its portion of the balance due shall be evidenced by a separate promissory note executed by the respective purchasing non-defaulting Member or the Company, as applicable. Each such promissory note shall be in an original principal amount equal to the portion owed by the respective purchasing non-defaulting Member or the Company, as applicable. The promissory note executed by each purchasing non-defaulting Member shall be secured by a pledge of that portion of the defaulting Member's Membership Interest purchased by such non-defaulting Member.

(v) Closing of Purchase of defaulting Member's Membership Interest. The closing for the sale of a defaulting Member's Interest pursuant to this **Section 3.8** shall be held at 10:00 a.m. at the principal office of Company no later than sixty (60) days after the determination of the purchase price, except that if the closing date falls on a Saturday, Sunday, or legal holiday, then the closing shall be held on the next succeeding business day. At the closing, the defaulting Member or such defaulting Member's legal representative shall deliver to the Company or the non-defaulting Members an instrument of transfer (containing warranties of title and no encumbrances) conveying the defaulting Member's Membership Interest. The defaulting Member or such defaulting Member's legal representative, the Company and the non-defaulting Members shall do all things and execute and deliver all papers as may be necessary fully to consummate such sale and purchase in accordance with the terms and provisions of this Agreement.

(vi) Purchase Terms Varied by Agreement. Nothing contained herein is intended to prohibit Members from agreeing upon other terms and conditions for the purchase by the Company or any Member of the Membership Interest of any Member in the Company.

Each Member acknowledges and agrees that (i) a default by any Member in making a required Capital Contribution will result in the Company and the non-defaulting Members incurring certain costs and other damages in an amount that would be extremely difficult or impractical to ascertain and (ii) the remedies described in this **Section 3.8** bear a reasonable relationship to the damages which the Members estimate may be suffered by the Company and the non-defaulting Members by reason of the failure of a defaulting Member to make any required Capital Contribution and the election of any or all of the above described remedies is not unreasonable under the circumstances existing as of the date hereof.

The election of the non-defaulting Members to pursue any remedy provided in this **Section 3.8** shall not be a waiver or limitation of the right to pursue an additional or different remedy available hereunder or at law or equity with respect to any such default.

Article IV. MEMBERS

4.1 Limited Liability. Except as expressly set forth in this Agreement or required by law, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

4.2 Admission of Additional Members. A Managing Interest, with the approval of a Majority Interest, may admit to the Company additional Members. Any additional Members shall obtain Membership Interests and will participate in the management, Net Profits, Net Losses, and distributions of the Company on such terms as are determined by a Managing Interest and approved by a Majority Interest. Notwithstanding the foregoing, Assignees may only be admitted as substitute Members in accordance with **Article VII.**

4.3 No Withdrawals or Resignations. No Member may withdraw or resign from the Company. If a Member wrongfully withdraws or resigns as a Member, that Member shall have no right to receive any distribution or any payment for the fair value of its Membership Interest other than such distributions or payments as are made to all Members pursuant to this Agreement.

4.4 Termination of Membership Interest. Upon the transfer of a Member's Membership Interest in violation of **Article VII**, the Membership Interest of such Member shall be terminated and thereafter that Member shall be an Assignee only unless such Membership Interest shall be purchased by the Company and/or remaining Members pursuant to the terms of **Section 7.8**. Such Member shall have no right to vote on any Company matters. Each Member acknowledges and agrees that such termination or purchase of a Membership Interest upon the occurrence of any of the foregoing events is not unreasonable under the circumstances existing as of the date hereof.

4.5 Transactions With The Company. Subject to any limitations set forth in this Agreement and notwithstanding that it may constitute a conflict of interest, with the prior approval of a Managing Interest, a Member may lend money to and transact other business with the Company, including but not limited to entering into franchise agreements (and any modifications or renewals thereof) with the Company; the purchase, sale, lease, or exchange of any property with the Company; or the rendering of any service to the Company, so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing them and in similar transactions between parties operating at arm's length. Subject to other applicable law, any Member entering into such transaction(s) with the Company has the same rights and obligations with respect thereto as a Person who is not a Member.

4.6 Voting Rights. Except as expressly provided in this Agreement or the Certificate, Members shall have no voting, approval or consent rights. Except where this Agreement specifically requires a greater percentage affirmative vote, in all matters in which a vote, approval or consent of the Members is required, a vote, consent or approval of a Majority Interest (or, in instances in which there are defaulting Members, non-defaulting Members who hold a majority of the Percentage Interests held by all non-defaulting Members) shall be sufficient to authorize or approve such act. All votes, approvals or consents of the Members may be given or withheld, conditioned or delayed as the Members may determine in their sole and absolute discretion.

4.7 Meetings of Members. Meetings of Members may be held at such date, time and place as the Member calling the meeting may reasonably fix from time to time. No annual or regular meetings of Members are required. Meetings of the Members may be called by any Member holding more than ten percent (10%) of the Percentage Interests for the purpose of addressing any matters on which the Members may vote. Written notice of a meeting of Members shall be sent or otherwise given to each Member not less than seven (7) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted.

The actions taken at any meeting of Members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting. All such waivers, consents or approvals shall be filed with the Company records or made a part of the minutes of the meeting.

Any action that may be taken at a meeting of Members may be taken without a meeting, if a consent in writing setting forth the action so taken, is signed and delivered to the Company within sixty (60) days of the record date for that action by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote on that action at a meeting were present and voted. All such consents shall be filed with the secretary of the Company and shall be maintained in the Company records. Any Member giving a written consent, or the Member's proxy holders, may revoke the consent by a writing received by the secretary of the Company before written consents of the number of votes required to authorize the proposed action have been filed.

Unless the consents of all Members entitled to vote have been solicited in writing, (i) notice of any Member approval of an amendment to the Certificate or this Agreement, a dissolution of the Company, or a merger of the Company, without a meeting by less than unanimous written consent, shall be given at least ten (10) days before the consummation of the action authorized by such approval, and (ii) prompt notice shall be given of the taking of any other action approved by Members without a meeting by less than unanimous written consent, to those Members entitled to vote who have not consented in writing.

Article V. MANAGEMENT AND CONTROL OF THE COMPANY

5.1 Management of the Company by Members. The business, property and affairs of the Company shall be managed by the Members of the Company. Except for situations in which the approval of a Majority Interest of the Members is expressly required by this Agreement, a Managing Interest of the Members shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs.

5.2 [Removed and Reserved].

5.3 Powers of the Managing Interest.

A. Rights Reserved for Managing Interest of Members. Without limiting the generality of **Section 5.1**, but subject to **Section 5.3D** and to the limitations set forth elsewhere in this Agreement, a Managing Interest of the Members shall have the sole and exclusive powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers of a natural person, including, without limitation, the power to:

(i) Authorize the execution and delivery of any agreement;

(ii) Acquire, purchase, lease, renovate, improve, alter, rebuild, demolish, replace, and own real property and any other property or assets that a Managing Interest of the Members determines is necessary or appropriate or in the interest of the business of the Company, and to acquire options for the purchase of any such property;

(iii) Sell, exchange, lease, or otherwise dispose of the real property and other property and assets owned by the Company, or any part thereof, or any interest therein;

(iv) Sue on, defend, or compromise any and all claims or liabilities in favor of or against the Company; submit any or all such claims or liabilities to arbitration; and confess a judgment against the Company in connection with any litigation in which the Company is involved; and

(v) Retain legal counsel, auditors, and other professionals in connection with the Company business and to pay therefor such remuneration as a Managing Interest of the Members may determine.

B. Annual Business Plan. At least sixty (60) days prior to the commencement of each Fiscal Year, the President shall submit to the Members for approval by a Managing Interest, the Annual Business Plan for the Company. The President and the Members shall at all times use their best efforts to operate the Company in conformity with the Annual Business Plan.

C. Maximization of Value. The Members shall from time to time evaluate in good faith all options available to the Company to maximize the value of each Member's Percentage Interest in the Company, such as, but not limited to, an initial public offering, strategic sale, or merger into OSI.

D. Limitations on Power of a Managing Interest of the Members .

(i) Limitations on Acts of Managing Interest . A Managing Interest of the Members shall not have authority hereunder to cause the Company to engage in the following without first obtaining the affirmative vote or written consent of a Majority Interest (or such greater Percentage Interest as is set forth below) of the Members:

(a) The operation of any Restaurant other than in conformity with the operating procedures established pursuant to, or in accordance with, the System;

(b) The sale, exchange or other disposition of all, or substantially all, of the Company's assets occurring as part of a single transaction or plan, or in multiple transactions over a six (6) month period, except in the orderly liquidation and winding up of the business of the Company upon its duly authorized dissolution;

(c) The borrowing of money from any party in excess of $25,000, the issuance of evidences of indebtedness in connection therewith, the refinancing, increase in the amount of, modification, amendment, or changing of the terms, or extension of the time for the payment of any indebtedness or obligation of the Company, and securing such indebtedness by mortgage, deed of trust, pledge, security interest, or other lien on Company assets;

(d) The merger of the Company with a corporation, another limited liability company or limited partnership which is not an Affiliate of the Company or of any of the Members; provided in no event shall a Member be required to become a general partner in a merger with a limited partnership without its express written consent;

(e) The merger of the Company with any general partnership, or with a corporation, limited liability company or limited partnership which is an Affiliate of the Company or any of the Members, shall require the affirmative vote or written consent of Members owning a ninety percent (90%) Percentage Interest;

(f) The admission of any person as a Member, or the establishment of different classes of Members;

(g) An alteration of the primary purpose or business of the Company as set forth in **Section 2.6;**

(h) The lending of money by the Company to any Member or officer;

(i) Any act which would make it impossible to carry on the ordinary business of the Company;

(j) The declaration of Bankruptcy on behalf of the Company;

(k) The payment of any amount in violation of this Agreement; and

(l) Any other transaction described in this Agreement as requiring the vote, consent, or approval of the Members.

(ii) [Removed and Reserved].

5.4 Liability of Members for Management Responsibilities . The Members, while carrying out their management responsibilities pursuant to this Agreement, shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, breach of fiduciary duty, a knowing violation of law by a Member or a breach of the Member's obligations under this Agreement, in which event such Member shall be so liable.

5.5 [Removed and Reserved].

5.6 [Removed and Reserved].

5.7 Officers. A Managing Interest of the Members may appoint officers at any time. The officers of the Company shall include a President and such other officers as a Managing Interest deems necessary and appropriate. The officers shall serve at the pleasure of Members, subject to (a) all rights, if any, of an officer under an employment contract, and (b) the right of a Majority Interest to remove any officer. A Managing Interest may determine a reasonable compensation to be paid to each officer so appointed. Any individual may hold any number of offices. The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by a Managing Interest.

5.8 President. All decisions as to the day to day operations of the Company shall be made by the President. The President shall execute an Employment Agreement acceptable to the President and a Managing Interest of the Members. The President shall not, without the approval of a Managing Interest of the Members (or a Majority Interest or more of the Members if such power is retained by the Members pursuant to this Agreement):

(i) Confess a judgment against the Company;

(ii) Admit any person as a Member;

(iii) Declare Bankruptcy on behalf of the Company;

(iv) Enter into any lease of real or personal property;

(v) Enter into any loan transaction or incur any indebtedness of the Company in excess of $25,000;

(vi) Execute any franchise agreement;

(vii) Purchase any real property; or

(viii) Undertake any such other matter(s) as may be agreed upon by a Managing Interest of the Members.

Article VI. ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS

6.1 Allocations of Net Profit and Net Loss

A. Net Loss. Subject to **Sections 3.1**, **3.7** and **6.5E**, Net Loss shall be allocated first to Outback in an amount equal to Outback's positive Capital Account balance, and then to the Members in proportion to their Percentage Interests. Notwithstanding the previous sentence, loss allocations to a Member shall be made only to the extent that such loss allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member's share of Company Minimum Gain. Any loss not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of losses under this **Section 6.1A**). Any loss reallocated under this **Section 6.1A** shall be taken into account in computing subsequent allocations of income and losses pursuant to this **Article VI**, so that the net amount of any item so allocated and the income and losses allocated to each Member pursuant to this **Article VI**, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this **Article VI** if no reallocation of losses had occurred under this **Section 6.1A**.

B. Net Profit. Subject to **Sections 3.1, 3.7** and **6.5E**, Net Profit shall be allocated to the Members in proportion to their Percentage Interests.

6.2 Special Allocations. Notwithstanding **Section 6.1**:

A. Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a

Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this **Section 6.2A** shall be made in proportion to the amounts required to be allocated to each Member under this **Section 6.2A.** The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This **Section 6.2A** is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

B. Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt . If there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each Member who has a share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this **Section 6.2B** shall be made in proportion to the amounts required to be allocated to each Member under this **Section 6.2B**. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This **Section 6.2B** is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

C. Nonrecourse Deductions. Any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their Percentage Interests.

D. Member Nonrecourse Deductions. Those items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regulations Section 1.704-2(i).

E. Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this **Section 6.2E** shall be taken into account in computing subsequent allocations of income and gain pursuant to this **Article VI** so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this **Article VI** to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this **Article VI** if such unexpected adjustments, allocations, or distributions had not occurred.

6.3 Code Section 704(c) Allocations. Notwithstanding any other provision in this **Article VI**, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this **Section 6.3** are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of profits, losses, or other items of distributions pursuant to any provision of this Agreement.

6.4 Allocation of Net Profits and Losses and Distributions in Respect of a Transferred Interest . If any Economic Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, Net Profit or Net Loss for such Fiscal Year shall be assigned pro rata to each day in the particular period of such Fiscal Year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member or Assignee based upon its respective Economic Interest at the close of such day.

However, for the purpose of accounting convenience and simplicity, the Company shall treat a transfer of, or an increase or decrease in, an Economic Interest which occurs at any time during a semi-monthly period (commencing with the semi-monthly period including the date hereof) as having been consummated on the last day of such semi-monthly period, regardless of when during such semi-monthly period such transfer, increase, of decrease actually occurs (i.e., sales and dispositions made during the first fifteen (15) days of any month will be deemed to have been made on the 15th day of the month).

Notwithstanding any provision above to the contrary, gain or loss of the Company realized in connection with a sale or other disposition of any of the assets of the Company shall be allocated solely to the parties owning Economic Interests as of the date such sale or other disposition occurs.

6.5 Distributions of Distributable Cash by the Company .

A. Subject to applicable law and any limitations contained in this Agreement, all Distributable Cash of the Company shall be retained by the Company and used for development of new Restaurants, except that the Company shall, if Distributable Cash is available, distribute to each Member cash in an amount equal to thirty-five percent (35%) of the Net Profits, if any, allocated to such Member. A Managing Interest of the Members shall make the distributions specified in this section, not less than once each calendar quarter based on estimated year to date Net Profits. Distributions for the last calendar quarter of the Fiscal Year shall be adjusted to reflect any under or over estimating of year to date Net Profits during prior calendar quarters.

B. Removed and Reserved.

C. Subject to **Sections 3.1**, **3.7** and **6.5E** and **Article X**, all other distributions to Members shall be made in accordance with their Percentage Interests.

D. All distributions shall be made only to the Persons who, according to the books and records of the Company, are the holders of record of the Economic Interests in respect of which such distributions are made on the actual date of distribution. Subject to **Section 6.8,** neither the Company nor any Member shall incur any liability for making distributions in accordance with this **Section 6.5.**

E. FPSH LP shall not: (i) have any ownership or other interest in, (ii) be allocated any profit or loss from, (iii) receive any distributions from; or (iv) be responsible for any obligations with respect to, the following Restaurants: 5406 Austin II, 5407 Houston-Town & Country, and 2007 Orlando/Sandlake.

6.6 Form of Distribution. Except as provided in **Section 8.2** and **Section 10.4,** a Member, regardless of the nature of the Member's Capital Contribution, has no right to demand and receive any distribution from the Company in any form other than cash. Except as provided in **Section 10.4**, no Member may be compelled to accept from the Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members and no Member may be compelled to accept a distribution of any asset in kind.

6.7 Restriction on Distributions. No distribution shall be made if, after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members on account of their Membership Interests and liabilities for which the recourse of creditors is limited to specified property of the Company, exceed the fair value of the assets of the Company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the Company only to the extent that the fair value of that property exceeds that liability.

6.8 Return of Distributions. A Member who receives a distribution in violation of **Section 6.7,** and who knew at the time of the distribution that the distribution violated **Section 6.7**, shall be liable to the Company for the amount of the distribution. A Member who receives a distribution in violation of **Section 6.7**, and who did not know at the time of the distribution that the distribution violated **Section 6.7**, shall not be liable for the amount of the distribution. A Member who receives a distribution shall have no liability for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such Member is commenced prior to the expiration of said three (3)-year period and an adjudication of liability against such Member is made in the said action.

6.9 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this **Article VI** and hereby agree to be bound by the provisions of this **Article VI** in reporting their shares of Company income and loss for income tax purposes.

Article VII. TRANSFER AND ASSIGNMENT OF INTERESTS

7.1 Transfer and Assignment of Interests.

A. General Restriction. Except as otherwise provided in this **Article VII**, a Member shall not be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Membership Interest (collectively, "transfer") except with the prior written consent of all Members, which consent may be given or withheld, conditioned or delayed, as the Members may determine in their sole and absolute discretion. Without limiting the generality of the foregoing, the sale or exchange of at least fifty percent (50%) of the voting stock of a Member, if a Member is a corporation, or the transfer of an interest or interests of at least fifty percent (50%) in the capital or profits of a Member (whether accomplished by the sale or exchange of interests or by the admission of new partners or members), if a Member is a partnership or limited liability company, or the cumulative transfer of such interests in a Member which effectively equal the foregoing (including transfer of interests followed by the incorporation of a Member and subsequent stock transfers, or transfers of stock followed by the liquidation of a Member and subsequent transfers of interests) will be deemed to constitute an assignment of a Membership Interest subject to this **Article VII;** provided that transfers among the Fleming's Principals shall be exempt from these requirements. After the consummation of any transfer of any part of a Membership Interest, the Membership Interest so transferred shall continue to be subject to the terms and provisions of this Agreement and any further transfers shall be required to comply with all the terms and provisions of this Agreement.

B. Improper Transfers. Transfers in violation of this **Article VII** shall only be effective to the extent set forth in **Section 7.8**.

7.2 Further Restrictions on the Fleming's Principals. Fleming's and the Fleming's Principals acknowledge and agree that Outback has entered into this Agreement in reliance on the personal skill and character of the Fleming's Principals.

A. AWA INC and A. William Allen, III hereby represent and warrant to Outback that A. William Allen, III (together with his wife or through a trust controlled by them) is the sole shareholders and sole director of AWA INC. The ownership of all of the capital stock of AWA INC by A. William Allen, III is a material inducement to Outback entering into this Agreement. Except as provided in **Section 7.4**, A. William Allen, III hereby covenants and agrees that he shall not, in any manner, transfer, alienate or encumber any of the capital stock, or other voting or ownership interest, in AWA INC without the prior written consent of Outback, which consent may be granted or denied in Outback's sole discretion. Further, AWA INC and A. William Allen, III hereby covenant and agree that they shall not in any manner allow any action to be taken that would result in A. William Allen, III, individually, having insufficient voting power to control all matters submitted to a vote of AWA INC's shareholders.

B. FPSH LP, PKCR, LLC ("PKCR") and Paul M. Fleming hereby represent and warrant to Outback that trusts established for the benefit of Paul M. Fleming, his family members, and entities under his control are the sole members of PKCR, and PKCR is the sole general partner of FPSH LP. The ownership of all of the general partnership interests of FPSH LP by PKCR and ownership of all of the membership interests in PKCR by trusts established for the benefit of Paul M. Fleming, his family members, and entities under his control are material inducements to Outback entering into this Agreement. Except as provided in **Section 7.4**, Paul M. Fleming hereby covenants and agrees that he shall not, in any manner, transfer, alienate or encumber any of the membership interests, or other voting or ownership interest, in PKCR without the prior written consent of Outback, which consent may be granted or denied in Outback's sole discretion, and PKCR hereby covenants and agrees that it shall not, in any manner, transfer, alienate or encumber any of its partnership or other ownership or voting interest in FPSH LP without the prior written consent of Outback, which consent may be granted or denied at Outback's sole discretion FPSH LP, PKCR and Paul M. Fleming covenant and agree that at all times Paul M. Fleming, individually, or in his capacity as trustee or controlling person, shall have the power to determine all matters submitted to a vote of FPSH LP's partners and PKCR's members.

7.3 Further Restrictions on Transfer of Interests. In addition to other restrictions found in this Agreement, no Member shall transfer all or any part of its Membership Interest:

A. Without compliance with all federal and state securities law, and

B. If the Membership Interest to be transferred, when added to the total of all other Membership Interests transferred in the preceding twelve (12) consecutive months prior thereto, would cause the tax termination of the Company under Code Section 708(b)(1)(B).

7.4 Permitted Transfers.

A. A Membership Interest may be transferred to any other Member, subject to compliance with **Section 7.2 and 7.3**, and without the prior written consent of the other Members as required by **Section 7.1**.

B. Subject to the restrictions of **Section 7.3**: Paul M. Fleming and PKCR may make bona fide gifts of interests in PKCR or FPSH LP to Paul M. Fleming's family members, or to one or more trusts for the benefit of his family members, for estate planning purposes provided that Paul M. Fleming retains at least a fifty-one percent

(51%) ownership and voting interest in PKCR and PKCR remains the sole general partner of FPSH LP; and A. William Allen, III may make bona fide gifts of interests in AWA INC to their family members, or to one or more trusts for the benefit of family members, for estate planning purposes provided that they collectively retain at least a fifty-one percent (51%) ownership and voting interest in AWA INC. In the event that Paul M. Fleming or PKCR transfers 100% of its ownership interest in FPSH (whether directly or indirectly) to one or more of Paul M. Fleming's family members or a trust for the benefit of one or more Paul M. Fleming's family members, with respect to which Paul M. Fleming is not a trustee or beneficiary, such transfer shall serve to revoke Paul M. Fleming's right to vote on matters requiring a Managing Interest of the Members of the Company; and AWA, INC shall thereafter have two (2) votes on each matter requiring the approval of a Managing Interest of the Members.

7.5 Effective Date of Permitted Transfers. Any permitted transfer of all or any portion of a Membership Interest or an Economic Interest shall be effective as of the date provided in **Section 6.4** following the date upon which the requirements of **Sections 7.1, 7.2** and **7.3** have been met. The Members shall be provided with written notice of such transfer as promptly as possible after the requirements of **Sections 7.1, 7.2** and **7.3** have been met. Any transferee of a Membership Interest shall take subject to the restrictions on transfer imposed by this Agreement.

7.6 Substitution of Members. An Assignee shall have the right to become a substitute Member only if (i) the requirements of **Sections 7.1, 7.2 and 7.3** hereof are met, (ii) the Assignee executes an instrument satisfactory to a Managing Interest of the Members accepting and adopting the terms and provisions of this Agreement, and (iii) the Assignee pays any reasonable expenses in connection with its admission as a new Member. The admission of an Assignee as a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

7.7 Rights of Legal Representatives. If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any power the Member has under the Certificate or this Agreement to give an Assignee the right to become a Member. If a Member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

7.8 No Effect to Transfers in Violation of Agreement. Upon any transfer of a Membership Interest in violation of this **Article VII**, the remaining Members shall have the right to Purchase the transferred Membership Interest as provided in **Section 3.8F** of this Agreement. In the event such Membership Interest is not purchased by the remaining Members, such transferee shall only be entitled to become an Assignee and thereafter shall only receive the share of the Company's Net Profits, Net Losses and distributions of the Company's assets to which the transferor of such Economic Interest would otherwise be entitled. The transferee shall have no right to vote or participate in the management of the business, property and affairs of the Company or to exercise any rights of a Member. Notwithstanding the immediately preceding sentences, if, in the determination of a Managing Interest of the Members, a transfer in violation of this **Article VII** would cause the tax termination of the Company under Code Section 708(b)(1)(B), the transfer shall be null and void and the purported transferee shall not become either a Member or an Assignee.

Upon and contemporaneously with any transfer (whether arising out of an attempted charge upon that Member's Economic Interest by judicial process, a foreclosure by a creditor of the Member or otherwise) of a Member's Economic Interest which does not at the same time transfer the balance of the rights associated with the Membership Interest transferred by the Member (including, without limitation, the rights of the Member to vote or

participate in the management of the business, property and affairs of the Company), the Company shall purchase from the Member, and the Member shall sell to Company for a purchase price of one hundred dollars ($100), all remaining rights and interests retained by the Member that immediately before the transfer were associated with the transferred Economic Interest. Such purchase and sale shall not, however, result in the release of the Member from any liability to the Company as a Member.

Each Member acknowledges and agrees that the right of the Company to purchase such rights and interests from a Member who transfers a Membership Interest in violation of this **Article VII** is not unreasonable under the circumstances existing as of the date hereof.

7.9 Rights of First Refusal.

A. Removed and Reserved.

B. Outback's Rights. At any time a Member other than Outback (or any shareholder of AWA INC or any partner of FPSH LP or member of PKCR) (each a "Transferor"), desires to transfer all or any part of his, hers, or its Membership Interest (or, in the case of a shareholder of AWA INC any capital stock or other voting or ownership interest in AWA INC, in the case of a partner of FPSH LP any partnership interests in FPSH LP, or in the case of a member of PKCR any membership interest in PKCR) to any person or entity, as permitted by this **Article VII**, the Transferor shall, prior to any such Transfer, give Outback a Notice of Transfer, which notice shall specify the Membership Interest to be transferred, the identity of the proposed transfer, and the Purchase Price. Any purported Notice of Transfer that does not comply with the requirements of this **Section 7.9B** shall be null and void and of no effect hereunder. Upon receipt of a proper Notice of Transfer, Outback shall thereupon have the right to acquire the Transferor's entire Membership Interest or such portion of the Transferor's Membership Interest as is specified in the Notice of Transfer, on terms identical to the Purchase Price or proportionately identical if Outback elects to purchase the entire Membership Interest of the Transferor. In the event the Purchase Price contains terms that Outback cannot reasonably duplicate, Outback shall have the right to substitute the reasonable cash equivalent thereof. This right of first refusal shall not apply to transfers made pursuant to **Section 7.4** or transfers among the Fleming's Principals.

C. Exercise of Rights.

(i) The purchasing Member(s) shall exercise the right of first refusal contained herein by mailing written notice thereof ("Notice of Election") to the Transferor within forty (40) days of mailing of the Notice of Transfer. In the event no purchasing Member(s) mail a Notice of Election to the Transferor within said 40-day period, the purchase option contained herein shall lapse (except as otherwise provided in **Section 7.10**). In the event a Member timely exercises the purchase option contained herein, such Member shall mail written notice to the Transferor of whether the Member has elected to purchase the entire Membership Interest of the Transferor or such portion as was specified in the Notice of Transfer, if less; such notice to be mailed within ten (10) days of the mailing of the Notice of Election.

(ii) The closing for any purchase hereunder shall be consummated and closed in the Company's principal office on a date and at a time designated by the purchasing Member in a notice to the Transferor, provided such consummation and closing date shall occur within ninety-five (95) days from the date of mailing of the Notice of Election. At such closing, the Transferor shall execute and deliver all documents and instruments as are necessary and appropriate, in the opinion of counsel for the Company, to effectuate the transfer of the Transferor's Membership Interest in accordance with the terms of the Notice of Transfer and the purchasing Member shall deliver the Purchase Price.

7.10 Transfer Permitted After Failure to Elect. Subject to **Section 7.1, 7.2 and 7.3**, in the event a Member does not elect pursuant to **Section 7.9** to exercise the purchase option specified therein, or in the event the closing for any purchase pursuant to **Section 7.9** does not occur within the time limits specified therein, then the Transferor shall be free to transfer the exact portion of his, her, or its Membership Interest as was specified in the Notice of Transfer to the person or entity identified in the Notice of Transfer in exchange for the exact Purchase Price as was specified in the Notice of Transfer; ***provided, however,*** that the closing and consummation of such transfer shall occur within one hundred thirty (130) days after the date of mailing of the Notice of Transfer and provided further that such transfer must comply with all other requirements of this **Article VII**. In the event such transfer is not so closed and consummated within such period, the purchase option granted in **Section 7.9** shall again be exercisable and the Transferor shall make no Transfer of any portion of his Membership Interest, or any right, title or interest therein, until such Transferor has again complied with all terms and provisions of this **Article VII**. In the event a Member does not elect pursuant to **Section 7.9** to exercise the purchase option contained therein and the Transferor makes a permitted Transfer in compliance with the terms and provisions of this **Article VII**, then the person or entity to whom such Membership Interest is transferred shall nevertheless acquire such Membership Interest subject to the restriction imposed on such Membership Interest under this **Article VII** as to further transfers of such Membership Interest, and provided further that any such transferee shall agree in writing to be bound by all terms and provisions of this Agreement.

Article VIII. [REMOVED AND RESERVED]

Article IX. ACCOUNTING, RECORDS, REPORTING BY MEMBERS

9.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office all of the following:

A. A current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account and Percentage Interest of each Member and Assignee;

B. [Removed and Reserved];

C. A copy of the Certificate and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Certificate or any amendments thereto have been executed;

D. Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

E. A copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

F. Copies of the financial statements of the Company, if any, for the six (6) most recent Fiscal Years; and

G. The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four (4) Fiscal Years.

9.2 Delivery to Members and Inspection.

A. Upon the request of any Member or Assignee, President shall promptly deliver to the requesting Member or Assignee, at the expense of the Company, a copy of the information required to be maintained under **Section 9.1**.

B. Each Member and Assignee has the right, upon reasonable request for purposes reasonably related to the interest of the Person as Member or Assignee, to:

(i) inspect and copy during normal business hours any of the Company records described in **Section 9.1**;

(ii) obtain from the Company, promptly after their becoming available, a copy of the Company's federal, state, and local income tax or information returns for each Fiscal Year; and

(iii) receive a monthly income statement of the Company and a balance sheet of the Company as of the end of that period. The statement and balance sheet shall be delivered or mailed to the Members within twenty (20) days after the end of each such period.

C. Any request, inspection or copying by a Member or Assignee under this **Section 9.2** may be made by that Person or that Person's agent or attorney.

9.3 Annual Statements.

A. A Managing Interest of the Members of the Company shall cause an annual report to be sent to each of the Members not later than ninety (90) days after the close of the Fiscal Year. The report shall contain a balance sheet as of the end of the Fiscal Year and an income statement and statement of changes in financial position for the Fiscal Year. Such financial statements shall be accompanied by the report thereon, if any, of the independent accountants engaged by the Company or, if there is no report, the certificate of the officers of the Company that the financial statements were prepared without audit from the books and records of the Company.

B. A Managing Interest of the Members of the Company shall cause to be prepared at least annually, at Company expense, information necessary for the preparation of the Members' and Assignees' federal and state income tax returns. A Managing Interest of the Members of the Company shall send or cause to be sent to each Member or Assignee within sixty (60) days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns, and a copy of the Company's federal, state, and local income tax or information returns for that year.

C. The failure by any Member to participate in the preparation of the reports or statements described in subsection 9.3A or 9.3B shall not constitute a default of such Member's obligations under this Agreement if such Member consents to the preparation of such reports or statements on its behalf by the other Members.

9.4 Financial and Other Information. The officers of the Company shall provide such financial and other information relating to the Company or any other Person in which the Company owns, directly or indirectly, an equity interest, as a Member may request.

9.5 Filings. The officers of the Company, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The officers of the Company, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Certificate and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules, and regulations. If a Member is required by the Act to execute or file any document fails, after demand, to do so within a reasonable period of time or refuses to do so, any other Member may prepare, execute and file that document.

9.6 Bank Accounts. The Members shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

9.7 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by a Managing Interest of the Members. The Members may rely upon the advice of the Company's accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

9.8 Tax Matters for the Company Handled by the Tax Matters Partner. The Tax Matters Partner, with the prior approval of a Managing Interest of the Members, shall from time to time cause the Company to make such tax elections it deems to be in the best interests of the Company and the Members. The Tax Matters Partner shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs associated therewith. The Tax Matters Partner shall oversee the Company tax affairs in the overall best interests of the Company but shall not have the right to agree to extend any statute of limitations without the approval of a Majority Interest. If for any reason the Tax Matters Partner can no longer serve in that capacity or ceases to be a Member, as the case may be, a Majority Interest may designate another Member to be Tax Matters Partner.

Article X. DISSOLUTION AND WINDING UP

10.1 Dissolution. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

A. The agreement of a Managing Interest of the Members to terminate the Company;

B. The entry of a decree of judicial dissolution;

C. The vote of non-defaulting Members holding a majority of the Percentage Interests held by all non-defaulting Members pursuant to **Section 3.8C**;

D. The sale of all or substantially all of the assets of Company.

Except for the foregoing, the Company shall not dissolve on the occurrence of any other event.

10.2 Winding Up. Upon the occurrence of any event specified in **Section 10.1**, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Members shall be responsible for overseeing the winding up and liquidation of Company, shall take full account of the liabilities of Company and assets, shall, subject to **Section 10.4,** either cause its assets to be sold or distributed, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in **Section 10.4**. The Persons winding up the affairs of the Company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. The Members winding up the affairs of the Company shall not be entitled to compensation for such services.

10.3 Distributions in Kind. Except for a distribution of the System to Fleming's pursuant to **Section 10.4** any non-cash asset distributed to one or more Members shall first be valued at its fair market value to determine the Net Profit or Net Loss that would have resulted if such asset were sold for such value, such Net Profit or Net Loss shall then be allocated pursuant to **Article VI**, and the Members' Capital Accounts shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to). The fair market value of such asset shall be determined by a Managing Interest or by the Members, or if any Member objects to such valuation, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by a Managing Interest or selected by the liquidating trustee, if applicable, and approved by the Members.

10.4 Order of Payment Upon Dissolution. After determining that all known debts and liabilities of the Company, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets shall be distributed as follows:

A. Upon dissolution of the Company (other than in connection with a sale of all or substantially all of the Company's assets to a third party and other than in connection with a termination resulting from one Member's purchase of all or part of the other Member's Membership Interest) the System shall be distributed to Fleming's, as valued at its deemed contribution value, and all other assets of the Company shall be liquidated. All other proceeds from liquidation of the Company assets shall be distributed (i) to Outback until Outback shall have received an amount equal to Outback's Capital Contributions, and (ii) thereafter to the Members in accordance with their positive Capital Account balances after giving effect to the allocation of Net Profit or Net Loss resulting from such liquidation. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

B. Upon dissolution of the Company in connection with a sale of all or substantially all of the Company's assets to a third party all proceeds from liquidation of the Company's assets shall be distributed to the Members in accordance with their positive Capital Account balances after giving effect to the allocation of Net Profit or Net Loss resulting from such liquidation, it being the intent of the Members that distributions shall be the same as if distributed pursuant to Percentage Interests. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

10.5 Limitations on Payments Made in Dissolution. Each Member shall only be entitled to look solely at the assets of the Company for the return of its Capital Contributions and positive Capital Account balance and shall have no recourse for its Capital Contribution, positive Capital Account balance and/or share of Net Profits (upon dissolution or otherwise) against any other Member.

Article XI. INDEMNIFICATION AND INSURANCE

11.1 Indemnification of Agents. The Company shall defend and indemnify any Member and may indemnify any other Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that it is or was a Member, officer, employee or other agent of the Company or that, being or having been such a Member, officer, employee or agent, it is or was serving at the request of the Company as a manager, member, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter as an "agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. A Managing Interest of the Members shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person entitled to be indemnified by the Company hereunder, upon such terms and conditions as a Managing Interest of the Members deems appropriate in its business judgment.

11.2 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of **Section 11.1** or under applicable law.

Article XII. CONFIDENTIALITY AND NON-COMPETITION

12.1 Noncompetition.

A. Subject to **Subsection C** below, so long as FPSH LP and AWA INC are Members and with respect to each of them for three (3) years thereafter, they, the Fleming's Principals (and their respective Affiliates) shall not, individually or jointly with others, directly or indirectly, whether for their own account or for that of any other Person, operate, engage in, own or hold any ownership interest in, have any interest in or lend any assistance to any steakhouse restaurant, or Person or entity engaged in a business owning, operating or controlling steakhouse restaurants, other than the Company's Restaurants, and shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to any such steakhouse restaurant or Person or entity. The restriction contained herein shall be deemed to apply to A. William Allen, III for so long as AWA INC is a Member and for three (3) years thereafter and to Paul M. Fleming for so long as FPSH LP is a Member and for three (3) years thereafter. For the purposes of this **Section 12.1**, the term "steakhouse restaurant" shall mean any restaurant for which: (i) the word "steak" or any variation thereof is in its name; or (ii) the sale of steak or prime rib is specified in its advertising or marketing efforts; or (iii) the sale of steak and prime rib constitutes thirty five percent (35%) or more of its entrée sales, computed on a dollar basis.

B. Subject to **Subsection D** below, so long as Outback is a Member, and for a period of one (1) year thereafter, Outback (and its Affiliates) shall not, individually or jointly with others, directly or indirectly, whether for its own account or for that of any other Person, operate, engage in, own or hold any ownership interest in, have any interest in or lend any assistance to: any steakhouse restaurant having a per person check average between $40.00 and $55.00, or Person or entity engaged in a business owning, operating or controlling steakhouse restaurants, having a per person check average between $40.00 and $55.00, other than the Company's Restaurants, franchisees of the Company, and the Restaurants currently owned or under development by Outback.

C. None of the restrictions in this **Section 12.1** shall be interpreted to apply to Paul M. Fleming's ownership interest in any Z' Tejas, Paul Martin's Bistro or Roaring Fork restaurants as those restaurants are currently operated.

12.2 Confidentiality.

A. Definition. For the purpose of this Agreement, "Proprietary Information" shall include all information designated by any Member, either orally or in writing, as confidential or proprietary, or which reasonably would be considered proprietary or confidential to the business contemplated by this Agreement, including but not limited to suppliers, customers, trade or industrial practices, marketing and technical plans, technology, personnel, organization or internal affairs, plans for products and ideas, recipes, menus, wine lists and proprietary techniques and other trade secrets. Notwithstanding the foregoing, "Proprietary Information" shall not include information which (i) has entered the public domain or became known other than due to a breach of any obligation of confidentiality owed to the owner of such information; (ii) was known prior to the disclosure of such information; (iii) became known to the recipient from a source other than a Member or its Affiliate, provided there was no breach of an obligation of confidentiality owed to said Member or its Affiliate; or (iv) was independently developed by the party receiving such information.

B. No Disclosure, Use, or Circumvention. No Member or its Affiliates shall disclose any Proprietary Information to any third parties (other than existing or permitted franchisees) and will not use any Proprietary Information in that Member's or Affiliate's business or any affiliated business without the prior written consent of the other Member, and then only to the extent specified in that consent. Consent may be granted or withheld at the sole discretion of any Member. No Member shall contact any suppliers, customers, employees, affiliates or associates to circumvent the purposes of this provision.

C. Maintenance of Confidentiality. Each Member shall take all steps reasonably necessary or appropriate to maintain the strict confidentiality of the Proprietary Information and to assure compliance with this Agreement.

12.3 Non Solicitation. During the term of this Agreement and, with respect to each Member, for a period two (2) years following the earlier of (A) the date that the Member transfers all of its Membership Interest in the Company or (B) the dissolution of the Company pursuant to **Article X**, the Member shall not offer employment to any employee of the Company or of a Member, or their Affiliates, or otherwise solicit or induce any employee of any of them to terminate their employment, nor shall any of the Fleming's Principals act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, for any person or entity which solicits or otherwise induces any employee of the Company or of a Member, or their Affiliates, to terminate their employment with such entity.

12.4 Reasonableness of Restrictions; Reformation; Enforcement. The parties hereto recognize and acknowledge that the geographical and time limitations contained in **Section 12.1, 12.2 and 12.3** hereof are reasonable and properly required for the adequate protection of the Company's and Members' interests. It is agreed by the parties hereto that if any portion of the restrictions contained in **Section 12.1, 12.2 or 12.3** are held to be unreasonable, arbitrary, or against public policy, then the restrictions shall be considered divisible, both as to the

time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile or other portion of the restricted territory being deemed a separate geographical area, so that the longest period of time and largest geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time period or geographical area which is the longest period of time and largest geographical area determined to be reasonable, nonarbitrary, and not against public policy may be enforced. If any of the covenants contained herein are violated and if any court action is instituted by the Company or a Member to prevent or enjoin such violation, then the period of time during which the business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Company or a Member to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in **Section 12.1, 12.2 or 12.3** hereof, the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs, including reasonable attorneys' fees, of such proceedings including appellate proceedings.

12.5 Specific Performance. The parties agree that a breach of any of the covenants contained **Section 12.1, 12.2 and 12.3** hereof will cause irreparable injury to the Company or a Member for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or threatened breach of any such covenants, the Company or injured Member shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to obtain an injunction to restrain any threatened or actual activities in violation of any such covenants. The parties hereby consent and agree that temporary and permanent injunctive relief may be granted in any proceedings which might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Company or Member does apply for such an injunction, that the Company or Member has an adequate remedy at law shall not be raised as a defense.

Article XIII. REPRESENTATIONS AND WARRANTIES

Each Member warrants and represents to the other Members (each of which warranties and representations shall be deemed to be a continuing warranty and representation and covenant that such warranties and representations shall remain true and correct at all times during the term of the Company) that:

13.1 Status. If an entity, such Member is duly organized, validly existing and in good standing under the laws of its state of formation, and each has the power under its organizational documents and adequate authority to execute, deliver, and perform this Agreement which upon such execution and delivery will be a legal, valid, and binding obligation of such party enforceable in accordance with its terms (subject only to the application of bankruptcy, reorganization, insolvency or other similar laws regarding the rights of creditors generally and the exercise of judicial discretion in equity).

13.2 Due Authorization. The execution, delivery and performance of this Agreement by a Member who is an entity have been duly authorized by all requisite corporate, partnership or other organizational action of such party and, as of the date hereof, do not require the consent or approval of any person that has not been obtained and are not in contravention of or in conflict with any term or provision of the organizational documents of such party.

13.3 Other Agreements and Violations of Law. The execution, delivery and performance of this Agreement by such Member will not breach or constitute a default under any agreement, indenture, undertaking or other instrument to which such party or any affiliate of such party is a party or by which any of such persons or any of their respective properties may be bound or affected, which breach or default would have a materially adverse effect on the financial condition of such Member or on the financial condition, properties or operations of the Company. Other than as contemplated by this Agreement such execution, delivery, and performance will not result in the creation or imposition of (or the obligation to create or impose) any lien or encumbrance on any of the Company property nor, to the knowledge of such party, constitute or result in the violation of any law.

13.4 No Litigation. There is no litigation or administrative or other proceeding or tax audit pending, or, to the knowledge of such Member, threatened against or affecting such Member, or any of its affiliates, or any of their respective properties, which, if determined adversely, would have a materially adverse effect on the financial condition, properties or operations of the Company. As of the date hereof, neither such Member, nor, to the knowledge of such Member, any affiliate of such Member is in default with respect to any order, writ, injunction, decree or demand of any court of other governmental or regulatory authority which might in any way adversely affect the Company.

Article XIV. MISCELLANEOUS

14.1 Complete Agreement. This Agreement and the Certificate constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Certificate will be binding on the Members or have any force or effect whatsoever. To the extent that any provision of the Certificate conflicts with any provision of this Agreement, the Certificate shall control.

14.2 Consultation with Attorney. Each Member has been advised to consult with its own attorney regarding all legal matters concerning an investment in the Company and the tax consequences of participating in the Company, and has done so, to the extent it considers necessary.

14.3 Tax Consequences. Each Member acknowledges that the tax consequences to it of investing in the Company will depend on its particular circumstances, and neither the Company, the Members, nor the partners, shareholders, members, agents, officers, directors, employees, Affiliates, or consultants of any of them will be responsible or liable for the tax consequences to him or her of an investment in the Company. It will look solely to, and rely upon, its own advisers with respect to the tax consequences of this investment.

14.4 No Assurance of Tax Benefits. Each Member acknowledges that there can be no assurance that the Code or the Regulations will not be amended or interpreted in the future in such a manner so as to deprive the Company and the Members of some or all of the tax benefits they might now receive, nor that some of the deductions claimed by the Company or the allocations of items of income, gain, loss, deduction, or credit among the Members may not be challenged by the Internal Revenue Service.

14.5 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

14.6 Parties in Interest. Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

14.7 Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. Any reference to the Code, the Regulations, the Act or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

14.8 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

14.9 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or its counsel.

14.10 References to this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated.

14.11 Jurisdiction. Each Member hereby consents to the exclusive jurisdiction of the state and federal courts sitting in Delaware in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement. Each Member further agrees that personal jurisdiction over him or her may be effected by service of process by registered or certified mail addressed as provided in **Section 14.14** of this Agreement, and that when so made shall be as if served upon him or her personally within the Member's state of residence.

14.12 Exhibits All Exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

14.13 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

14.14 Notices.

A. All notices required or permitted shall be in writing and may be communicated in person or by mail. Notice shall be deemed to be delivered when deposited in the United States mail addressed to the respective Member at its mailing address as designated in the records of the Membership, with postage thereon prepaid, registered or certified mail, return receipt requested, or if personally delivered, when received. Notices to a dissolved or bankrupt Member shall be delivered in the same manner to the last known address of its registered agent or receiver, as the case may be.

B. While all notices, demands and requests shall be effective as provided in **Section 14.4A** above, the time period in which a response to any such notice, demand or request must be given shall commence to run from the date of receipt appearing on the return receipt or other evidence of delivery of the notice, and the time period in which a response to a demand or request must be given shall commence to run from the date of receipt on the return receipt or other evidence of delivery of the notice. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent.

C. By giving to the other Members at least thirty (30) days' prior written notice thereof, each Member and its successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their addresses and each shall have the right to specify as its address any other address within the United States of America.

14.15 Amendments. All amendments to this Agreement will be in writing and signed by all of the Members.

14.16 Reliance on Authority of Person Signing Agreement If a Member is not a natural person, neither the Company nor any Member will: (A) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual, or (B) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

14.17 Company Property. All property contributed to the Company or acquired with Company funds shall be held and titled in the name of the Company and not individually by or for any Member.

14.18 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

14.19 Attorney Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment and an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law. For the purposes of this Section: (a) attorney fees shall include, without limitation, fees incurred in the following: (1) post judgment motions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation and (b) prevailing party shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

14.20 Time is of the Essence. All dates and times in this Agreement are of the essence.

14.21 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

14.22 Severability. Each article, section, subsection, and lesser section of this Agreement constitutes a separate and distinct undertaking, covenant or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

14.23 Partition. The Members hereby agree that no Members, nor any successor in interest of any Members, shall have the right to have Company assets partitioned, or to file a complaint or institute any proceedings of law or equity to have a Company asset partitioned, and each Member, on behalf of itself, its successors and assigns, hereby waives any such rights.

14.24 Waiver. The failure of any Member to insist upon strict performance of a covenant hereunder or any obligation hereunder shall not be a waiver of such Member's right to demand compliance therewith in the future.

All of the Members have executed this Agreement, effective as of the date written above.

ATTEST

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ A. William Allen
Print Name: A. William Allen
Its: Secretary

MEMBERS:

"OUTBACK"
OS PRIME, LLC,
a Florida limited liability company

By: OSI RESTAURANT PARTNERS, LLC
a Delaware limited liability company, its managing member

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

"FPSH LP"
FPSH LIMITED PARTNERSHIP, an Arizona limited partnership

By its general partner:

PKCR, LLC, an Arizona limited liability company

By: /s/ Paul M. Fleming
Paul M. Fleming, Manager

"AWA INC"
AWA III STEAKHOUSES, INC, a California corporation

By:
Its: CEO

EXHIBIT A

ADDRESSES
OF MEMBERS

Member	Address
OS PRIME, LLC	2202 N. West Shore Blvd., Suite 500 Tampa, Florida 33607
FPSH LIMITED PARTNERSHIP	1345 Lincoln Ave , Suite B Calistoga, California 94515
AWA III STEAKHOUSES, INC.	1300 Dove Street, Suite 105 Newport Beach, CA 92660

Schedule 1

Outback 89.62%
FPSH LP 7.88%
AWA INC 2.5%

CONSENT OF OSI RESTAURANT PARTNERS, LLC

The undersigned, the sole member OS PRIME, LLC, which is a member in OSI/FLEMING'S, LLC, a Delaware limited liability company hereby agrees to be bound by and comply with the provisions of that certain Amended and Restated Operating Agreement of OSI/FLEMING'S, LLC (the "Agreement") applicable to it in its capacity as the parent of OS PRIME, LLC or as otherwise provided in the Agreement.

DATED this 4th day of June, 2010.

ATTEST

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

CONSENT OF AWA III STEAKHOUSES, INC. SHAREHOLDER

A. William Allen III (together with his wife or a trust controlled by them), being all of the shareholders in AWA III STEAKHOUSES, INC. which is a member in OSI/FLEMING'S, LLC, a Delaware limited liability company, hereby agree to be bound by, and comply with the provisions of that certain Amended and Restated Operating Agreement of OSI/FLEMING'S, LLC (the "Agreement") applicable to them in their individual capacity, as shareholders of AWA III STEAKHOUSE, INC., or as "Fleming's Principals" (as such term is defined in the Agreement) or as otherwise provided in the Agreement.

DATED this 3rd day of June, 2010.

WITNESSES:

/s/ Noel Murphy	/s/ A. William Allen III
/s/ Jennifer Capler	A. WILLIAM ALLEN III

CONSENT OF PAUL M. FLEMING

PAUL M. FLEMING being the sole manager of PKCR, LLC ("PKCR") the sole general partner of FPSH LIMITED PARTNERSHIP which is a member in OSI/FLEMING'S, LLC, a Delaware limited liability company, hereby agrees to be bound by, and comply with the provisions of that certain Amended and Restated Operating Agreement of OSI/FLEMING'S, LLC (the "Agreement") applicable to him in his individual capacity, as the sole manager of PKCR, and as a "Fleming's Principal" (as such term is defined in the Agreement) or as otherwise provided in the Agreement.

DATED this 3rd day of April, 2010.

WITNESSES:

/s/ Kelly Fleming	/s/ Paul M. Fleming
/s/ Robert Fleming	PAUL M. FLEMING

CONSENT OF PKCR, LLC

PKCR, LLC, the sole general partner of FPSH LIMITED PARTNERSHIP which is a member in OSI/FLEMING'S LLC (the "Company"), a Delaware limited liability company, hereby agrees to be bound by and comply with the provisions of that certain Amended and Restated Operating Agreement of OSI/FLEMING'S, LLC (the "Agreement") applicable to it individually and as a partner in FPSH LIMITED PARTNERSHIP, or as otherwise provided in the Agreement.

PKCR, LLC, an Arizona limited liability company

By: /s/ Paul M. Fleming
Paul M. Fleming, Manager

Exhibit 10.9

EXECUTION VERSION

CREDIT AGREEMENT

Dated as of June 14, 2007

among

OSI RESTAURANT PARTNERS, LLC,
as Borrower,

OSI HOLDCO, INC.,

DEUTSCHE BANK AG NEW YORK BRANCH,
as Administrative Agent,
Pre-Funded RC Deposit Bank,
Swing Line Lender and an L/C Issuer,

THE OTHER LENDERS PARTY HERETO,

BANK OF AMERICA, N.A.,
as Syndication Agent,

GENERAL ELECTRIC CAPITAL CORPORATION,
SUNTRUST BANK

and

COOPERATIEVE CENTRALE RAIFFEISEN – BOERENLEENBANK B.A., "RABOBANK NEDERLAND", NEW YORK BRANCH,
as Co-Documentation Agents for the Term Loan Facility,

and

LASALLE BANK NATIONAL ASSOCIATION,
WACHOVIA BANK, NATIONAL ASSOCIATION and
WELLS FARGO BANK, NATIONAL ASSOCIATION,

as

Co-Documentation Agents for the Working Capital RC and Pre-Funded RC Facilities

DEUTSCHE BANK SECURITIES INC. and
BANC OF AMERICA SECURITIES LLC,
as Joint Lead Arrangers and Co-Bookrunners

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CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of June 14, 2007, among OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (formerly known as OSI Restaurant Partners, Inc., a Delaware corporation, the " Borrower"), OSI HOLDCO, INC., a Delaware corporation ("Holdings"), DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, each lender from time to time party hereto (collectively, the " Lenders" and individually, a "Lender"), BANK OF AMERICA, N.A., as Syndication Agent, and GENERAL ELECTRIC CAPITAL CORPORATION, SUNTRUST BANK, COOPERATIEVE CENTRALE RAIFFEISEN – BOERENLEENBANK B.A., "RABOBANK NEDERLAND," NEW YORK BRANCH, LASALLE BANK NATIONAL ASSOCIATION, WACHOVIA BANK, NATIONAL ASSOCIATION AND WELLS FARGO BANK, NATIONAL ASSOCIATION, as Co-Documentation Agents.

PRELIMINARY STATEMENTS

Pursuant to the Merger Agreement (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below), Kangaroo Acquisition, Inc., a Delaware corporation and a wholly owned Subsidiary of Holdings (" Acquisition Sub"), shall be merged with the Borrower, with the Borrower as the surviving corporation (the " Merger").

The Borrower has requested that substantially simultaneously with the consummation of the Merger, the Lenders extend credit to the Borrower in the form of (i) Term Loans in an initial aggregate principal amount of $1,310,000,000, (ii) a Working Capital RC Facility in an aggregate principal amount of $150,000,000 and (iii) a Pre-Funded RC Facility in an aggregate principal amount of $100,000,000. The Working Capital RC Facility may include one or more Swing Line Loans and one or more Letters of Credit from time to time.

The proceeds of the Term Loans made on the Closing Date, together with the proceeds of (i) the issuance of the Senior Notes, (ii) the Specified Lease Transactions and (iii) the cash portion of the Equity Contributions, will be used to finance the Debt Prepayment and pay the Merger Consideration and the Transaction Expenses. Additional proceeds of Working Capital RC Loans made on the Closing Date will be used to fund (i) working capital adjustments, if any, required under the Merger Agreement, seasonal working capital needs and variations from working capital projected on the Closing Date, (ii) amounts not to exceed $11,500,000 to finance the Debt Prepayment and pay the Merger Consideration and the Transaction Expenses, and (iii) any escrow accounts, reserve deposits or similar amounts in respect of the Master Lease or related Sub-Leases.

The proceeds of Working Capital RC Loans and Swing Line Loans made after the Closing Date will be used for working capital, Capital Expenditures and other general corporate purposes of the Borrower and the Restricted Subsidiaries, including the financing of Permitted Acquisitions; provided that if, as of the last day of the immediately preceding Test Period (after giving Pro Forma Effect to such Borrowing and any other Borrowing to occur on such date) the Rent Adjusted Leverage Ratio is greater than or equal to 5.25:1.00, proceeds of Working Capital RC Loans and Swing Line Loans may be utilized solely for working capital and other general

corporate purposes (including Capital Expenditures, but excluding Capital Expenditures for the establishment of new restaurants and refurbishments of existing restaurants). Letters of Credit will be used for general corporate purposes of the Borrower and the Restricted Subsidiaries.

The proceeds of Pre-Funded RC Loans will be used solely to fund Capital Expenditures.

The applicable Lenders have indicated their willingness to lend, and the L/C Issuers have indicated their willingness to issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

Definitions and Accounting Terms

Section 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"**Acquired EBITDA**" means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary (determined as if references to the Borrower and the Restricted Subsidiaries in the definition of Consolidated EBITDA (and in the component financial definitions used therein) were references to such Acquired Entity or Business or Converted Restricted Subsidiary and its Subsidiaries), all as determined on a consolidated basis for such Acquired Entity or Business or Converted Restricted Subsidiary.

"**Acquired Entity or Business**" has the meaning set forth in the definition of the term "Consolidated EBITDA".

"**Acquisition Sub**" has the meaning set forth in the Preliminary Statements of this Agreement.

"**Act**" has the meaning set forth in Section 10.20.

"**Administrative Agent**" means DBNY, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent. Unless the context otherwise requires, the term "Administrative Agent" as used herein and in the other Loan Documents shall include the Collateral Agent.

"**Administrative Agent's Office**" means the Administrative Agent's address and account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

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

"**Affiliate**" means, with respect to any 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. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"**Agent-Related Persons**" means the Agents, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"**Agents**" means, collectively, the Administrative Agent, the Collateral Agent, the Syndication Agent, the Co-Documentation Agents and the Supplemental Administrative Agents (if any).

"**Aggregate Commitments**" means the Commitments of all the Lenders.

"**Aggregate Credit Exposures**" means, at any time, the sum of (a) the unused portion of each Working Capital RC Commitment then in effect, (b) the unused portion of each Term Commitment then in effect, (c) the unused portion of each Pre-Funded RC Commitment then in effect and (d) the Total Outstandings at such time.

"**Agreement**" means this Credit Agreement.

"**Applicable Rate**" means a percentage per annum equal to:

(a) with respect to Term Loans, (A) for Eurocurrency Rate Loans, 2.25%, and (B) for Base Rate Loans, 1.25%, less, in each case, 0.25% (the "Term Loan Stepdown") if (but only if) the Moody's Applicable Corporate Rating then most recently published is B1 or higher (with at least a stable outlook),

(b) with respect to Pre-Funded RC Loans, (A) for Eurocurrency Rate Loans, 2.25%, and (B) for Base Rate Loans, 1.25%, less, in each case, the Term Loan Stepdown if (but only if) the Moody's Applicable Corporate Rating then most recently published is B1 or higher (with at least a stable outlook),

(c) with respect to unused Working Capital RC Commitments and the commitment fee therefor, (i) until delivery of financial statements pursuant to Section 6.01 for the second full fiscal quarter of the Borrower ending after the Closing Date, 0.50%, and (ii) thereafter, the percentages per annum set forth in the table below applicable to commitment fees, based upon the Total Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(b),

(d) with respect to Working Capital RC Loans and Letter of Credit fees, (i) until delivery of financial statements pursuant to Section 6.01 for the second full fiscal quarter of the Borrower ending after the Closing Date, (A) for Eurocurrency Rate Loans, 2.50%, (B) for Base Rate Loans, 1.50% and (C) for Letter of Credit fees, 2.50%, and (ii) thereafter, the following percentages per annum applicable to Working Capital RC Loans or Letter of Credit fees, as the case may be, based upon the Total Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(b):

Pricing Level	Total Leverage Ratio	Eurocurrency Rate for Working Capital RC Loans and Letter of Credit Fees	Base Rate for Working Capital RC Loans	Commitment Fee for unused Working Capital RC Commitments
1	Less than 4.00:1.00	2.00%	1.00%	0.375%
2	Greater than or equal to 4.00:1.00 but less than 5.25:1.00	2.25%	1.25%	0.50%
3	Greater than or equal to 5.25:1.00	2.50%	1.50%	0.50%

With respect to clauses (c) or (d) above, any increase or decrease in the Applicable Rate resulting from a change in the Total Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); provided that at the option of the Administrative Agent or the Required Lenders, the highest Pricing Level shall apply (x) as of the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply) and (y) as of the first Business Day after an Event of Default under Section 8.01(a) shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply).

In addition, with respect to clauses (a) and (b) above, any increase or decrease in the Applicable Rate resulting from a change of Moody's Applicable Corporate Rating shall become effective as of the first Business Day immediately following the date of any change to such rating; provided, that, the Term Loan Stepdown shall not be available for any period (commencing as of the first Business Day during any such period) that either (x) an Event of Default under Section 8.01(a) shall have occurred and be continuing or (y) the Borrower fails to have a Moody's Applicable Corporate Rating for any reason.

"**Appropriate Lender**" means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to Letters of Credit, (i) the relevant L/C Issuers and (ii) with respect to any Letters of Credit issued pursuant to Section 2.03(a), the Working Capital RC Lenders and (c) with respect to the Swing Line Facility, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Working Capital RC Lenders.

"**Approved Bank**" has the meaning specified in clause (c) of the definition of "Cash Equivalents".

"**Approved Fund**" means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"**Arrangers**" means DBSI and BAS, each in its capacity as a Joint Lead Arranger and a Co-Bookrunner under this Agreement.

"**Assignees**" has the meaning specified in Section 10.07(b).

"**Assignment and Assumption**" means an Assignment and Assumption substantially in the form of Exhibit E.

"**Attorney Costs**" means and includes all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

"**Attributable Indebtedness**" means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"**Audited Financial Statements**" means the audited consolidated balance sheets of the Borrower and its Subsidiaries as of each of December 31, 2006, 2005 and 2004, and the related audited consolidated statements of income, stockholders' equity and cash flows for the Borrower and its Subsidiaries for the fiscal years ended December 31, 2006, 2005 and 2004, respectively, as any of the foregoing may have been restated prior to the date hereof.

"**Auto-Renewal Letter of Credit**" has the meaning specified in Section 2.03(b)(iii).

"**Bain Entities**" means, collectively, Bain Capital, LLC, its Affiliates (other than any portfolio companies) and any investment funds advised or managed by any of the foregoing.

"**BAS**" means Banc of America Securities, LLC and any successor thereto by merger, consolidation or otherwise.

"**Base Rate**" means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by DBNY as its "prime rate." The "prime rate" is a rate set by DBNY based upon various factors including DBNY's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by DBNY shall take effect at the opening of business on the day specified in the public announcement of such change.

"**Base Rate Loan**" means a Loan that bears interest based on the Base Rate.

"**Borrower**" has the meaning provided in the introductory paragraph of this Agreement.

"**Borrower Guaranty**" means the Borrower Guaranty made by the Borrower in favor of the Administrative Agent on behalf of the Secured Parties, substantially in the form of Exhibit F.

"**Borrower Retained Prepayment Amounts**" has the meaning specified in Section 2.06(b)(ix).

"**Borrowing**" means a Working Capital RC Borrowing, a Swing Line Borrowing, a Term Borrowing or a Pre-Funded RC Borrowing, as the context may require.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and if such day relates to any interest rate settings as to a Eurocurrency Rate Loan or the Pre-Funded RC Deposits, any fundings, disbursements, settlements and payments in respect of any such Eurocurrency Rate Loan or the Pre-Funded RC Deposits, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan or the Pre-Funded RC Deposits, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the relevant interbank eurodollar market.

"**Capital Expenditures**" means, for any period, the aggregate of (a) all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as additions during such period to property, plant or equipment reflected in the consolidated balance sheet of the Borrower and the Restricted Subsidiaries and (b) the value of all assets under Capitalized Leases incurred by the Borrower and the Restricted Subsidiaries during such period; provided that the term "Capital Expenditures" shall not include (i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) the purchase of plant, property or equipment or software to the extent financed with the proceeds of Dispositions that are not required to be applied to prepay Term Loans pursuant to Section 2.06(b), (iv) expenditures that constitute any part of Consolidated Lease Expense, (v) expenditures that are accounted for as capital expenditures by the Borrower or any Restricted Subsidiary and that actually are paid for, or reimbursed to the Borrower or any Restricted Subsidiary in cash or Cash Equivalents, by a Person other than the Borrower or any Restricted Subsidiary and for which neither the Borrower nor any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation (other than

rent) in respect of such expenditures to such Person or any other Person (whether before, during or after such period), (vi) the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period, provided that (x) any expenditure necessary in order to permit such asset to be reused shall be included as a Capital Expenditure during the period in which such expenditure actually is made and (y) such book value shall have been included in Capital Expenditures when such asset was originally acquired, (vii) expenditures that constitute Permitted Acquisitions, (viii) for purposes of Section 7.16 only, interest capitalized during such period, (ix) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (A) used or surplus equipment traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business, or (x) expenditures relating to the construction, acquisition, replacement, reconstruction, development, refurbishment, renovation or improvement of any property which has been transferred to a Person other than the Borrower or a Restricted Subsidiary during the same fiscal year in which such expenditures were made pursuant to a sale-leaseback transaction permitted under Section 7.05(f) to the extent of the cash proceeds received by the Borrower or such Restricted Subsidiary pursuant to such sale-leaseback transaction.

"**Capital Expenditures Account**" means a blocked account of the Borrower under the sole dominion control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent and the proceeds of which shall be used to fund Capital Expenditures and for certain other limited purposes in each case as (and to the extent) provided herein. The initial Capital Expenditures Account is Account 59171 maintained with DBNY at 60 Wall Street, New York, New York 10005.

"**Capital Expenditures Account Security Agreement**" means the Capital Expenditures Account Security Agreement, substantially in the form of Exhibit L.

"**Capitalized Leases**" means all leases that have been or should be, in accordance with GAAP (except for temporary treatment of construction-related expenditures under EITF 97-10 "The Effects of Lessee Involvement in Asset Construction" which will ultimately be treated as operating leases upon a sale-leaseback transaction), recorded on the balance sheet as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP. Notwithstanding the foregoing and for the avoidance of doubt, Capitalized Leases shall not include any Master Lease or any Sub-Lease of the properties thereunder.

"**Carry-Back Amount**" has the meaning specified in Section 7.16(c).

"**Cash Collateral**" has the meaning specified in Section 2.03(g).

"**Cash Collateral Account**" means a blocked account at DBNY (or another commercial bank selected in compliance with Section 9.09) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent.

"**Cash Collateralize**" has the meaning specified in Section 2.03(g).

"**Cash Equivalents**" means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

(a) Dollars or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States, having average maturities of not more than 24 months from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development, and is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least $250,000,000 (any such bank in the foregoing clauses (i) or (ii) being an "Approved Bank"), in each case with average maturities of not more than 12 months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody's, in each case with average maturities of not more than 24 months from the date of acquisition thereof;

(e) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of $250,000,000 for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of the United States, in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations;

(f) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision, taxing authority agency or instrumentality of any such state, commonwealth or territory or by any foreign government having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(g) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(h) Indebtedness or preferred stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's with maturities of 24 months or less from the date of acquisition, in each case in Dollars or another currency permitted above in this definition;

(i) in the case of Foreign Subsidiaries only, instruments equivalent to those referred to in clauses (a) through (h) above or clause (j) below in each case denominated in any foreign currency comparable in credit quality and tenor to those referred to in such clauses above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Foreign Subsidiary organized in such jurisdiction; or

(j) Investments, classified in accordance with GAAP as current assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of at least $250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (g) of this definition.

"**Cash Management Banks**" means any Lender or any Affiliate of a Lender providing Cash Management Services to Holdings, the Borrower or any Restricted Subsidiary.

"**Cash Management Obligations**" means obligations owed by Holdings, the Borrower or any Restricted Subsidiary to any Cash Management Bank in respect of any Cash Management Services.

"**Cash Management Services**" means treasury, depository and/or cash management services or any automated clearing house transfer services.

"**Casualty Event**" means any event that gives rise to the receipt by Holdings, the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"**Catterton Entities**" means one or more investment funds affiliated with, and managed by, Catterton Management Company, LLC.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as subsequently amended.

"**CERCLIS**" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"**Change of Control**" means the earliest to occur of (a) the Permitted Holders ceasing to have the power, directly or indirectly, to vote or direct the voting of securities having a majority of the ordinary voting power for the election of directors of Holdings; provided that the occurrence of the foregoing event shall not be deemed a Change of Control if,

(i) any time prior to the consummation of a Qualifying IPO, and for any reason whatsoever, (A) the Permitted Holders otherwise have the right, directly or indirectly, to designate (and do so designate) a majority of the board of directors of Holdings or (B) the Permitted Holders own, directly or indirectly, of record and beneficially an amount of common stock of Holdings equal to an amount more than fifty percent (50%) of the amount of common stock of Holdings owned, directly or indirectly, by the Permitted Holders of record and beneficially as of the Closing Date and such ownership by the Permitted Holders represents the largest single block of voting securities of Holdings held by any Person or related group for purposes of Section 13(d) of the Exchange Act, or

(ii) at any time after the consummation of a Qualifying IPO, and for any reason whatsoever, (A) no "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person and its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than any one or more of the Permitted Holders, shall become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of more than the greater of (x) thirty-five percent (35%) of the shares outstanding of Holdings and (y) the percentage of the then outstanding voting stock of Holdings owned, directly or indirectly, beneficially by the Permitted Holders, and (B) during each period of twelve (12) consecutive months, the board of directors of Holdings shall consist of a majority of the Continuing Directors; or

(b) any "Change of Control" (or any comparable term) in any document pertaining to (i) the Senior Notes or Indebtedness which constitutes a Permitted Refinancing thereof, (ii) any Permitted Holdings Debt, (iii) any other Junior Financing with an aggregate outstanding principal amount in excess of the Threshold Amount or (iv) Disqualified Equity Interests with an aggregate liquidation preference in excess of the Threshold Amount; or

(c) at any time prior to a Qualifying IPO of the Borrower, the Borrower ceasing to be a directly or indirectly wholly owned Subsidiary of Holdings.

"**Class**" (a) when used with respect to Lenders, refers to whether such Lenders are Working Capital RC Lenders, Term Lenders or Pre-Funded RC Lenders, (b) when used with respect to Commitments, refers to whether such Commitments are Working Capital RC Commitments, Term Commitments or Pre-Funded RC Commitments and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Working Capital RC Loans, Term Loans or Pre-Funded RC Loans.

"**Closing Date**" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

"**CMBS Facilities**" means the mortgage financing and mezzanine financing arrangements between certain of the Specified Lease Entities and the CMBS Lender, dated as of the Closing Date, in the aggregate principal amount of $790,000,000, and any modification, refinancing, refunding, renewal, extension or replacement thereof.

"**CMBS Facilities Documentation**" means, collectively, (i) the Loan and Security Agreement, dated as of June 14, 2007, among a Specified Lease Entity, as borrower, and the lenders party thereto, (ii) each Mezzanine Loan and Security Agreement, dated as of June 14, 2007, among a Specified Lease Entity, as borrower, and the lenders party thereto, (iii) each of the promissory notes entered into by a Specified Lease Entity in connection with the foregoing, (iv) each of the mortgages, assignments of leases and rents, pledge agreements and other security instruments entered into by a Specified Lease Entity in connection with the foregoing, (v)the Environmental Indemnity, Environmental Indemnity (First Mezzanine), Environmental Indemnity (Second Mezzanine), Environmental Indemnity (Third Mezzanine) and Environmental Indemnity (Fourth Mezzanine), each dated as of June 14, 2007, among Holdings, German American Capital Corporation ("GACC"), and Bank of America, N.A. ("Bank of America" and, together with GACC, collectively, the "CMBS Lender"), (vi) the Environmental Indemnity, Environmental Indemnity (First Mezzanine), Environmental Indemnity (Second Mezzanine), Environmental Indemnity (Third Mezzanine) and Environmental Indemnity (Fourth Mezzanine), each dated as of June 14, 2007, among PRP Holdings, LLC and the CMBS Lender, (vii) the Environmental Indemnity, Environmental Indemnity (First Mezzanine), Environmental Indemnity (Second Mezzanine), Environmental Indemnity (Third Mezzanine) and Environmental Indemnity (Fourth Mezzanine), each dated as of June 14, 2007, among Private Restaurant Master Lessee, LLC and the CMBS Lender, (viii) the Guaranty of Recourse Obligations, Guaranty of Recourse Obligations (First Mezzanine), Guaranty of Recourse Obligations (Second Mezzanine), Guaranty of Recourse Obligations (Third Mezzanine) and Guaranty of Recourse Obligations (Fourth Mezzanine) each dated as of June 14, 2007, between Holdings and the CMBS Lender, each entered into by Holdings and (ix) a guaranty of the Master Leases by the Borrower or any of its Subsidiaries, in each case as amended, restated, extended, amended and restated, refinanced, replaced or otherwise modified from time to time.

"CMBS Intercreditor Agreement" means the Intercreditor Agreement dated as of June 14, 2007 by and among the Administrative Agent and the CMBS Lender.

"CMBS Lender" has the meaning specified in the definition of CMBS Facilities Documentation.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended, and rules and regulations related thereto.

"**Co-Documentation Agents**" means each of General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association.

"**Collateral**" means all the "Collateral" as defined in any Collateral Document and shall include the Mortgaged Properties.

"**Collateral Agent**" means the Administrative Agent, in its capacity as collateral agent under any of the Loan Documents, or any successor collateral agent.

"**Collateral and Guarantee Requirement**" means, at any time, the requirement that:

(a) the Administrative Agent shall have received each Collateral Document required to be delivered on the Closing Date pursuant to Section 4.01(a)(iii) or pursuant to Section 6.11 at such time, duly executed by each Loan Party thereto;

(b) all Obligations shall have been unconditionally guaranteed by Holdings, the Borrower (in the case of Obligations under clauses (y) and (z) of the first sentence of the definition thereof) and each Restricted Subsidiary that is a Domestic Subsidiary and not an Excluded Subsidiary;

(c) all guarantees issued or to be issued in respect of (x) the Junior Financing (other than the Senior Notes) (i) shall be subordinated to the Guarantees to the same extent that the Junior Financing is subordinated to the Obligations and (ii) shall provide for their automatic release upon a release of the corresponding Guarantee and (y) the Senior Notes shall provide for their automatic release upon a release of the corresponding Guarantee;

(d) the Obligations and the Guarantees shall have been secured by a first-priority perfected security interest in (i) all the Equity Interests of the Borrower and (ii) all Equity Interests (other than (w) Equity Interests of any Unrestricted Subsidiaries, (x) Equity Interests of each Excluded Subsidiary set forth on Schedule 1.01G, (y) Equity Interests in any Employment Participation Subsidiary and (z) any Equity Interest of any Restricted Subsidiary pledged to secure Indebtedness permitted under Section 7.03(g)(ii) but only so long as such Indebtedness is outstanding) of each Subsidiary directly owned by the Borrower or any Guarantor; provided that (x) no Loan Party shall be required to pledge more than 65% of the issued and outstanding voting Equity Interests of any Foreign Subsidiary at any time, (y) in any event, such pledges of Equity Interests shall specifically include all of the Equity Interests in any Restricted Subsidiary that is a Restaurant LP on the Closing Date, and (z) the creation and priority of security interests in Equity Interests of any Subsidiary shall be limited to the extent the pledge conflicts with or violates applicable law and, in the case of any Subsidiary other than a Loan Party, Permitted Liens or other permitted agreements (including permitted leases, licenses and stockholders agreements but excluding the organizational and other constituent documents of Holdings, the Borrower and its Restricted Subsidiaries (other than such documents with third parties that are not officers or employees of Holdings, the Borrower or any of its Restricted Subsidiaries));

(e) except to the extent otherwise permitted hereunder or under any Collateral Document, the Obligations and the Guarantees shall have been secured by a security interest in, and mortgages on, substantially all tangible and intangible assets of Holdings, the Borrower and each other Guarantor (including accounts receivable, inventory, equipment, investment property, contract rights, intellectual property, other general intangibles, owned Material Real Property and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents; provided that (i) actions, other than the filing of UCC-1 (or similar) Financing Statements, to perfect security interests in

the following assets shall not be required to be taken: (w) motor vehicles or other assets subject to certificates of title, (x) deposit, commodities or securities accounts (other than the Capital Expenditures Account and the Cash Collateral Account) and (y) any property or assets specifically excluded from the Collateral under the terms of any applicable Collateral Document, (ii) security interests in real property shall be limited to the Mortgaged Properties, (iii) no documents, agreements, instruments or actions shall be required with respect to assets located in a foreign jurisdiction (including no delivery or recordation of recordable security documents with respect to intellectual property registered in non-U.S. jurisdictions) and (iv) no documents, agreements, instruments or actions (other than the execution of the applicable Collateral Documents) shall be required to establish "control" (within the meaning of the Uniform Commercial Code) by the Administrative Agent or any Secured Party in any deposit accounts in order to perfect any security interests therein or to enforce any security interest (other than with respect to the Capital Expenditures Account and the Cash Collateral Account);

(f) none of the Collateral shall be subject to any Liens other than Liens permitted by Section 7.01; and

(g) the Collateral Agent shall have received (i) counterparts of a Mortgage with respect to any Material Real Property required to be delivered pursuant to Section 6.11 (the "Mortgaged Properties") duly executed and delivered by the record owner of such property, (ii) a policy or policies of title insurance issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a valid Lien on the property described therein, free of any other Liens except as expressly permitted by Section 7.01 together with such endorsements, coinsurance and reinsurance as the Administrative Agent may reasonably request, (iii) such existing surveys, existing abstracts, existing appraisals and other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property, provided that nothing in this clause (iii) shall require the Borrower to update existing surveys or order new surveys with respect to any Mortgaged Property and (iv) flood certificates covering each Mortgaged Property in form and substance reasonably acceptable to the Collateral Agent, certified to the Collateral Agent in its capacity as such and certifying whether or not each such Mortgaged Property is located in a flood hazard zone by reference to the applicable FEMA map.

The foregoing definition shall not require (A) for the avoidance of doubt, the guarantee of Obligations by, or pledge of any Equity Interests or any property or assets of, the Specified Lease Entities or (B) the creation or perfection of pledges of or security interests in, or the obtaining of title insurance or surveys with respect to, particular assets if and for so long as, in the reasonable judgment of the Collateral Agent (confirmed in writing by notice to the Borrower), the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance or surveys in respect of such assets shall be excessive in view of the practical benefits to be obtained by the Lenders therefrom. The Collateral Agent may grant extensions of time for the perfection of security interests in or the obtaining of title insurance with respect to particular assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in the Collateral Documents and, to the extent appropriate in the applicable jurisdiction, as agreed between the Collateral Agent and the Borrower.

"**Collateral Documents**" means, collectively, the Security Agreement, the Capital Expenditures Account Security Agreement, the Mortgages, each of the mortgages, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Collateral Agent pursuant to Section 6.11 or Section 6.13, the Guaranty and each of the other agreements, instruments or documents that creates or purports to create a Lien or Guarantee in favor of the Collateral Agent or the Administrative Agent for the benefit of the Secured Parties.

"**Commitment**" means a Term Commitment, a Working Capital RC Commitment or a Pre-Funded RC Commitment, as the context may require.

"**Committed Loan Notice**" means a notice of (a) a Term Borrowing, (b) a Working Capital RC Borrowing, (c) a Pre-Funded RC Borrowing, (d) a conversion of Loans from one Type to the other, or (e) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

"**Compensation Period**" has the meaning specified in Section 2.13(c)(ii).

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

"**Consolidated EBITDA**" means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and (in each case) to the extent already deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) total interest expense and, to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, or other derivative instruments and costs of surety bonds in connection with financing activities, and any financing fees (including commitment, underwriting, funding, "rollover" and similar fees and commissions, discounts, yields and other fees, charges and amounts incurred in connection with the issuance or incurrence of Indebtedness and all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts) and annual agency, unused line, facility or similar fees paid under definitive documentation related to Indebtedness,

(ii) provision for Income Taxes of the Borrower and the Restricted Subsidiaries paid or accrued during such period (including tax distributions by the Borrower in respect thereof),

(iii) depreciation and amortization, including amortization of deferred financing fees and debt discounts,

(iv) Non-Cash Charges,

(v) unusual or non-recurring losses, charges or expenses (including without limitation, relating to the Transaction) and any charges, losses or expenses related to signing, retention or completion bonuses or recruiting costs, costs and expenses relating to any registration statement, or registered exchange offer, in either case in respect of the Senior Notes, and, to the extent related to Permitted Acquisitions, integration and systems establishment costs; provided that such integration and systems establishment costs are certified as such in a certificate of a Responsible Officer delivered to the Administrative Agent,

(vi) severance, relocation costs, curtailments or modifications to pension and post-retirement employee benefit plans, catch-up or transition expenses for "Partner Equity Plans" to the extent relating to employee services rendered in prior periods, and pre-opening, opening, closing and consolidation costs and expenses with respect to any facilities and restaurants,

(vii) cash restructuring charges or reserves (including restructuring costs related to acquisitions after the date hereof); provided that such adjustments are certified as restructuring charges or reserves in a certificate of a Responsible Officer delivered to the Administrative Agent,

(viii) to the extent permitted to be paid under 7.08(e), the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees), related indemnities and expenses and any other fees and expenses paid to, or for the benefit of, the Sponsors and the Founders or their Affiliates (including, without duplication, Restricted Payments with respect thereto,

(ix) any costs or expenses (excluding Non-Cash Charges) incurred by the Borrower or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Equity Interests of the Borrower (other than Disqualified Equity Interests),

(x) to the extent (1) covered by insurance under which the insurer has been properly notified and has affirmed or consented to coverage in writing, expenses with respect to liability or casualty events or business interruption, and (2) actually reimbursed in cash, expenses incurred to the extent covered by indemnification provisions in any agreement in connection with the Transaction or a Permitted Acquisition,

(xi) cash receipts (or reduced cash expenditures) to the extent of non-cash gains relating to such income that were deducted in the calculation of Consolidated EBITDA pursuant to clause (b)(ii) below for any prior period,

(xii) the amount of net cost savings and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken during such period (calculated on a pro forma basis as though such cost savings and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions, provided that (A) such cost savings and synergies are reasonably identifiable and factually supportable, (B) such actions are taken within 18 months after the Closing Date, (C) no cost savings or synergies shall be added pursuant to this clause (xii) to the extent duplicative of any expenses or charges relating to such cost savings or synergies that are included in another clause of this definition with respect to such period and (D) the aggregate amount of cost savings and synergies added pursuant to this clause (xii) shall not exceed $20,000,000 for any period consisting of four consecutive quarters,

(xiii) the amount of any minority interest consisting of Subsidiary income attributable to minority equity interests of third parties in any non-wholly owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income except to the extent of cash dividends declared or paid on Equity Interests of such non-wholly owned Subsidiaries held by third parties, and

(xiv) to the extent that any Holdings Specified Expenses would have been added back to Consolidated EBITDA pursuant to clauses (a)(i) through (xiii) above had such charge, tax or expense been incurred directly by the Borrower, such Holdings Specified Expenses, *less*

(b) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) unusual or non-recurring gains,

(ii) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period, or is in respect of cash received in a prior period to the extent not included in Consolidated EBITDA in prior periods), and

(iii) rent expense paid in cash during such period over and above rent expense as determined in accordance with GAAP for such period,

in each case, as determined on a consolidated basis for the Borrower and the Restricted Subsidiaries in accordance with GAAP; provided that, to the extent included in Consolidated Net Income,

(A) there shall be excluded in determining Consolidated EBITDA currency translation gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain resulting from Swap Contracts for currency exchange risk),

(B) there shall be excluded in determining Consolidated EBITDA rent expense as determined in accordance with GAAP not actually paid in cash during such period (net of rent expense paid in cash during such period over and above rent expense as determined in accordance with GAAP for such period),

(C) there shall be included in determining Consolidated EBITDA for any period, without duplication, (i) the Acquired EBITDA of any Person, property, business or asset acquired by the Borrower or any Restricted Subsidiary during such period (but not the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed by the Borrower or such Restricted Subsidiary (each such Person, property, business or asset acquired and not subsequently so disposed of, an "Acquired Entity or Business") during such period, and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary (each, a "Converted Restricted Subsidiary"), in each case based on the actual Acquired EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition or conversion) and (ii) solely for the purposes of the definition of the term "Permitted Acquisition" and Sections 7.02(o), 7.03(h), 7.04, 7.06(j), 7.11 and 7.13(a)(v), an adjustment in respect of each Acquired Entity or Business or Converted Restricted Subsidiary equal to the amount of the Pro Forma Adjustment with respect to such Acquired Entity or Business or Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition) as specified in a certificate executed by a Responsible Officer and delivered to the Administrative Agent (it being understood that this clause (C) is not intended to address Acquired EBITDA of the Borrower acquired pursuant to the Merger, which is addressed in the last sentence of this definition),

(D) for purposes of determining the Total Leverage Ratio, the Rent Adjusted Leverage Ratio and the Interest Coverage Ratio only, there shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of, closed or classified as discontinued operations by the Borrower or any Restricted Subsidiary during such period (each such Person, property,

business or asset so sold or disposed of, a "Sold Entity or Business"), based on the actual Disposed EBITDA of such Sold Entity or Business for such period (including the portion thereof occurring prior to such sale, transfer or disposition), and

(E) there shall be excluded in determining Consolidated EBITDA any net after-tax income (loss) from the early extinguishment of Indebtedness or hedging obligations or other derivative instruments.

For the purpose of the definition of Consolidated EBITDA, "Non-Cash Charges" means (a) any impairment charge or asset write-off or write-down related to intangible assets, long-lived assets and other assets (including licenses or other approvals for the sale of alcoholic beverages), and investments in debt and equity securities pursuant to GAAP, (b) stock-based awards compensation expense including, but not limited to, non-cash charges arising from stock options, restricted stock or other equity incentive programs, and (c) other non-cash charges (provided that if any non-cash charges, expenses and write-downs referred to in this paragraph represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period). Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes any of the fiscal quarters ended or ending (as applicable) December 31, 2006 and March 31, 2007, Consolidated EBITDA for such fiscal quarters shall be deemed to be $85,560,000 and $99,250,000, respectively.

"**Consolidated Interest Expense**" means, for any period, the sum of (i) the interest expense (including that attributable to Capitalized Leases), net of interest income, of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, and limited to such interest paid or payable in cash or received or receivable in cash during such period, with respect to all outstanding Indebtedness of the Borrower and the Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts, (ii) any cash payments made during such period in respect of the interest expense on such obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period (other than any such obligations resulting from the discounting of Indebtedness in connection with the application of purchase accounting in connection with the Transaction, any acquisition consummated prior to the Closing Date or any Permitted Acquisition) and (iii) from and after the date that a Holdings Restricted Payments Election is made, the amount of all Restricted Payments from the Borrower to Holdings used to fund cash interest payments by Holdings, but excluding, however, (a) amortization of deferred financing costs and any other amounts of non-cash interest, (b) the accretion or accrual of discounted liabilities during such period, (c) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP, (d) fees and expenses associated with the consummation of the Transaction, (e) annual agency fees paid to the Administrative Agent and/or Collateral Agent, and (f) costs associated with obtaining Swap Contracts; provided that (A) except as provided in clause (B) below, there shall be excluded from Consolidated

Interest Expense for any period the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense, (B) solely for purposes of the definition of the term "Permitted Acquisition" and Sections 7.02(o), 7.03(h), 7.04, 7.06(j), 7.11 and 7.13(a)(v), there shall be included in determining Consolidated Interest Expense for any period the cash interest expense (or income) of any Acquired Entity or Business acquired during such period and of any Converted Restricted Subsidiary converted during such period, in each case based on the cash interest expense (or income) relating to any Indebtedness incurred or assumed as part of an acquisition of an Acquired Entity or Business or as part of the conversion of a Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition or conversion) assuming any Indebtedness incurred or repaid in connection with any such acquisition or conversion had been incurred or repaid on the first day of such period and (C) solely for purposes of the definition of the term "Permitted Acquisition" and Sections 7.02(o), 7.03(h), 7.04, 7.06(j), 7.11 and 7.13(a)(v), there shall be excluded from determining Consolidated Interest Expense for any period the cash interest expense (or income) of any Sold Entity or Business Disposed of during such period, based on the cash interest expense (or income) relating to any Indebtedness relieved or repaid in connection with any such Disposition of such Sold Entity or Business for such period (including the portion thereof occurring prior to such Disposition) assuming such Indebtedness relieved or repaid in connection with such Disposition has been relieved or repaid on the first day of such period. Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense for any period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the date of determination.

"**Consolidated Lease Expense**" means, for any period, all rental expenses paid or payable of the Borrower and the Restricted Subsidiaries (net of rental income received or receivable) during such period under operating leases for real or personal property (including, without limitation, rental expense paid or payable (i) in connection with sale-leaseback transactions permitted by Section 7.05(f), (ii) to any Unrestricted Subsidiary and (iii) under any Master Lease) (but excluding real estate taxes, insurance costs and common area maintenance charges and similar amounts in the case of gross leases and non-cash portion of operating lease expense recorded under SFAS 13 related to the excess accrual (or reversals thereof) of straight-line rent expense amounts, and net of sublease income) other than (a) obligations under vehicle leases entered into in the ordinary course of business, (b) all such rental expenses associated with assets acquired pursuant to a Permitted Acquisition to the extent such rental expenses relate to operating leases in effect at the time of (and immediately prior to) such acquisition and related to periods prior to such acquisition, and (c) all obligations under Capitalized Leases, all as determined on a consolidated basis in accordance with GAAP. Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Lease Expense for any period ending prior to the first anniversary of the Closing Date, Consolidated Lease Expense with respect to the Master Lease shall be an amount equal to actual Consolidated Lease Expense with respect to the Master Lease from the Closing Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the date of determination.

"**Consolidated Net Income**" means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP (adjusted to reflect any Holdings Specified Expenses during such period as though such Holdings Specified Expenses had been incurred by the Borrower), excluding, without duplication, (a) extraordinary items for such period, (b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income, (c) in the case of any period that includes a period ending prior to June 30, 2008, Transaction Expenses, (d) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed), (e) any income (loss) for such period attributable to the early extinguishment of Indebtedness, (f) accruals and reserves that are established within twelve months after the Closing Date that are so required to be established as a result of the Transaction in accordance with GAAP, (g) in the case of determining the Rent Adjusted Leverage Ratio only, any sub-lease income for such period, (h) any unrealized net gains and losses resulting from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Statement of Financial Accounting Standards No. 133 and related pronouncements, (i) any net after-tax effect of gains and losses attributable to asset dispositions in connection with the Transaction, (j) any after-tax gains or losses on disposal of disposed, abandoned or discontinued operations and any after-tax effect of gains and losses (less all fees and expenses related thereto) attributable to asset dispositions other than in the ordinary course of business, (k) any net income (loss) for such period of any Person that is not a Subsidiary, or that is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, provided that Consolidated Net Income shall be increased by the amount of dividends or distributions that are actually paid in cash (or converted into cash) to the Borrower or a Restricted Subsidiary in respect of such net income in such period, (l) cash expenses related to deferred compensation or change of control payment obligations, buyout of employee options and employee bonus programs, in each case, to the extent related to the Transaction and funded on the Closing Date with proceeds from the financing transactions included in the Transaction and (m) in the case of determining the Interest Coverage Ratio only, any interest income for such period. There shall be excluded from Consolidated Net Income for any period the purchase accounting effects of adjustments, including to property, equipment, inventory and software and other intangible assets (including favorable and unfavorable leases and contracts) and deferred revenue in component amounts required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to Holdings, the Borrower and the Restricted Subsidiaries), as a result of the Transaction, any acquisition consummated prior to the Closing Date, any Permitted Acquisitions, or the amortization, write-off or write-down of any amounts thereof.

"**Consolidated Total Debt**" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding (x) the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transaction or any Permitted Acquisition and (y) for the avoidance of doubt, all obligations of the Specified Lease Entities), consisting of Indebtedness for borrowed money,

obligations in respect of Capitalized Leases and debt obligations evidenced by promissory notes or similar instruments, minus (b) the aggregate amount of cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Sections 7.01(a), 7.01(l) and clauses (i) and (ii) of Section 7.01(t)) included in the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date (but, in any event, excluding all cash and Cash Equivalents held in, or credited to, the Capital Expenditures Account).

"**Consolidated Working Capital**" means, at any date, the excess of (a) the sum of all amounts (other than cash and Cash Equivalents) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries at such date over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans and L/C Obligations to the extent otherwise included therein, (iii) the current portion of accrued interest and (iv) the current portion of current and deferred income taxes.

"**Continuing Directors**" means the directors of Holdings on the Closing Date, as elected or appointed after giving effect to the Merger and the other transactions contemplated hereby, and each other director, if, in each case, such other directors' nomination for election to the board of directors of Holdings (or the Borrower after a Qualifying IPO of the Borrower) is recommended by a majority of the then Continuing Directors or such other director receives the vote of one or more of the Permitted Holders in his or her election by the stockholders of Holdings (or the Borrower after a Qualifying IPO of the Borrower).

"**Contract Consideration**" has the meaning set forth in the definition of "Excess Cash Flow".

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control**" has the meaning specified in the definition of "Affiliate".

"**Converted Restricted Subsidiary**" has the meaning specified in the definition of "Consolidated EBITDA".

"**Credit Extension**" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"**Cumulative Excess Cash Flow**" means, at any time, the sum of (i) Excess Cash Flow (which may not be less than zero) for the period commending on the Closing Date and ending on December 31, 2007 and (ii) Excess Cash Flow (which may not be less than zero in any period) for each succeeding and completed fiscal year of the Borrower at such time.

"**Cumulative Growth Amount**" shall mean, on any date of determination, the sum of, without duplication,

(A) the Cumulative Excess Cash Flow that was not required to be applied to prepay the Term Loans pursuant to Section 2.06(b)(i), *provided* that, for purposes of Sections 7.02(o), 7.06(j) and 7.13(a)(v), the amount in this clause (A) shall only be available if the Rent Adjusted Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(b) was less than 5.25:1.00 determined on a Pro Forma Basis after giving effect to any such Investment, Restricted Payment or prepayment, redemption or repurchase actually made pursuant to Section 7.02(o), 7.06(j) or 7.13(a)(v), *plus*

(B) the amount of Net Cash Proceeds of Permitted Equity Issuances (other than amounts in respect of a Permitted Equity Issuance made pursuant to Section 8.05) after the Closing Date to the extent that such Net Cash Proceeds shall have been actually received by the Borrower (through a capital contribution of such Net Cash Proceeds by Holdings to the Borrower) on or prior to such date of determination and to the extent not used to make payments under Section 7.03(j) or make Restricted Payments pursuant to Section 7.06(g), *plus*

(C) the amount of Net Cash Proceeds from the issuance of Permitted Holdings Debt after the Closing Date to the extent that such Net Cash Proceeds shall have been actually received by the Borrower (through a capital contribution of such Net Cash Proceeds by Holdings to the Borrower) on or prior to such date of determination, *plus*

(D) other than for the purpose of making any Capital Expenditures pursuant to Section 7.16(a)(ii), the amount of proceeds available in the Capital Expenditures Account (but not to exceed $100,000,000 in the aggregate during the term of this Agreement) to the extent that (i) the Rent Adjusted Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(b) was less than 5.25:1.00, determined on a Pro Forma Basis after giving effect to the respective Investment, Restricted Payment or prepayment, redemption or repurchase actually made pursuant to Sections 7.02(o), 7.06(j) and 7.13(a)(v), and (ii) no Pre-Funded RC Loans are then outstanding, *plus*

(E) solely for the purpose of making Capital Expenditures pursuant to Section 7.16(a)(ii), Borrower Retained Prepayment Amounts, *plus*

(F) an amount equal to the aggregate Returns in respect of any Investment made since the Closing Date pursuant to Section 7.02(o) to the extent that such Returns did not increase Consolidated Net Income, *plus*

(G) the aggregate amount of Specified Proceeds actually received by the Borrower on or prior to such date of determination; provided that, for purposes of Sections 7.02(o) (to the extent made in an Unrestricted Subsidiary, Holdings, any direct or indirect parent of Holdings, or any direct or indirect shareholder of Holdings) and 7.06(j), the amount otherwise available in this clause (G) shall not exceed $25,000,000 in any fiscal year unless the Rent Adjusted Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(b) was less than 5.25:1.00 determined on a Pro Forma Basis after giving effect to any such Investment or Restricted Payment actually made pursuant to Section 7.02(o) or 7.06(j), *minus*

(H) the sum at the time of determination of (i) the aggregate amount of Investments made since the Closing Date pursuant to Section 7.02(o), (ii) the aggregate amount of Restricted Payments made since the Closing Date pursuant to Section 7.06(j), (iii) the aggregate amount of prepayments, redemptions or repurchases made since the Closing Date pursuant to Section 7.13(a)(v) and (iv) the aggregate amount of Capital Expenditures made since the Closing Date pursuant to Section 7.16(a)(ii).

"**DBNY**" means Deutsche Bank AG New York Branch and any successor thereto by merger, consolidation or otherwise.

"**DBSI**" means Deutsche Bank Securities Inc. and any successor thereto by merger, consolidation or otherwise.

"**Debt Prepayment**" means the prepayment by the Borrower on the Closing Date of any Indebtedness outstanding under the Existing Credit Agreements.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, 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 and affecting the rights of creditors generally.

"**Default**" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"**Default Rate**" means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; provided that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

"**Defaulting Lender**" means any Lender that (a) has failed to fund any portion of the Term Loans, Pre-Funded RC Loans, Working Capital RC Loans, participations in L/C Obligations or participations in Swing Line Loans required to be funded by it hereunder within one (1) Business Day of the date required to be funded by it hereunder, unless the subject of a good faith dispute or subsequently cured, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, unless the subject of a good faith dispute or subsequently cured, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"**Designated Non-Cash Consideration**" means the Fair Market Value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 7.05(k) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer, setting forth the basis of such valuation (which amount will be reduced by the Fair Market Value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition).

"**Disposed EBITDA**" means, with respect to any Sold Entity or Business for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business (determined as if references to the Borrower and the Restricted Subsidiaries in the definition of Consolidated EBITDA (and in the component financial definitions used therein) were references to such Sold Entity or Business and its Subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale of Equity Interests) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith; provided that "Disposition" and "Dispose" shall not be deemed to include any issuance by Holdings of any of its Equity Interests to another Person.

"**Disqualified Equity Interests**" means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date of the Term Loans.

"**Disqualified Institutions**" means any banks, financial institutions or other Persons separately identified by the Borrower to the Joint Lead Arrangers in writing prior to the Closing Date.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**Domestic Subsidiary**" means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

"**Eligible Assignee**" means any Assignee permitted by and consented to in accordance with Section 10.07(b).

"**Employment Participation Subsidiary**" means a limited partnership or other entity that is a Restricted Subsidiary of the Borrower (i) which contracts to provide services to one or more other Subsidiaries of the Borrower which operate one or more restaurants, (ii) which engages in no other material business activities and has no material assets other than those related to clause (i) above and (iii) in which restaurant employees of the Borrower and its Subsidiaries have an equity ownership interest.

"**Employment Participation Subsidiary Conversion**" means the purchase by one or more Restricted Subsidiaries of the Borrower of the ownership interests of restaurant employees in limited partnership Subsidiaries of the Borrower existing as of the Closing Date and which operate restaurants and the simultaneous use of the proceeds of such purchase by such restaurant employees to acquire ownership interests in one or more Employment Participation Subsidiaries.

"**Environmental Laws**" means any and all Federal, state, local and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment, natural resources, or, to the extent relating to exposure to Hazardous Materials, human health or to the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equity Contributions**" means, collectively, (a) the contribution by the Sponsors and the other Equity Investors of an aggregate amount of cash, together with any rollover equity, of approximately $803,000,000 to Holdings or one or more direct or indirect holding company parents of Holdings (less the aggregate amount used in connection with the Founders Stock Purchase Transaction), (b) the further contribution to Acquisition Sub or the Borrower of the portion of such cash contribution proceeds specified in clause (a) above that are not directly received by Acquisition Sub or the Borrower, applied in connection with the Founders Stock Purchase Transaction, used by Holdings or one or more direct or indirect holding company parents of Holdings to pay Transaction Expenses, and of which $100,000,000 shall be deposited on the Closing Date into the Capital Expenditures Account and (c) the Founders Stock Purchase Transaction.

"**Equity Interests**" means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

"**Equity Investors**" means the Sponsors, the Founders, the Management Stockholders and other co-investors with the Sponsors on the Closing Date.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that is under common control with any Loan Party within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; or (g) the failure of any Pension Plan to satisfy the minimum funding standard required for any plan year or part thereof under Section 412 of the Code or Section 302 of ERISA or a waiver of such standard or extension of any amortization period is sought or granted under Section 412 of the Code or Section 303 or 304 of ERISA.

"**Eurocurrency Rate**" means (a) the offered quotation to first class banks in the New York interbank Eurodollar market by the Administrative Agent for Dollar deposits of amounts in immediately available funds comparable to the outstanding principal amount of the Eurocurrency Rate Loan of the Administrative Agent (in its capacity as a Lender) (or, if the Administrative Agent is not a Lender with respect thereto, taking the average principal amount of the Eurocurrency Rate Loan then being made by the various Lenders pursuant thereto)) with maturities comparable to the Interest Period applicable to such Eurocurrency Rate Loan commencing two (2) Business Days thereafter as of 10:00 A.M. (New York City time) on the applicable date of determination, divided (and rounded upward to the nearest 1/16 of 1%) by (b) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves required by applicable law) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"**Eurocurrency Rate Loan**" means a Loan that bears interest at a rate based on the Eurocurrency Rate.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excess Cash Flow**" means, for any period, an amount equal to the excess of:

(a) the sum, without duplication, of:

(i) Consolidated Net Income,

(ii) depreciation, amortization and other non-cash charges and expenses incurred during such period, to the extent deducted in arriving at such Consolidated Net Income,

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions and non-ordinary course Dispositions by the Borrower and the Restricted Subsidiaries completed during such period),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

(v) an amount equal to all cash received for such period on account of any net non-cash gain or income from Investments deducted in a previous period pursuant to clause(b)(iv)(B) below in this definition,

(vi) an amount equal to all cash income and gains included in clauses (a) and (e) of the definition of Consolidated Net Income, and

(vii) rent expense as determined in accordance with GAAP during such period over and above rent expense paid in cash during such period, over

(b) the sum, without duplication, of:

(i) an amount equal to all non-cash credits included in arriving at such Consolidated Net Income and cash losses, charges and expenses included in clauses (a), (c), (d), (e), (f), (i) and (j) of the definition of Consolidated Net Income,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior fiscal years, the amount of Capital Expenditures made in cash or accrued during such period pursuant to Section 7.16, except to the extent that such Capital Expenditures were financed with the proceeds of Indebtedness (other than Working Capital RC Loans and loans under any other revolving credit line or similar facility (other than the Pre-Funded RC Facility)) of the Borrower or any Restricted Subsidiary,

(iii) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Restricted Subsidiaries (including (A) the principal component of payments in respect of Capitalized Leases and (B) the amount of any mandatory prepayment of Term Loans pursuant to Section 2.06(b)(ii) to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase but excluding (X) all other prepayments of Term Loans pursuant to Section 2.06, (Y) all prepayments of Working Capital RC Loans, Pre-Funded RC Loans and Swing Line Loans and (Z) the Debt Prepayment) made during such period (other than in respect of any revolving credit facility to the extent there is not an equivalent permanent reduction in commitments thereunder), except to the extent financed with the proceeds of other Indebtedness of the Borrower or the Restricted Subsidiaries,

(iv) an amount equal to the sum of (A) the aggregate net non-cash gain on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income and (B) the aggregate net non-cash gain or income from Investments to the extent included in arriving at Consolidated Net Income,

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions and non-ordinary course Dispositions by the Borrower and the Restricted Subsidiaries during such period),

(vi) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries other than Indebtedness,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior fiscal years, the amount of Investments and acquisitions made during such period pursuant to Section 7.02 (other than Section 7.02(a) or 7.02(o)) to the extent that such Investments and acquisitions were financed with internally generated cash flow of the Borrower and the Restricted Subsidiaries,

(viii) the amount of Restricted Payments paid during such period pursuant to Sections 7.06(d), (g), (i) and (m) in each case to the extent such Restricted Payments were financed with internally generated cash flow of the Borrower and the Restricted Subsidiaries,

(ix) the aggregate amount of expenditures actually made by the Borrower and the Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures were not expensed during such period,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts (the " Contract Consideration") entered into prior to or during such period relating to Permitted Acquisitions or Capital Expenditures to be consummated or made during the period of four consecutive fiscal quarters of the Borrower following the end of such period, provided that to the extent the aggregate amount of internally generated cash actually utilized to finance such Permitted Acquisitions or Capital Expenditures during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes paid and, without duplication, cash distributions for payment of taxes, in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) the aggregate amount of all mandatory principal payments of Pre-Funded RC Loans made during such period pursuant to Section 2.06(b)(v),

(xiv) the aggregate amount of all deposits into the Capital Expenditures Account made during such period pursuant to Section 2.06(b)(v),

(xv) the aggregate amount of all mandatory principal prepayments of Term Loans made during such period pursuant to Section 2.08(a),

(xvi) cash expenditures made in respect of Swap Contracts to the extent not reflected in the computation of Consolidated Net Income for such period,

(xvii) to the extent not otherwise deducted in determining Consolidated Net Income for such period and to the extent paid in cash with internally generated cash flow during such period, the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees), related indemnities and expenses and any other fees and expenses paid or accrued during such period to, or for the benefit of, the Sponsors and the Founders or their Affiliates to the extent permitted by Section 7.08(e) (including, without duplication, Restricted Payments with respect thereto), and

(xviii) rent expense paid in cash during such period over and above rent expense as determined in accordance with GAAP for such period.

"**Exchange Act**" means the Securities Exchange Act of 1934.

"**Exchange Rate**" means on any day with respect to any currency other than Dollars, the rate at which such currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m. (London time) on such day on the Reuters World Currency Page for such currency; in the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m. (New York City time) on such date for the purchase of Dollars for delivery two Business Days later.

"**Excluded Concept Subsidiaries**" means any Restricted Subsidiaries other than (i) wholly owned domestic Restricted Subsidiaries in the Borrower's Outback, Carrabba's and Cheeseburger in Paradise concepts (which, for the avoidance of doubt, also shall include each such Subsidiary that is the general partner of each Employment Participation Subsidiary associated with such concepts); provided, that if after the Closing Date, the portion of Consolidated EBITDA attributable to wholly owned domestic Excluded Concept Subsidiaries (taken as a group) exceeds 10% of the Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for any Test Period, then the Borrower shall designate certain domestic wholly owned Excluded Concept Subsidiaries to become Guarantors (including, in any event, any Subsidiary that is the general partner of each Employment Participation Subsidiary associated with such Excluded Concept Subsidiaries designated to become Guarantors), which shall cease to be Excluded Concept Subsidiaries, such that the portion of Consolidated EBITDA attributable to the remaining wholly owned domestic Excluded Concept Subsidiaries (after giving effect to such designated domestic wholly owned Subsidiaries ceasing to be Excluded Concept Subsidiaries) no longer exceeds 10% of the Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for such Test Period, (ii) any co-issuer of the Senior Notes, (iii) any wholly owned domestic Restricted Subsidiary that is a tenant or lessee under a Master Lease, (iv) any wholly owned domestic Restricted Subsidiary that owns, or otherwise licenses or has the right to use, trademarks and other intellectual property material to the operation of the Borrower and its Restricted Subsidiaries (excluding any Excluded Concept Subsidiaries) and (v) OS Restaurant Services (or any successor to the business conducted by it on the Closing Date).

"**Excluded Subsidiary**" means (a) any Subsidiary that is not a wholly owned Subsidiary, (b) each Subsidiary listed on Schedule 1.01G, (c) any Subsidiary that is prohibited by applicable Law from guaranteeing the Obligations, (d) any Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary, (e) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition financed with secured Indebtedness incurred pursuant to Section 7.03(g)(ii) and each Restricted Subsidiary thereof that guarantees such Indebtedness; provided that each such Restricted Subsidiary shall cease to be an Excluded Subsidiary under this clause (e) if such secured Indebtedness is repaid or becomes unsecured or if such Restricted Subsidiary ceases to guarantee such secured Indebtedness, as applicable, (f) any Immaterial Subsidiary, (g) any Employment Participation Subsidiary, (h) any Excluded Concept Subsidiary, and (i) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (confirmed in writing by notice to the Borrower), the cost or other consequences (including any adverse tax consequences) of providing a Guarantee shall be excessive in view of the practical benefits to be obtained by the Lenders therefrom.

"**Existing Credit Agreements**" means, collectively, (a) the Credit Agreement, dated as of April 27, 2004, between Outback Steakhouse, Inc. and Wachovia Bank, National Association (as amended, restated, modified and/or supplemented from time to time), (b) the Amended and Restated Credit Agreement, dated as of March 10, 2006, among Outback Steakhouse, Inc., Wachovia Bank, National Association, as Agent, Wachovia Capital Markets, LLC, as Sole Arranger, SunTrust Bank, as Syndication Agent, Bank of America, N.A. and Wells Fargo Bank, National Association, as Co-Documentation Agents, and the lenders party thereto (as amended, restated, modified and/or supplemented from time to time), and (c) the Credit Agreement, dated as of October 12, 2006, between OSI Restaurant Partners, Inc. and Wachovia Bank, National Association (as amended, restated, modified and/or supplemented from time to time).

"**Existing Letters of Credit**" means the letters of credit outstanding on the Closing Date and set forth on Schedule 1.01E.

"**Facility**" or "**Facilities**" means the Term Loans, the Working Capital RC Facility, the Pre-Funded RC Facility, the Swing Line Sublimit or the Letter of Credit Sublimit, as the context may require.

"**Fair Market Value**" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

"**Federal Funds Rate**" means, for any period, a fluctuating interest rate equal for each day during such period to 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 for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

"**Foreign Lender**" has the meaning specified in Section 10.15(a)(i).

"**Foreign Subsidiary**" means any direct or indirect Restricted Subsidiary of the Borrower which (a) is not a Domestic Subsidiary or (b) is set forth on Schedule 1.01H.

"**Founders**" means (i) Christopher T. Sullivan, Robert D. Basham and J. Timothy Gannon; (ii) the spouses, ancestors, siblings, descendants (including children or grandchildren by adoption) and the descendants of any of the siblings of the Persons referred to in preceding clause (i); (iii) in the event of the incompetence or death of any of the Persons described in preceding clauses (i) or (ii), such Person's estate, executor, administrator, committee or other personal representative, in each case who at any particular date shall be the beneficial owner or have the right to acquire, directly or indirectly, capital stock of the Borrower or Holdings (or any other direct or indirect parent of the Borrower); (iv) any trust created for the sole benefit of the Persons described in any of preceding clauses (i) through (iii) or any trust for the benefit of any such trust; or (v) any Person Controlled by any of the Persons described in any of preceding clauses (i) through (iv).

"Founders Stock Purchase Transaction" means (a) the purchase for cash for a purchase price of $40.0 per share of certain Equity Interests of the Borrower (immediately prior to giving effect to the Merger) held by the Founders by one or more of the Sponsors immediately prior to the consummation of the Merger and (b) either the contribution to Holdings (and further contribution to the Borrower) of the acquired Equity Interest or the cancellation thereof.

"**FRB**" means the Board of Governors of the Federal Reserve System of the United States or any successor thereto.

"**Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"**Funded Debt**" means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Granting Lender**" has the meaning specified in Section 10.07(h).

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such

Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term " Guarantee" as a verb has a corresponding meaning.

"**Guarantee Supplement**" has the meaning provided in the Guaranty.

"**Guarantors**" means Holdings, the Borrower and each Subsidiary Guarantor.

"**Guaranty**" means, collectively, the Holdings Guaranty, the Borrower Guaranty and the Subsidiary Guaranty.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"**Hedge Bank**" means any Person that is a Lender or an Affiliate of a Lender at the time it enters into a Secured Hedge Agreement, in its capacity as a party thereto, and such Person's successors and assigns.

"**Holdings**" shall have the meaning set forth in the first paragraph of this Agreement.

"**Holdings Guaranty**" means the Holdings Guaranty made by Holdings in favor of the Administrative Agent on behalf of the Secured Parties, substantially in the form of Exhibit F.

"**Holdings Restricted Payments Election**" has the meaning specified in Section 7.06(c).

"**Holdings Specified Expenses**" means any charge, tax or expense incurred or accrued by Holdings (or any parent company thereof) during any period to the extent that the Borrower has made any Restricted Payment to Holdings (or any parent company thereof) in respect thereof pursuant to Sections 7.06(c) and (h)(i), (h)(ii), (h)(iii), (h)(v) (to the extent such Investment would have reduced Consolidated Net Income had it been made by the Borrower) and (h)(vi).

"**Honor Date**" has the meaning specified in Section 2.03(c)(i).

"**Immaterial Subsidiary**" means any Restricted Subsidiary designated in writing by the Borrower to the Administrative Agent as an Immaterial Subsidiary that is not already a Guarantor and that does not, as of the last day of the most recently completed fiscal quarter of the Borrower, have assets with a value in excess of 1.0% of the consolidated total assets of the Borrower and the Restricted Subsidiaries and did not, as of the four-quarter period ending on the last day of such fiscal quarter, have revenues exceeding 1.0% of the consolidated revenues of the Borrower and the Restricted Subsidiaries; provided that if (a) such Restricted Subsidiary shall have been designated in writing by the Borrower to the Administrative Agent as an Immaterial Subsidiary, and (b) if (i) the aggregate assets then owned by all Restricted Subsidiaries of the Borrower that would otherwise constitute Immaterial Subsidiaries shall have a value in excess of 5.0% of the consolidated total assets of the Borrower and the Restricted Subsidiaries as of the last day of such fiscal quarter or (ii) the combined revenues of all Restricted Subsidiaries of the Borrower that would otherwise constitute Immaterial Subsidiaries shall exceed 5.0% of the consolidated revenues of the Borrower and the Restricted Subsidiaries for such four-quarter period, the Borrower shall redesignate one or more of such Restricted Subsidiaries to not be Immaterial Subsidiaries within ten (10) Business Days after delivery of the Compliance Certificate for such fiscal quarter such that only those such Restricted Subsidiaries as shall then have aggregate assets of less than 5.0% of the consolidated total assets of the Borrower and the Restricted Subsidiaries and combined revenues of less than 5.0% of the consolidated revenues of the Borrower and the Restricted Subsidiaries shall constitute Immaterial Subsidiaries. Notwithstanding the foregoing, in no event shall (A) any "co-issuer" of the Senior Notes, (B) any Restricted Subsidiary that is a tenant or lessee under a Master Lease, (C) any wholly owned domestic Restricted Subsidiary that owns, or otherwise licenses or has the right to use, trademarks and other intellectual property material to the operation of the Borrower and its Restricted Subsidiaries (excluding any Excluded Concept Subsidiaries), (D) any general partner of an Employment Participation Subsidiary or (E) OS Restaurant Services (or any successor to the business conducted by it on the Closing Date) in any such case be designated as an Immaterial Subsidiary.

"**Income Taxes**" means, with respect to any Person, the foreign, federal, state and local taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as the Pennsylvania capital tax and Texas margin tax) and withholding taxes of such Person.

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable and deferred gift card revenue in the ordinary course of business and (ii) any earn-out obligation or purchase price adjustment until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) above shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the Fair Market Value of the property encumbered thereby. Notwithstanding anything to the contrary contained in this definition, for the avoidance of doubt, any indebtedness or other obligations of the Specified Lease Entities in respect of the Specified Lease Transactions and the CMBS Facilities shall not be treated as Indebtedness of Holdings, the Borrower or any Restricted Subsidiary for any purpose under this Agreement so long as neither Holdings, the Borrower nor any Restricted Subsidiary expressly guarantees the obligations under the CMBS Facilities (other than as, and to the extent, set forth in the documents with respect thereto as of the Closing Date) nor becomes a borrower or issuer thereunder.

"**Indemnified Liabilities**" has the meaning set forth in Section 10.05.

"**Indemnitees**" has the meaning set forth in Section 10.05.

"**Information**" has the meaning specified in Section 10.08.

"**Intercompany Note**" means the Intercompany Note, substantially in the form of Exhibit K.

"**Interest Coverage Ratio**" means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis, as of the end of any fiscal quarter of the Borrower for the Test Period ending on such date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense for such Test Period.

"**Interest Payment Date**" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made.

"**Interest Period**" means:

(i) as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter, or to the extent agreed to by each Lender of such Eurocurrency Rate Loan, nine or twelve months or less than one month thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period 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 calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made; and

(ii) as to any investment of the Pre-Funded RC Deposits, the interest period applicable thereto selected pursuant to, and otherwise subject to the provisions of, Section 2.05(e).

"Intermediate Holding Company" shall have the meaning provided in the definition of "Qualifying IPO".

"**Investment**" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person (including by way of merger or consolidation), (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. Subject to Section 6.14 (in the case of deemed Investments in Unrestricted Subsidiaries), for purposes of covenant compliance, the amount of any Investment shall be the amount actually invested (in the case of any non-cash asset invested, taking the Fair Market Value thereof at the time the investment is made), without adjustment for subsequent increases or decreases in the value of such Investment.

"**IP Collateral**" means all "Intellectual Property Collateral" referred to in the Collateral Documents and all of the other IP Rights that are or are required by the terms hereof or of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

"**IP Rights**" has the meaning set forth in Section 5.15.

"**IRS**" means the United States Internal Revenue Service.

"**Junior Financing**" has the meaning specified in Section 7.13.

"**Junior Financing Documentation**" means any documentation governing any Junior Financing.

"**Laws**" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes 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.

"**L/C Advance**" means, with respect to each Working Capital RC Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share.

"**L/C Borrowing**" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Working Capital RC Borrowing.

"**L/C Credit Extension**" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"**L/C Issuer**" means DBNY, Wachovia (in respect of the Existing Letters of Credit) and any other Lender (which also may include Wachovia) or Affiliate of a Lender that becomes an L/C Issuer in accordance with Section 2.03(k) or 10.07(j), in each case, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

"**L/C Obligations**" means, as at any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings.

"**Lender**" has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes an L/C Issuer and the Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a " Lender".

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"**Letter of Credit**" means any Existing Letter of Credit or any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

"**Letter of Credit Application**" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant L/C Issuer.

"**Letter of Credit Expiration Date**" means the day that is five (5) Business Days prior to the scheduled Maturity Date then in effect for the Working Capital RC Facility (or, if such day is not a Business Day, the next preceding Business Day).

"**Letter of Credit Sublimit**" means an amount equal to the lesser of (a) $75,000,000 and (b) the aggregate amount of the Working Capital RC Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Working Capital RC Facility.

"**LIBOR Rate**" means, for any Interest Period with respect to the investment of the Pre-Funded RC Deposits, the rate for deposits in Dollars for a period equal to such Interest Period which appears on Telerate Page 3750 (or any successor page) as of 11:00 a.m. (London time) on the day that is two (2) Business Days preceding the beginning of such Interest Period. If such rate does not appear on Telerate Page 3750 (or any successor page), the rate for that Interest Period will be the rate determined in good faith by the Administrative Agent on the basis of the rates at which deposits in Dollars are offered by four major banks in the London interbank market at approximately 11:00 a.m. (London time), on the day that is two (2) Business Days preceding the beginning of the new Interest Period to prime banks in the London interbank market for a period of one month commencing on the beginning of the new Interest Period and in the then outstanding amount of the Credit-Linked Deposits. The Administrative Agent will request the principal London office of each of such four major banks in the London interbank market to provide a quotation of its rate. If at least two such quotations are provided, the rate for

that new Interest Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided as requested, the rate for that Interest Period will be the arithmetic mean of the rates quoted by major banks in New York City, selected by the Administrative Agent, at approximately 11:00 a.m. (New York City time), on the beginning of the new Interest Period for loans in Dollars to leading European banks for such Interest Period commencing on the beginning of the new Interest Period and in the amount of the Pre-Funded RC Deposits.

"**Lien**" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing).

"**Loan**" means an extension of credit by a Lender to the Borrower under Article 2 in the form of a Term Loan, a Working Capital RC Loan, a Swing Line Loan or a Pre-Funded RC Loan.

"**Loan Documents**" means, collectively, (i) this Agreement, (ii) the Notes, (iii) each Guaranty, (iv) the Collateral Documents, (v) the Intercompany Note and (vi) each Letter of Credit Application.

"**Loan Parties**" means, collectively, the Borrower and each Guarantor.

"**Management Stockholders**" means the members of management of the Borrower or its Subsidiaries (excluding the Founders) who are investors in Holdings or any direct or indirect parent thereof.

"**Master Agreement**" has the meaning specified in the definition of "Swap Contract".

"**Master Lease**" means each of the Master Leases entered into (or to be entered into) by any Loan Party with a Specified Lease Entity, including without limitation, with Private Restaurant Properties, LLC on the Closing Date, and any and all modifications thereto, substitutions therefore and replacements thereof.

"**Material Adverse Change**" means any facts, circumstances, events or changes that are materially adverse to the business, financial condition or long-term profitability of the Borrower and its Subsidiaries, taken as a whole, but shall not include facts, circumstances, events or changes (a) generally affecting the casual dining or restaurant industries in the United States or the economy or the financial or securities markets in the United States or elsewhere in the world, including regulatory and political conditions or developments (including any outbreak or escalation of hostilities or acts of war or terrorism) or changes in interest rates or (b) to the extent resulting from (i) the announcement or the existence of, or compliance with, the Merger Agreement or the announcement of the Merger or any of the other transaction contemplated by the Merger Agreement (provided that compliance by the Borrower with the requirement to operate in the ordinary course of business as required by Section 5.1(a) of the Merger Agreement shall not be excluded), (ii) any litigation arising from allegations of a breach of fiduciary duty or

other violation of applicable Law relating to the Merger Agreement or the transactions contemplated by the Merger Agreement, (iii) changes in applicable Laws, GAAP or accounting standards, (iv) changes in the market price or trading volume of any issued and outstanding shares of common stock of the Borrower, (v) changes in any analyst's recommendations, any financial strength rating or any other recommendations or ratings as to the Borrower or its Subsidiaries (including, in and of itself, any failure to meet analyst projections) or (vi) the failure of the Borrower to meet any expected or projected financial or operating performance target publicly announced prior to the date of the Merger Agreement, as well as any change by the Borrower in any expected or projected financial or operating performance target as compared with any target publicly announced prior to the date of the Merger Agreement, provided, however, that any change, effect, development, event or occurrence described in the foregoing clause (a) above shall not constitute or give rise to a Material Adverse Change only if and to the extent that such change, effect, development, event or occurrence does not have a disproportionate effect on the Borrower and its Subsidiaries as compared to other Persons in the casual dining or restaurant industries and provided further that the facts, circumstances or events underlying the change or failure in each of clauses (b)(iv), (b)(v) or (b)(vi) of this paragraph shall not be excluded to the extent such facts, circumstances or events would otherwise constitute a Material Adverse Change.

"**Material Adverse Effect**" means (a) a material adverse effect on the business, operations, assets, liabilities (actual or contingent) or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) a material adverse effect on the ability of the Borrower or the Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party or (c) a material adverse effect on the rights and remedies of the Lenders under any Loan Document.

"**Material Real Property**" means any real property owned by any Loan Party with a Fair Market Value of $2,500,000 or more.

"**Maturity Date**" means (a) with respect to the Working Capital RC Facility and Swing Line Loans, June 14, 2013, (b) with respect to the Term Loans, June 14, 2014 and (c) with respect to the Pre-Funded RC Facility, June 14, 2013.

"**Maximum Rate**" has the meaning specified in Section 10.10.

"**Merger**" has the meaning set forth in the preliminary statements to this Agreement.

"**Merger Agreement**" means the Agreement and Plan of Merger, dated as of November 5, 2006, among Kangaroo Holdings, Inc., Acquisition Sub and the Borrower, as amended by that certain Amendment, dated as of May 21, 2007, among Kangaroo Holdings, Inc., Acquisition Sub and the Borrower, and as further amended, supplemented or modified from time to time in accordance with the terms of this Agreement.

"**Merger Consideration**" means the total funds required to consummate the Merger.

"**Minimum Free Cash Flow**" means, for any period, an amount equal to the excess of: (a) the sum, without duplication, of:

(i) Consolidated EBITDA for such period,

(ii) the aggregate amount of all Net Cash Proceeds actually received by the Borrower after the Closing Date and during such period (through a capital contribution of such Net Cash Proceeds by Holdings to the Borrower) from a Permitted Equity Issuance by Holdings or the Borrower (other than any such Net Cash Proceeds from a Permitted Equity Issuance pursuant to Section 8.05 unless such amounts are to cure an Event of Default under Section 7.11(b)), and

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions and non-ordinary course Dispositions by the Borrower and the Restricted Subsidiaries completed during such period), *over*

(b) the sum, without duplication of:

(i) Consolidated Interest Expense for such period,

(ii) without duplication of amounts deducted pursuant to clause (iii) below in prior fiscal years, the amount of Capital Expenditures made in cash or accrued during such period pursuant to Section 7.16 (other than clause (a)(ii) thereof), except to the extent that such Capital Expenditures were financed with the proceeds of Indebtedness (other than Working Capital RC Loans and loans under any other revolving credit line or similar facility (other than the Pre-Funded RC Facility)) of the Borrower or the Restricted Subsidiaries,

(iii) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions and non-ordinary course Dispositions by the Borrower and the Restricted Subsidiaries during such period), and

(iv) the amount of cash taxes paid in such period.

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto.

"**Moody's Applicable Corporate Rating**" means the corporate family rating assigned to the Borrower by Moody's.

"**Mortgage**" means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent on behalf of the Secured Parties substantially in form and substance reasonably satisfactory to the Collateral Agent (taking account of relevant local Law matters), and any other mortgages executed and delivered pursuant to Section 6.11.

"**Mortgage Policies**" has the meaning specified in Section 6.13(b)(iii).

"**Mortgaged Properties**" has the meaning specified in paragraph (g) of the definition of "Collateral and Guarantee Requirement".

"**Multiemployer Plan**" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"**Net Cash Proceeds**" means:

(a) with respect to the Disposition of any asset by Holdings, the Borrower or any Restricted Subsidiary or any Casualty Event, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition or Casualty Event (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received and, with respect to any Casualty Event, any insurance proceeds or condemnation awards in respect of such Casualty Event actually received by or paid to or for the account of Holdings, the Borrower or any Restricted Subsidiary) over (ii) the sum of (A) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by the asset subject to such Disposition or Casualty Event (other than in the case of a Foreign Subsidiary) and that is required to be repaid (and is timely repaid) in connection with such Disposition or Casualty Event (other than Indebtedness under, or that is secured by, the Loan Documents), (B) the out-of-pocket expenses (including attorneys' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by Holdings, the Borrower or such Restricted Subsidiary in connection with such Disposition or Casualty Event, (C) taxes paid or reasonably estimated to be actually payable in connection therewith, and (D) any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by Holdings, the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and it being understood that "Net Cash Proceeds" shall include any cash or Cash Equivalents (i) received upon the Disposition of any non-cash consideration received by Holdings, the Borrower or any Restricted Subsidiary in any such Disposition and (ii) upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in preceding clause (D) or, if such liabilities have not been satisfied in cash and such reserve is not reversed within three hundred and sixty-five (365) days after such Disposition or Casualty Event, the amount of such reserve; provided that (x) no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Cash Proceeds unless such net cash proceeds shall exceed $2,500,000 and (y) no such net cash proceeds shall constitute Net Cash Proceeds under this clause (a) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed $10,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Cash Proceeds under this clause (a)); and

(b) with respect to the incurrence or issuance of any Indebtedness by Holdings, the Borrower or any Restricted Subsidiary, the excess, if any, of (i) the sum of the cash received in connection with such incurrence or issuance over (ii) the investment banking fees, underwriting discounts, commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by Holdings, the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance.

"**Non-Cash Charges**" has the meaning set forth in the definition of the term "Consolidated EBITDA".

"**Non-Consenting Lenders**" has the meaning specified in Section 3.07(d).

"**Nonrenewal Notice Date**" has the meaning specified in Section 2.03(b)(iii).

"**Note**" means a Term Note, a Working Capital RC Note, a Swing Line Note or a Pre-Funded RC Note, as the context may require.

"**Notice of Intent to Cure**" has the meaning specified in Section 6.02(b).

"**NPL**" means the National Priorities List under CERCLA.

"**Obligations**" means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Subsidiaries arising under any Loan Document (including each Guaranty) or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, (y) obligations of any Loan Party and its Subsidiaries arising under any Secured Hedge Agreement and (z) Cash Management Obligations, in each of clauses (x), (y) and (z) including interest and fees that accrue after the commencement by or against any Loan Party or Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, premium, interest, Letter of Credit commissions, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party or its Subsidiaries under any Loan Document and (b) the obligation of any Loan Party or any of its Subsidiaries to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party or such Subsidiary.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the

partnership, joint venture or other applicable agreement of formation or organization and, if applicable, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**OS Restaurant Services**" means OS Restaurant Services, Inc., a wholly-owned domestic Restricted Subsidiary of the Borrower.

"**Other Parent Subsidiaries**" means Subsidiaries of the direct parent company of the Borrower other than the Borrower and its Restricted Subsidiaries.

"**Other Taxes**" has the meaning specified in Section 3.01(b).

"**Outstanding Amount**" means (a) with respect to the Term Loans, Working Capital RC Loans, Pre-Funded RC Loans and Swing Line Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Working Capital RC Loans (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Working Capital RC Borrowing), Pre-Funded RC Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the outstanding amount thereof on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Working Capital RC Borrowing) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"**Participant**" has the meaning specified in Section 10.07(e).

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**PCAOB**" has the meaning specified in Section 6.01(a).

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Section 412 of the Code or Section 302 or Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

"**Permits**" means any and all franchises, licenses, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, and other rights, privileges and approvals required for the operation of the Borrower's or its applicable Subsidiary's business under its organizational documents or under any loan treaty, rule or regulation or determination of an arbitrator or a court other Governmental Authority, in each case applicable or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Permitted Acquisition**" has the meaning specified in Section 7.02(i).

"**Permitted Equity Issuance**" means any sale or issuance of any Qualified Equity Interests of Holdings or a capital contribution to Holdings in respect of its Equity Interests (and, after a Qualifying IPO, of the Borrower or any Intermediate Holding Company) to the extent permitted hereunder.

"**Permitted Holders**" means each of (i) the Bain Entities, (ii) the Catterton Entities, (iii) the Founders and (iv) the Management Stockholders; provided that if the Management Stockholders own beneficially or of record more than ten percent (10%) of the outstanding voting stock of Holdings in the aggregate, they shall be treated as Permitted Holders of only ten percent (10%) of the outstanding voting stock of Holdings at such time; and provided further that if the Founders own beneficially or of record more than fifteen percent (15%) of the outstanding voting stock of Holdings in the aggregate, they shall be treated as Permitted Holders of only fifteen percent (15%) of the outstanding voting stock of Holdings at such time.

"**Permitted Holdings Debt**" has the meaning specified in Section 7.03(r).

"**Permitted Liens"** means any Lien permitted to be outstanding pursuant to Section 7.01.

"**Permitted Refinancing**" means, with respect to any Person, any modification, refinancing, refunding, renewal, extension or replacement of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, extended or replaced except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, extension or replacement and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, extension or replacement has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, extended or replaced, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), at the time thereof, no Event of Default shall have occurred and be continuing, and (d) if such Indebtedness being modified, refinanced, refunded, renewed, extended or replaced is Indebtedness permitted pursuant to Section 7.03(b), 7.03(t), 7.03(u) or 7.13(a), (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, extended or replaced is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, extension or replacement is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, extended or replaced, (ii) the terms and conditions (including, if applicable, as to collateral but excluding as to subordination, interest rate and redemption premium) of any such modified,

refinanced, refunded, renewed, extended or replaced Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed, extended or replaced; provided that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees) and (iii) such modification, refinancing, refunding, renewal, extension or replacement is incurred by the Person who is the obligor of the Indebtedness being modified, refinanced, refunded, renewed, extended or replaced.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Plan**" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Section 302 or Title IV of ERISA, any ERISA Affiliate.

"**Pledged Debt**" has the meaning specified in the Security Agreement.

"**Pledged Equity**" has the meaning specified in the Security Agreement.

"**Post-Acquisition Period**" means, with respect to any Permitted Acquisition or conversion of an Unrestricted Subsidiary to a Converted Restricted Subsidiary, the period beginning on the date such Permitted Acquisition or conversion of an Unrestricted Subsidiary to a Converted Restricted Subsidiary is consummated and ending on the last day of the sixth full consecutive fiscal quarter immediately following the date on which such Permitted Acquisition or conversion of an Unrestricted Subsidiary to a Converted Restricted Subsidiary is consummated.

"**Pre-Funded RC Borrowing**" means a borrowing consisting of simultaneous Pre-Funded RC Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Pre-Funded RC Lenders pursuant to Section 2.01(c).

"**Pre-Funded RC Commitment**" means, as to each Pre-Funded RC Lender, its obligation to make a Pre-Funded RC Loan to the Borrower pursuant to Section 2.01(c) in an aggregate principal amount not to exceed the amount set forth opposite such Pre-Funded RC Lender's name on Schedule 2.01 under the caption "Pre-Funded RC Commitment" or in the Assignment and Assumption pursuant to which such Pre-Funded RC Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Pre-Funded RC Commitments of all Pre-Funded RC Lenders on the Closing Date is $100,000,000.

"**Pre-Funded RC Deposit**" means, as to each Pre-Funded RC Lender, the cash deposit made by such Pre-Funded RC Lender pursuant to Section 2.05(a), as such deposit may be (x) reduced from time to time pursuant to the terms of this Agreement and (y) reduced or increased from time to time pursuant to assignments to or by such Pre-Funded RC Lender pursuant to Section 3.07 or 10.07. The initial amount of each Pre-Funded RC Lender's Pre-Funded RC Deposit shall be equal to the amount of its Pre-Funded RC Commitment on the Closing Date or on the date that such Person becomes a Pre-Funded RC Lender pursuant to Section 3.07 or 10.07.

"**Pre-Funded RC Deposit Account**" means the account of, and established by, the Pre-Funded RC Deposit Bank under its sole and exclusive control and maintained at the office of the Pre-Funded RC Deposit Bank, and designated as the "Outback Pre-Funded RC Deposit Account" that shall be used solely for the purposes set forth in Section 2.05.

"**Pre-Funded RC Deposit Bank**" means DBNY.

"**Pre-Funded RC Deposit Cost Amount**" means an amount (expressed in basis points) reasonably determined by the Administrative Agent from time to time in consultation with the Borrower to represent the cost of investing the Pre-Funded RC Deposits by the Pre-Funded RC Deposit Bank (or an affiliate thereof) until the then next occurring Scheduled Investment Termination Date.

"**Pre-Funded RC Exposure**" means, at any time, the aggregate principal amount of all Pre-Funded RC Loans outstanding at such time.

"Pre-Funded RC Facility" means, at any time, the aggregate amount of the Pre-Funded RC Lenders' Pre-Funded RC Commitments at such time.

"**Pre-Funded RC Interest Payment Date**" means the last day of each Interest Period applicable to Pre-Funded RC Deposits and the Maturity Date of the Pre-Funded RC Facility.

"**Pre-Funded RC Lender**" means each Lender having a Pre-Funded RC Commitment or which has any outstanding Pre-Funded RC Loans at such time.

"**Pre-Funded RC Loan**" has the meaning specified in Section 2.01(c).

"**Pre-Funded RC Note**" means a promissory note of the Borrower payable to a Pre-Funded RC Lender or its registered assigns in substantially the form of Exhibit C-4 hereto evidencing the aggregate Indebtedness of the Borrower to such Pre-Funded RC Lender resulting from the Pre-Funded RC Loans made by such Pre-Funded RC Lender.

"**Principal L/C Issuer**" means DBNY and any L/C Issuer that has issued Letters of Credit having an aggregate Outstanding Amount in excess of $500,000.

"**Pro Forma Adjustment**" means, for any Test Period that includes all or any part of a fiscal quarter included in any Post-Acquisition Period, with respect to the Acquired EBITDA of the applicable Acquired Entity or Business or a Converted Restricted Subsidiary or

the Consolidated EBITDA of the Borrower, the pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, projected by the Borrower in good faith as a result of (a) actions taken during such Post-Acquisition Period for the purposes of realizing reasonably identifiable and factually supportable cost savings or (b) any additional costs incurred during such Post-Acquisition Period, in each case in connection with the combination of the operations of such Acquired Entity or Business or such Converted Restricted Subsidiary with the operations of the Borrower and the Restricted Subsidiaries; provided that, so long as such actions are taken during such Post-Acquisition Period or such costs are incurred during such Post-Acquisition Period, as applicable, the cost savings related to such actions or such additional costs, as applicable, it may be assumed, for purposes of projecting such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, that such cost savings will be realizable during the entirety of such Test Period, or such additional costs, as applicable, will be incurred during the entirety of such Test Period; provided, further, that any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for cost savings or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, for such Test Period.

"**Pro Forma Balance Sheet**" has the meaning set forth in Section 5.05(a)(ii).

"**Pro Forma Basis**", "**Pro Forma Compliance**" and "**Pro Forma Effect**" mean, with respect to compliance with any test or covenant hereunder, that (A) to the extent applicable, the Pro Forma Adjustment shall have been made and (B) all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a Disposition of all or substantially all Equity Interests in or assets of any Subsidiary of the Borrower or any division, product line, or facility used for operations of the Borrower or any of its Subsidiaries, shall be excluded, and (ii) in the case of a Permitted Acquisition, conversion of an Unrestricted Subsidiary to a Converted Restricted Subsidiary or Investment described in the definition of "Specified Transaction", shall be included, (b) any retirement or repayment of Indebtedness, and (c) any Indebtedness incurred or assumed by the Borrower or any of the Restricted Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination; provided that, without limiting the application of the Pro Forma Adjustment pursuant to clause (A) above, the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to events (including cost savings, synergies and operating expense reductions) that are (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on the Borrower and the Restricted Subsidiaries and (z) reasonably identifiable and factually supportable or (ii) otherwise consistent with the definition of Pro Forma Adjustment, provided, further, that no pro forma adjustments shall apply to the consummation of the Transaction except as expressly contemplated in the definitions of "Consolidated EBITDA", "Consolidated Interest Expense" and "Consolidated Lease Expense".

"**Pro Forma Financial Statements**" has the meaning set forth in Section 5.05(a)(ii).

"**Pro Rata Share**" means, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitment of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments of all Lenders under the applicable Facility or Facilities at such time; provided that if such Commitment has been terminated, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

"**Projections**" has the meaning set forth in Section 6.01(c).

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified Equity Interests.

"Qualifying IPO" means the issuance by Holdings, any direct or indirect parent of Holdings, any Subsidiary (an " Intermediate Holding Company") of Holdings that, directly or indirectly, owns 100% of the issued and outstanding Equity Interests of the Borrower or the Borrower of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

"**Refinanced Pre-Funded RC Loans**" has the meaning specified in Section 10.01.

"**Refinanced Term Loans**" has the meaning specified in Section 10.01.

"**Register**" has the meaning set forth in Section 10.07(d).

"**Regulation D**" shall mean Regulation D of the FRB as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

"**Regulation S-X**" means Regulation S-X of the Securities Act as from time to time in effect and any successor to all or a portion thereof.

"**Rejected Amounts**" has the meaning set forth in Section 2.06(b)(ix).

"**Rejection Notice**" has the meaning set forth in Section 2.06(b)(ix).

"**Rent Adjusted Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) the sum of (i) Consolidated Total Debt as of the last day of such Test Period plus (ii) the product of (x) Consolidated Lease Expense for such Test Period multiplied by (y) 8 to (b) the sum of (i) Consolidated EBITDA for such Test Period plus (ii) Consolidated Lease Expense for such Test Period.

"**Replacement Pre-Funded RC Loans**" has the meaning specified in Section 10.01.

"**Replacement Term Loans**" has the meaning specified in Section 10.01.

"**Reportable Event**" means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

"**Request for Credit Extension**" means (a) with respect to a Borrowing, conversion or continuation of Term Loans, Working Capital RC Loans or Pre-Funded RC Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"**Request for Release of Capital Expenditure Funds**" means a written request by the Borrower for the Administrative Agent to release funds on deposit in the Capital Expenditures Account, which shall be substantially in the form of Exhibit J.

"**Required Lenders**" means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition), (b) aggregate unused Term Commitments, (c) aggregate unused Working Capital RC Commitments and (d) aggregate unused Pre-Funded RC Commitments, provided that the unused Term Commitment, unused Working Capital RC Commitment and unused Pre-Funded RC Commitments of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"**Responsible Officer**" means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"**Restaurant LP**" means a Domestic Subsidiary which is organized as a limited partnership (or similar entity) (a) in which either the Borrower or a wholly-owned Restricted Subsidiary is the sole general partner and (b) which operates a restaurant that it owns or leases. As of the Closing Date and except as set forth on Schedule 1.01I, all of the Restaurant LP's are wholly-owned Restricted Subsidiaries, and, in the case of the ones that are Domestic Subsidiaries, are Guarantors.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Holdings, the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to Holdings, or the Borrower's stockholders, partners or members (or the equivalent Persons thereof).

"**Restricted Subsidiary**" means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

"**Returns**" means, with respect to any Investment, any repayments, interest, returns, profits, distributions, proceeds, fees and similar amounts actually received in cash or Cash Equivalents (or converted into cash or Cash Equivalents) by the Borrower or any of its Restricted Subsidiaries.

"**Rollover Amount**" has the meaning set forth in Section 7.16(b).

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

"**Same Day Funds**" means, with respect to disbursements and payments, immediately available funds in Dollars.

"**Scheduled Investment Termination Date**" means, when referring to the Pre-Funded RC Deposits on deposit in the Pre-Funded RC Deposit Account, the respective maturity date for the investment that the Pre-Funded RC Deposits have been so invested in. The respective maturity date for such investments shall be the date agreed to by the Borrower and the Administrative Agent from time to time, provided that if no such agreement shall be reached, the Scheduled Investment Termination Date shall be the last day of the then current Interest Period applicable to the Pre-Funded RC Deposits.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Hedge Agreement**" means any Swap Contract permitted under Article VII that is entered into by and between any Loan Party or any Restricted Subsidiary and any Hedge Bank.

"**Secured Obligations**" has the meaning specified in the Security Agreement.

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Hedge Banks, the Cash Management Banks, the Pre-Funded RC Deposit Bank, the Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(c) or 9.01(d).

"**Securities Act**" means the Securities Act of 1933.

"**Security Agreement**" means, collectively, the Security Agreement executed by the Loan Parties, substantially in the form of Exhibit G, together with each other security agreement supplement executed and delivered pursuant to Section 6.11.

"**Security Agreement Supplement**" has the meaning specified in the Security Agreement.

"**Senior Notes**" means $550,000,000 in aggregate principal amount of the Borrower's 10% senior unsecured notes due June 14, 2015 and any registered senior unsecured notes having substantially identical terms and issued pursuant to the Senior Notes Indenture in exchange for the initial, unregistered senior unsecured notes.

"**Senior Notes Documentation**" means the Senior Notes, and all documents executed and delivered in connection with the Senior Notes, including the Senior Notes Indenture.

"**Senior Notes Indenture**" means the Indenture for the Senior Notes, dated as of June 14, 2007.

"**Senior Subordinated Notes Precedent**" has the meaning specified in Section 7.03(h).

"**Sold Entity or Business**" has the meaning set forth in the definition of the term "Consolidated EBITDA".

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**SPC**" has the meaning specified in Section 10.07(h).

"**Specified Lease Entities**" means (i) one or more non-Subsidiary Affiliates of the Borrower, which is a wholly-owned Subsidiary of the direct parent company of the Borrower, to which the Borrower and/or its Restricted Subsidiaries has sold, transferred or assigned (or will sell, transfer and assign) in the Specified Lease Transactions certain real property interests and related improvements, and (ii) their direct and indirect parent companies (provided, that any direct or indirect parent entity of the Borrower shall not be a Specified Lease Entity).

"**Specified Lease Transactions**" means the sale, transfer or assignment to one or more Specified Lease Entities of real property interests, including improvements thereon, operated by the Borrower or its Restricted Subsidiaries as restaurants, substantially all of the net proceeds of which shall be applied (except as otherwise required pursuant to the CMBS

Facilities) substantially concurrently to finance the Transaction or to refinance any interim or other financing used to finance the Transaction, to the extent that the Borrower or a Restricted Subsidiary has leased such real property interests, including improvements thereon, or otherwise arranged for the rights to use and operate such properties, in each case pursuant to the Master Leases.

"**Specified Proceeds**" means contributions made to the common equity of the Borrower in cash by Holdings (other than contributions made with the cash proceeds from financing activities of Holdings or from other equity contributions to Holdings or from dividends or other distributions or payments received by Holdings from Other Parent Subsidiaries that are unrelated to the businesses conducted by the Other Parent Subsidiaries on the Closing Date after giving effect to the Transaction); provided that the first $11,500,000 of such contributions shall be excluded.

"**Specified Transaction**" means, with respect to any period, any Investment, Disposition of all or substantially all of the Equity Interests in or assets of any Restricted Subsidiary or any division, product line or facility (including, without limitation, any individual restaurant facility) used for the operations of the Borrower or any of the Restricted Subsidiaries, incurrence or repayment of Indebtedness, Restricted Payment or Subsidiary designation that by the terms of this Agreement requires "Pro Forma Compliance" with a test or covenant hereunder or requires such test or covenant to be calculated on a " Pro Forma Basis".

"**Sponsor Management Agreement**" means the Management Agreement and the Financial Advisory Agreement, in each case between certain of the management companies associated with the Sponsors, the Founders (as applicable), Holdings, certain direct and indirect parents of Holdings and the Borrower.

"**Sponsors**" means the Bain Entities and the Catterton Entities, and their respective Affiliates, but not including, however, any portfolio companies of any of the foregoing.

"**Sub-Lease**" means each of the sub-leases entered into (or to be entered into) by any Loan Party with one or more of its Restricted Subsidiaries the terms of which shall mirror the terms of the Master Leases, any related sub-sub-leases, and any and all modifications thereto, substitutions therefor and extensions, renewals and replacements thereof.

"**Subsidiary**" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower. Notwithstanding the foregoing, no Specified Lease Entity shall, for any purpose of this Agreement or any other Loan Document (other than for the definition of Specified Lease Entities), be considered a Subsidiary of Holdings or the Borrower.

"**Subsidiary Guarantor**" means, collectively, the Subsidiaries of the Borrower that are Guarantors.

"**Subsidiary Guaranty**" means, collectively, (a) the Subsidiary Guaranty made by the Subsidiary Guarantors in favor of the Administrative Agent on behalf of the Secured Parties, substantially in the form of Exhibit F and (b) each other guaranty and guaranty supplement delivered pursuant to Section 6.11.

"**Successor Company**" has the meaning specified in Section 7.04(d).

"**Supplemental Administrative Agent**" has the meaning specified in Section 9.13 and "Supplemental Administrative Agents" shall have the corresponding meaning.

"**Swap Contract**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"**Swap Termination Value**" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contract has been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contract, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"**Swing Line Borrowing**" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"**Swing Line Facility**" means the revolving credit facility made available by the Swing Line Lender pursuant to Section 2.04.

"**Swing Line Lender**" means DBNY, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"**Swing Line Loan**" has the meaning specified in Section 2.04(a).

"**Swing Line Loan Notice**" means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

"**Swing Line Note**" means a promissory note of the Borrower payable to any Swing Line Lender or its registered assigns, in substantially the form of Exhibit C-3, evidencing the aggregate Indebtedness of the Borrower to such Swing Line Lender resulting from the Swing Line Loans made by such Swing Line Lender.

"**Swing Line Obligations**" means, as at any date of determination, the aggregate principal amount of all Swing Line Loans outstanding.

"**Swing Line Sublimit**" means an amount equal to the lesser of (a) $15,000,000 and (b) the aggregate amount of the Working Capital RC Commitments. The Swing Line Sublimit is part of, and not in addition to, the Working Capital RC Commitments.

"**Syndication Agent**" means Bank of America, N.A., as Syndication Agent under this Agreement.

"**Taxes**" has the meaning specified in Section 3.01(a).

"**Term Borrowing**" means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01.

"**Term Commitment**" means, as to each Term Lender, its obligation to make a Term Loan to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the caption " Term Commitment" or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The initial aggregate amount of the Term Commitments is $1,310,000,000.

"**Term Lender**" means, at any time, any Lender that has a Term Commitment or an outstanding Term Loan at such time.

"**Term Loan**" means a Loan made pursuant to Section 2.01(a).

"**Term Loan Stepdown**" has the meaning specified in clause (a) of the definition of "Applicable Rate".

"**Term Note**" means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit C-1, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

"**Test Period**" means, for any determination under this Agreement, the four consecutive fiscal quarters of the Borrower then last ended, *provided* that for purposes of any calculation of Consolidated Interest Expense and Consolidated Lease Expense for any "Test

Period" ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense and Consolidated Lease Expense shall be calculated in accordance with the last sentence appearing in the respective definitions of "Consolidated Interest Expense" and "Consolidated Lease Expense".

"**Threshold Amount**" means $35,000,000.

"**Total Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

"**Total Tangible Assets**" means, as of any date, the total tangible assets of the Borrower and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

"**Total Outstandings**" means, at any time, the aggregate Outstanding Amount of all Loans and all L/C Obligations at such time.

"**Transaction**" means the transactions contemplated by the Merger Agreement, the Equity Contributions, the issuance of the Senior Notes, the borrowings hereunder, the Specified Lease Transactions, the conversion of the Borrower and any of its Subsidiaries from corporations to limited liability companies, intercompany restructurings and reorganizations to effect or facilitate the Transaction (including the Employment Participation Subsidiary Conversion), the consummation of any other transactions in connection with the foregoing, and the payment of the fees and expenses incurred in connection with any of the foregoing, each as in effect on the Closing Date, and the application of proceeds therefrom.

"**Transaction Expenses**" means any fees or expenses incurred or paid by Holdings, any direct or indirect parent holding company of Holdings, the Borrower or any Restricted Subsidiary in connection with the Transaction, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

"**True Cash Flow**" means, for any period, an amount equal to the excess of: (a) the sum, without duplication, of:

(i) Excess Cash Flow for such period,

(ii) the amount of Capital Expenditures made in cash during such period pursuant to Section 7.16 to the extent financed with proceeds of Pre-Funded RC Loans or the Capital Expenditures Account to the extent that such Capital Expenditures reduced Excess Cash Flow for such period,

(iii) the aggregate amount of all Investments made in cash during such period pursuant to Sections 7.02(c)(iv) (to the extent made by a Loan Party) and (m) (to the extent that the underlying Restricted Payment would have otherwise been included in clause (iv) below), in each case to the extent that such Investments reduced Excess Cash Flow for such period, and

(iv) the aggregate amount of all Restricted Payments made in cash during such period pursuant to Section 7.06 (other than Sections 7.06(d) and (m) or otherwise in respect of taxes or amounts permitted to be paid pursuant to Section 7.08(e)) to the extent that such Restricted Payments reduced Excess Cash Flow for such period (except to the extent that such Restricted Payments otherwise reduced Consolidated Net Income), *over*

(b) the aggregate amount of all voluntary principal payments of the Term Loans made during such period to the extent financed with internally generated cash flow of the Borrower and the Restricted Subsidiaries generated in such period or made with Working Capital RC Loans, Swing Line Loans or revolving loans under any other revolving credit line or similar facility (other than under the Pre-Funded RC Facility).

"**Type**" means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

"**Unaudited Financial Statements**" has the meaning set forth in Section 4.01(g).

"**Uniform Commercial Code**" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"**United States**" and "**U.S.**" mean the United States of America.

"**Unreimbursed Amount**" has the meaning set forth in Section 2.03(c)(i).

"**Unrestricted Subsidiary**" means any Subsidiary of the Borrower designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date, in each case until such time (if any) as the board of directors of the Borrower designates any such Subsidiary as a Restricted Subsidiary pursuant to Section 6.14.

"**U.S. Lender"** has the meaning specified in Section 10.15(c).

"**Wachovia**" means Wachovia Bank, National Association.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

"**wholly owned**" means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

"**Working Capital RC Borrowing**" means a borrowing consisting of simultaneous Working Capital RC Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Working Capital RC Lenders pursuant to Section 2.01(b).

"**Working Capital RC Commitment**" means, as to each Working Capital RC Lender, its obligation to (a) make Working Capital RC Loans to the Borrower pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations in respect of Letters of Credit and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the caption "Working Capital RC Commitment" or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Working Capital RC Commitments of all Working Capital RC Lenders shall be $150,000,000 on the Closing Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

"**Working Capital RC Exposure**" means, at any time, as to each Working Capital RC Lender, the sum of the outstanding principal amount of such Working Capital RC Lender's Working Capital RC Loans at such time and its Pro Rata Share of the L/C Obligations and the Swing Line Obligations at such time.

"**Working Capital RC Facility**" means, at any time, the aggregate amount of the Working Capital RC Lenders' Working Capital RC Commitments at such time.

"**Working Capital RC Lender**" means, at any time, any Lender that has a Working Capital RC Commitment at such time or which has outstanding Working Capital RC Loans at such time.

"**Working Capital RC Loan**" has the meaning specified in Section 2.01(b).

"**Working Capital RC Note**" means a promissory note of the Borrower payable to any Working Capital RC Lender or its registered assigns, in substantially the form of Exhibit C-2, evidencing the aggregate Indebtedness of the Borrower to such Working Capital RC Lender resulting from the Working Capital RC Loans made by such Working Capital RC Lender.

Section 1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term "including" is by way of example and not limitation.

(iv) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(d) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03. Accounting Terms. (a) 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 in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test or covenant contained in this Agreement with respect to any period during which any Specified Transaction occurs, the Total Leverage Ratio, the Rent Adjusted Leverage Ratio and the Interest Coverage Ratio shall be calculated with respect to such period and such Specified Transaction on a Pro Forma Basis.

Section 1.04. Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05. References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements and other modifications are permitted by any Loan Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07. Timing of Payment of Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period or in Section 2.05(e)) or performance shall extend to the immediately succeeding Business Day.

Section 1.08. Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount to be determined at the rate of exchange quoted by the Reuters World Currency Page for the applicable currency at 11:00 a.m. (London time) on such day (or, in the event such rate does not appear on any Reuters World Currency Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such agreement, such rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m. (New York City time) on such date for the purchase of Dollars for delivery two (2) Business Days later). Notwithstanding the foregoing, for purposes of determining compliance with Sections 7.01, 7.02 and 7.03 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided that, for the avoidance of doubt, the foregoing provisions of this Section 1.08 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

Section 1.09. Change of Currency. Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower's consent to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

Section 1.10. Cumulative Growth Amount Transactions. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Growth Amount immediately prior to the taking of such action, the permissibility of the taking of such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

ARTICLE II

The Commitments and Credit Extensions

Section 2.01. The Loans. (a) *The Term Borrowings.* Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make to the Borrower a single loan denominated in Dollars in a principal amount equal to such Term Lender's Term

Commitment on the Closing Date. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(b) *The Working Capital RC Borrowings*. Subject to the terms and conditions set forth herein, each Working Capital RC Lender severally agrees to make loans denominated in Dollars to the Borrower (each such loan, a " Working Capital RC Loan") from time to time, on any Business Day until the Maturity Date for the Working Capital RC Facility, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender's Working Capital RC Commitment; provided that after giving effect to any Working Capital RC Borrowing, the aggregate Outstanding Amount of the Working Capital RC Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Working Capital RC Commitment. Within the limits of each Lender's Working Capital RC Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(b), prepay under Section 2.06, and reborrow under this Section 2.01(b). Working Capital RC Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further *provided* herein.

(c) *The Pre-Funded RC Borrowings*. Subject to the terms and conditions set forth herein, each Pre-Funded RC Lender severally agrees to make loans denominated in Dollars to the Borrower (each such loan, a " Pre-Funded RC Loan") from time to time, on any Business Day until the Maturity Date for the Pre-Funded RC Facility, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender's Pre-Funded RC Commitment; provided that after giving effect to any Pre-Funded RC Borrowing, the aggregate Outstanding Amount of the Pre-Funded RC Loans of any Lender shall not exceed such Lender's Pre-Funded RC Commitment. Within the limits of each Lender's Pre-Funded RC Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(c), repay under Section 2.06, and reborrow under this Section 2.01(c). Pre-Funded RC Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further *provided* herein.

Section 2.02. Borrowings, Conversions and Continuations of Loans . (a) Each Term Borrowing, each Working Capital RC Borrowing, each Pre-Funded RC Borrowing, each conversion of Term Loans, Working Capital RC Loans or Pre-Funded RC Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 12:30 p.m. (i) except for notices delivered prior to the Closing Date, three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (ii) one (1) Business Day before the requested date of any Borrowing of Base Rate Loans or conversion of any Eurocurrency Rate Loans to Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Except as *provided* in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base

Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Term Borrowing, a Working Capital RC Borrowing, a Pre-Funded RC Borrowing, a conversion of Term Loans, Working Capital RC Loans or Pre-Funded RC Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans, Working Capital RC Loans or Pre-Funded RC Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans, Working Capital RC Loans or Pre-Funded RC Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 1:00 p.m., in each case on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are Swing Line Loans or L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings, second, to the payment in full of any such Swing Line Loans, and third, to the Borrower as provided above. Each Pre-Funded RC Lender hereby irrevocably authorizes the Administrative Agent to fund each Pre-Funded RC Loan to be made by such Pre-Funded RC Lender hereunder solely by requesting the Pre-Funded RC Deposit Bank (and the Pre-Funded RC Deposit Bank hereby agrees) to withdraw such Pre-Funded RC Lender's Pro Rata Share of the Pre-Funded RC Deposits on deposit with the Pre-Funded RC Deposit Bank in the Pre-Funded RC Deposit Account and to pay same over to the Administrative Agent.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05(a) in connection

therewith. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in DBNY's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Term Borrowings, all Working Capital RC Borrowings, all Pre-Funded RC Borrowings, all conversions of Term Loans, Working Capital RC Loans or Pre-Funded RC Loans from one Type to the other, and all continuations of Term Loans, Working Capital RC Loans or Pre-Funded RC Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect (or such greater number as may be acceptable to the Administrative Agent).

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

Section 2.03. Letters of Credit. (a) *The Letter of Credit Commitment*. (i) On and after the Closing Date, the Existing Letters of Credit will constitute Letters of Credit under this Agreement and for purposes hereof will be deemed to have been issued on the Closing Date. Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Working Capital RC Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars on a sight basis for the account of the Borrower (provided that any Letter of Credit may be for the benefit of any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drafts under the Letters of Credit and (B) the Working Capital RC Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; provided that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Working Capital RC Exposure of any Lender would exceed such Lender's Working Capital RC Commitment or (y) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless the Required Lenders have approved such expiry date;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Working Capital RC Lenders have approved such expiry date;

(D) the issuance of such Letter of Credit would violate any Laws binding upon such L/C Issuer;

(E) such Letter of Credit is in an initial amount less than $50,000 (or such lesser amount as may be acceptable to the respective L/C Issuer); or

(F) any Working Capital RC Lender is a Defaulting Lender at such time, unless such L/C Issuer has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate such L/C Issuer's risk with respect to the participation in Letters of Credit by such Defaulting Lender, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the L/C Obligations.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) *Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit*. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 12:30 p.m. at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter

of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (g) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the relevant L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Working Capital RC Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer shall agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto-Renewal Letter of Credit must permit the relevant L/C Issuer to prevent any such renewal at least once in each twelve month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the relevant L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided that the relevant L/C Issuer shall not permit any such renewal if (A) the relevant L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Nonrenewal Notice Date from the Administrative Agent, any Working Capital RC Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the relevant L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements; Funding of Participations* . (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. on the Business Day immediately following any payment by an L/C Issuer under a Letter of Credit (each such date, an " Honor Date"), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing, together with interest on the amount so paid or disbursed by such L/C Issuer, to the extent not reimbursed on the date of such payment of disbursement. If the Borrower does not reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Appropriate Lender's Pro Rata Share thereof. In such event, the Borrower shall be deemed to have requested a Working Capital RC Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the amount of the unutilized portion of the Working Capital RC Commitments of the Appropriate Lenders and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Appropriate Lender (including any Appropriate Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer, in Dollars, at the Administrative Agent's Office for payments in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Appropriate Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Working Capital RC Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Appropriate Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Appropriate Lender funds its Working Capital RC Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of the relevant L/C Issuer.

(v) Each Working Capital RC Lender's obligation to make Working Capital RC Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Working Capital RC Lender's obligation to make Working Capital RC Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Working Capital RC Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the relevant L/C Issuer submitted to any Working Capital RC Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) *Repayment of Participations*. (i) If, at any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Working Capital RC Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(e) *Obligations Absolute*. The obligation of the Borrower to reimburse the relevant L/C Issuer for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or nonperfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations any Loan Party in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party;

provided that the foregoing shall not excuse any L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(f) *Role of L/C Issuers*. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any draft, demand, certificate or other document expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); provided that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a draft, demand, certificate or other document strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) *Cash Collateral*. (i) If any Event of Default occurs and is continuing and the Administrative Agent or the Required Lenders, as applicable, require the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02(c) or (ii) an Event of Default set forth under Section 8.01(f) occurs and is continuing, then the Borrower shall Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default), and shall do so not later than 2:00 p.m. on (x) in the case of the immediately preceding clause (i), (1) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 Noon, or (2) if clause (1) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (y) in the case of the immediately preceding clause (ii), the Business Day on which an Event of Default set forth under Section 8.01(f) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances (" Cash Collateral") pursuant to documentation in form and

substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked accounts at DBNY and may be invested in readily available Cash Equivalents. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent (on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts at DBNY as aforesaid, an amount equal to the excess of (a) such aggregate Outstanding Amount over (b) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower. To the extent any Event of Default giving rise to the requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(g) is cured or otherwise waived by the Required Lenders, then so long as no other Event of Default has occurred and is continuing, all Cash Collateral pledged to Cash Collateralize such Letter of Credit shall be refunded to the Borrower.

(h) *Letter of Credit Fees*. The Borrower shall pay to the Administrative Agent for the account of each Working Capital RC Lender in accordance with its Pro Rata Share a Letter of Credit fee for each Letter of Credit issued pursuant to this Agreement equal to the remainder of (x) the Applicable Rate times the daily maximum amount then available to be drawn under such Letter of Credit (determined without regard to whether any conditions to drawing could then be met) minus (y) the fronting fee paid to the relevant L/C Issuer for each such Letter of Credit for the relevant period pursuant to Section 2.03(i). Such Letter of Credit fees shall be computed on a quarterly basis in arrears. Such Letter of Credit fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers* . The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued by it equal to 0.125% per annum of the daily maximum amount then available to be drawn under such Letter of Credit (determined without regard to whether any conditions to drawing could then be met). Such fronting fees shall be (x) computed on a quarterly basis in arrears and (y) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and

thereafter on demand. In addition, the Borrower shall pay directly to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(j) *Conflict with Letter of Credit Application*. Notwithstanding anything else to the contrary in this Agreement, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(k) *Addition of an L/C Issuer*. A Working Capital RC Lender may become an additional L/C Issuer hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Working Capital RC Lender. The Administrative Agent shall notify the Working Capital RC Lenders of any such additional L/C Issuer.

Section 2.04. Swing Line Loans. (a) *The Swing Line*. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees to make loans (each such loan, a "Swing Line Loan") to the Borrower from time to time on any Business Day (other than the Closing Date) until the Maturity Date for the Working Capital RC Facility in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Pro Rata Share of the Outstanding Amount of Working Capital RC Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Working Capital RC Commitment; provided that (i) after giving effect to any Swing Line Loan, the aggregate Outstanding Amount of the Working Capital RC Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Working Capital RC Commitment then in effect and (ii) notwithstanding the foregoing, the Swing Line Lender shall not be obligated to make any Swing Line Loans at a time when a Working Capital RC Lender is a Defaulting Lender, unless the Swing Line Lender has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loans, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of Swing Line Loans; provided further that, the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.06, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Swing Line Loans shall only be denominated in Dollars. Immediately upon the making of a Swing Line Loan, each Working Capital RC Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Swing Line Loan.

(b) *Borrowing Procedures*. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall

specify (i) the amount to be borrowed, which shall be a minimum of $100,000 or a whole multiple of $100,000 in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Working Capital RC Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower.

(c) *Refinancing of Swing Line Loans*. (i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Working Capital RC Lender make a Base Rate Loan in an amount equal to such Lender's Pro Rata Share of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the aggregate Working Capital RC Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Working Capital RC Lender shall make an amount equal to its Pro Rata Share of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Working Capital RC Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Working Capital RC Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Working Capital RC Lenders fund its risk participation in the relevant Swing Line Loan and each Working Capital RC Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Working Capital RC Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid

by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Working Capital RC Lender's obligation to make Working Capital RC Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Working Capital RC Lender's obligation to make Working Capital RC Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) *Repayment of Participations*. (i) At any time after any Working Capital RC Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Pro Rata Share of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Working Capital RC Lender shall pay to the Swing Line Lender its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender.

(e) *Interest for Account of Swing Line Lender*. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Working Capital RC Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro Rata Share of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender.

(f) *Payments Directly to Swing Line Lender*. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

Section 2.05. Pre-Funded RC Deposits. (a) On the Closing Date and subject to the satisfaction of the applicable conditions precedent set forth in Article IV, each Pre-Funded RC Lender on such date shall pay to the Pre-Funded RC Deposit Bank such Pre-Funded RC Lender's Pre-Funded RC Deposit. The Pre-Funded RC Deposits shall be held by the Pre-Funded RC Deposit Bank in (or credited to) the Pre-Funded RC Deposit Account and applied as necessary to fund Pre-Funded RC Borrowings, and no Person other than the Pre-Funded RC Deposit Bank shall have a right of withdrawal from the Pre-Funded RC Deposit Account or any other right or power with respect to the Pre-Funded RC Deposits. Notwithstanding anything herein to the contrary, the funding obligation of each Pre-Funded RC Lender in respect of its participation in Pre-Funded RC Borrowings shall be satisfied in full upon the funding of its Pre-Funded RC Deposit.

(b) Each of the Pre-Funded RC Deposit Bank, the Administrative Agent and each Pre-Funded RC Lender hereby acknowledges and agrees that (i) each Pre-Funded RC Lender is funding its Pre-Funded RC Deposit to the Pre-Funded RC Deposit Bank for application in the manner contemplated by Section 2.01(c), (ii) the Pre-Funded RC Deposit Bank may invest the Pre-Funded RC Deposits in such investments as may be determined from time to time by the Pre-Funded RC Deposit Bank and (iii) the Pre-Funded RC Deposit Bank has agreed to pay to the Administrative Agent, who shall in turn pay to each Pre-Funded RC Lender, a return on its Pre-Funded RC Deposit (except (x) during periods when such Pre-Funded RC Deposits are used to fund Pre-Funded RC Loans or (y) as otherwise provided in Sections 2.05(d) and (f)) for each Pre-Funded RC Lender equal at any time to the LIBOR Rate for the Interest Period in effect for the Pre-Funded RC Deposits at such time less the Pre-Funded RC Deposit Cost Amount at such time. Such interest will be paid to the Pre-Funded RC Lenders by the Administrative Agent (solely from amounts received by it from the Pre-Funded RC Deposit Bank) at the LIBOR Rate for the Interest Period in effect for the Pre-Funded RC Deposits at such time (or at an amount determined in accordance with Section 2.05(d) or (f), as applicable) less, in each case, the Pre-Funded RC Deposit Cost Amount as in effect from time to time in arrears on each Pre-Funded RC Interest Payment Date.

(c) Neither the Borrower nor any other Loan Party shall have any right, title or interest in or to the Pre-Funded RC Deposit Account or the Pre-Funded RC Deposits and no obligations with respect thereto (except to repay Pre-Funded RC Loans and all related Obligations, it being acknowledged and agreed by the parties hereto that the funding of the Pre-Funded RC Deposits by the Pre-Funded RC Lenders to the Pre-Funded RC Deposit Bank for deposit in the Pre-Funded RC Deposit Account and the application of the Pre-Funded RC Deposits in the manner contemplated by Section 2.02(b) constitute agreements among the Pre-Funded RC Deposit Bank, the Administrative Agent and each Pre-Funded RC Lender with respect to its participation in the Pre-Funded RC Loans and do not constitute any loan or extension of credit to the Borrower). Without limiting the generality of the foregoing, each party hereto acknowledges and agrees that no amount on deposit at any time in the Pre-Funded RC Deposit Account shall be the property of any Secured Party (other than the Pre-Funded RC Deposit Bank) or any of any Loan Party or any of its Subsidiaries or Affiliates. In addition, each Pre-Funded RC Lender hereby grants to the Pre-Funded RC Deposit Bank a security interest in, and rights of offset against, its rights and interests in such Pre-Funded RC Lender's Pre-Funded RC Deposit, and investments thereof and proceeds of any of the foregoing, to secure the obligations of such Pre-Funded RC Lender hereunder. Each Pre-Funded RC Lender agrees that

its right, title and interest with respect to the Pre-Funded RC Deposit Account shall be limited to the right to require its Pre-Funded RC Deposit to be used as expressly set forth herein and that it will have no right to require the return of its Pre-Funded RC Deposit other than as expressly provided herein (each Pre-Funded RC Lender hereby acknowledges that its Pre-Funded RC Deposit constitutes payment for its obligations under Sections 2.01(c) and 2.02(b) and that the Administrative Agent (on behalf of the respective Pre-Funded RC Lender) will be advancing Pre-Funded RC Loans to the Borrower in reliance on the availability of such Pre-Funded RC Lender's Pre-Funded RC Deposit to discharge such Pre-Funded RC Lender's obligations in respect thereof).

(d) If the Pre-Funded RC Deposit Bank is not offering Dollar deposits (in the applicable amounts) in the applicable eurodollar interbank market, or the Pre-Funded RC Deposit Bank determines that adequate and fair means do not otherwise exist for ascertaining the LIBOR Rate for the Pre-Funded RC Deposits (or any part thereof), then the Pre-Funded RC Deposits (or such parts, as applicable) shall be invested so as to earn a return equal to the greater of the Federal Funds Rate and a rate determined by the Pre-Funded RC Deposit Bank in accordance with banking industry rules on interbank compensation.

(e) The Borrower shall have the right to elect the Interest Period to be applicable to the Pre-Funded RC Deposits from time to time, which Interest Period shall, at the option of the Borrower, be a one, two or three month period, provided that (in each case):

(i) the Pre-Funded RC Deposits shall at all times have the same Interest Period;

(ii) the initial Interest Period for the Pre-Funded RC Deposits shall commence on the Closing Date and each Interest Period occurring thereafter in respect of the Pre-Funded RC Deposits shall commence on the day on which the next preceding Interest Period applicable thereto expires, provided that (x) if any Interest Period for the Pre-Funded RC Deposits begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month, and (y) if any Interest Period for the Pre-Funded Deposits would otherwise expire on a day which is not a Business Day, such Interest Period shall expire on the next succeeding Business Day, although if any Interest Period for the Pre-Funded Deposits would otherwise expire on a day which is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; and

(iii) until the Borrower notifies the Administrative Agent of a change in the Interest Period as provided below, each Interest Period for the Pre-Funded Deposits shall be a period of one month.

The Borrower shall have the right to elect a new Interest Period to be applicable to the Pre-Funded Deposits so long as the Borrower notifies the Administrative Agent of such election in writing by 12:30 p.m. on the third Business Day prior to the expiration of the Interest Period then in effect for the Pre-Funded Deposits; provided, however, if the Borrower has failed to so notify the Administrative Agent of such Interest Period, the Borrower shall be deemed to have elected an Interest Period of one month effective as of the expiration of such current Interest Period.

(f) If any Pre-Funded RC Loan is repaid on a day other than on the last day of an Interest Period or Scheduled Investment Termination Date applicable to the Pre-Funded RC Deposits, the Administrative Agent shall, upon receipt thereof, pay over such amounts to the Pre-Funded RC Deposit Bank which will invest the amount so reimbursed in overnight or short-term cash equivalent investments until the end of the Interest Period or Scheduled Investment Termination Date at the time in effect and the Borrower shall pay to the Pre-Funded RC Deposit Bank, upon the Pre-Funded RC Deposit Bank's request therefor, the amount, if any, by which the interest accrued on a like amount of the Pre-Funded RC Deposits at the LIBOR Rate for the Interest Period in effect therefor shall exceed the interest earned through the investment of the amount so reimbursed for the period from the date of such repayment or reimbursement through the end of the applicable Interest Period, as determined by the Pre-Funded RC Deposit Bank (such determination shall, absent manifest error, be final and conclusive and binding on all parties hereto) and set forth in the request for payment delivered to the Borrower. In the event that the Borrower shall fail to pay any amount due under this Section 2.05(f), the interest payable by the Pre-Funded RC Deposit Bank to the Pre-Funded RC Lenders on their Pre-Funded RC Deposits under Section 2.05(b) shall be correspondingly reduced and the Pre-Funded RC Lenders shall without further act succeed, ratably in accordance with their Pro Rata Shares, to the rights of the Pre-Funded RC Deposit Bank with respect to such amount due from the Borrower. All repayments of Pre-Funded RC Loans that have been funded by the Pre-Funded RC Lenders from the Pre-Funded RC Deposits, in each case received by the Administrative Agent prior to the termination of the aggregate Pre-Funded RC Commitment, shall be paid over to the Pre-Funded RC Deposit Bank which will deposit same in the Pre-Funded RC Deposit Account.

(g) (i) If the Administrative Agent and/or the Pre-Funded RC Deposit Bank is enjoined from taking any action referred to in this Section 2.05 and/or in Section 2.01(c) or 2.02(b) (in each case in respect of a Pre-Funded RC Loan), or if the Administrative Agent and/or the Pre-Funded RC Deposit Bank reasonably determines that, by operation of law, it may reasonably be precluded from taking any such action, or if any Loan Party or Pre-Funded RC Lender challenges in any legal proceeding any of the acknowledgments, agreements or characterizations set forth in any of this Section 2.05 and/or in Section 2.01(c) or 2.02(b) (in each case in respect of Pre-Funded RC Loans), then, in any such case (and so long as such event or condition shall be continuing), and notwithstanding anything contained herein to the contrary, the Administrative Agent shall not be required to advance any Pre-Funded RC Loan on behalf of the affected Pre-Funded RC Lender or Pre-Funded RC Lenders.

(ii) In the event any payment of a Pre-Funded RC Loan shall be required to be refunded to the Borrower after the return of the Pre-Funded RC Deposits to the Pre-Funded RC Lenders as permitted hereunder, each Pre-Funded RC Lender agrees to acquire and fund a participation in such refunded amount equal to the lesser of its applicable Pro Rata Share thereof and the amount of its Pre-Funded RC Deposit that shall have been so returned. The obligations of the Pre-Funded RC Lenders under this clause (ii) shall survive the payment in full of the Pre-Funded RC Deposits and the termination of this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, following the repayment by the Borrower of any Pre-Funded RC Loan, in no event shall the Pre-Funded RC Deposit Bank be required to return to any Pre-Funded RC Lender any proceeds of such Pre-Funded RC Lender's Pre-Funded RC Deposit prior to the 90th day following such repayment unless the respective Pre-Funded RC Lender shall have sufficiently indemnified the Pre-Funded RC Deposit Bank (in the sole discretion of the Pre-Funded RC Deposit Bank) for any losses the Pre-Funded RC Deposit Bank may incur as a result of preference claims brought by any creditor of the Borrower with respect to the proceeds of such repayment.

Section 2.06. Prepayments. (a) *Optional*. (i) Except as otherwise provided below in this Section 2.06(a), the Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans, Working Capital RC Loans and Pre-Funded RC Loans in whole or in part without premium or penalty; provided that (1) such notice must be received by the Administrative Agent not later than 12:30 p.m. (A) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; and (3) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and provided further, however, that, unless all Pre-Funded RC Loans are to be repaid in full and all Pre-Funded RC Commitments are to be terminated at the time of such prepayment, voluntary prepayments of Pre-Funded RC Loans only may be made with cash proceeds actually received by the Borrower after the Closing Date (including through capital contributions received from Holdings) from a Permitted Equity Issuance by Holdings or the Borrower. Each such notice shall specify the date and amount of such prepayment, the Class(es) and Type(s) of Loans to be prepaid and (i) in the case of a prepayment of Term Loans, the manner in which the Borrower elects to have such prepayment applied to the remaining repayments thereof; provided that in the event such notice fails to specify the manner in which the respective prepayment of Term Loans shall be applied to repayments thereof required pursuant to Section 2.08(a), such prepayment of Term Loans shall be applied in direct order of maturity to repayments thereof required pursuant to Section 2.08(a), and (ii) in the case of a partial prepayment of Pre-Funded RC Loans, a certification that such prepayment is being made with new cash equity proceeds as provided above in this Section 2.06(a). The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05(a). Each prepayment of the Loans pursuant to this Section 2.06(a) shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares.

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (2) any such prepayment shall be in a minimum principal amount of

$100,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.06(a)(i) or 2.06(a)(ii) if such prepayment would have resulted from a refinancing in total of a Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(b) *Mandatory*. (i) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) and the related Compliance Certificate has been delivered pursuant to Section 6.02(b), the Borrower shall cause to be prepaid Term Loans in an aggregate principal amount equal to (A) 50% of Excess Cash Flow, if any, for the fiscal year (or, in the case of the fiscal year ending December 31, 2007, for the period commencing on the Closing Date and ending on December 31, 2007) covered by such financial statements (commencing with the fiscal year ending December 31, 2007) minus (B) the sum of (without duplication) (i) all voluntary prepayments of Term Loans during such fiscal year, (ii) all voluntary prepayments of Working Capital RC Loans during such fiscal year to the extent the Working Capital RC Commitments are permanently reduced by the amount of such payments, and (iii) all mandatory prepayments of Term Loans pursuant to Section 2.06(b)(iv) in respect of such fiscal year, but in the case of each of the immediately preceding clauses (i) and (ii), to the extent such prepayments are not funded with the proceeds of Indebtedness; provided that (x) the percentage of Excess Cash Flow specified in clause (A) above shall instead be 25% if the Rent Adjusted Leverage Ratio as of the last day of the fiscal year covered by such financial statements was less than or equal to 5.25:1.00 but greater than 4.00:1.00 and (y) no payment of any Term Loans shall be required under this Section 2.06(b)(i) if the Rent Adjusted Leverage Ratio as of the last day of the fiscal year covered by such financial statements was less than or equal to 4.00:1.00.

(ii) (A) If (x) Holdings, the Borrower or any Restricted Subsidiary Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d) (to the extent constituting a Disposition by any Restricted Subsidiary to a Loan Party), (e), (g), (h), (i), (j) or (n) or (y) any Casualty Event occurs, which in the aggregate results in the realization or receipt by Holdings, the Borrower or such Restricted Subsidiary of Net Cash Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt of such Net Cash Proceeds, Term Loans in an aggregate principal amount equal to 100% of all Net Cash Proceeds received; provided that no such prepayment shall be required pursuant to this Section 2.06(b)(ii) with respect to such portion of such Net Cash Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest in accordance with Section 2.06(b)(ii)(B) (which notice may only be provided if no Event of Default has occurred and is then continuing);

(B) With respect to any Net Cash Proceeds realized or received with respect to any Disposition (other than any Disposition specifically excluded from the application of

Section 2.06(b)(ii)(A)) or any Casualty Event, at the option of the Borrower, the Borrower may reinvest all or any portion of such Net Cash Proceeds in assets useful for its business or its Restricted Subsidiaries within (x) twelve (12) months following receipt of such Net Cash Proceeds or (y) if the Borrower enters into a legally binding commitment to reinvest such Net Cash Proceeds within twelve (12) months following receipt thereof, within the later of (a) one hundred and eighty (180) days following the date of such legally binding commitment and (b) twelve (12) months following receipt of such Net Cash Proceeds; provided that (i) so long as an Event of Default shall have occurred and be continuing, the Borrower (x) shall not be permitted to make any such reinvestments (other than pursuant to a legally binding commitment that the Borrower entered into at a time when no Event of Default is continuing) and (y) shall not be required to apply such Net Cash Proceeds which have been previously applied to prepay Working Capital RC Loans to the prepayment of Term Loans until such time as the relevant investment period has expired and no Event of Default is continuing and (ii) if any Net Cash Proceeds are no longer intended to be or cannot be so reinvested (whether because the applicable reinvestment period has expired or otherwise) at any time after delivery of a notice of reinvestment election, an amount equal to any such Net Cash Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Cash Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Term Loans as set forth in this Section 2.06.

(iii) If Holdings, the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to any clause of Section 7.03 (other than clause (t) of said Section), the Borrower shall cause to be prepaid Term Loans in an aggregate principal amount equal to 100% of all Net Cash Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt of such Net Cash Proceeds.

(iv) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) and the related Compliance Certificate has been delivered pursuant to Section 6.02(b), the Borrower shall, to the extent that the Rent Adjusted Leverage Ratio as of the last day of the fiscal year covered by such financial statements was equal to or greater than 5.25:1.00, cause to be prepaid Term Loans in an aggregate principal amount equal to the remainder of (A) the lesser of (x) (i) in the case of the fiscal year ended December 31, 2007, $50,000,000 and (ii) in the case of each fiscal year ending thereafter, $75,000,000 and (y) 100% of Minimum Free Cash Flow, if any, for the fiscal year (or, in the case of the fiscal year ended December 31, 2007, for the period commencing on the Closing Date and ending on December 31, 2007) covered by such financial statements (commencing with the fiscal year ended December 31, 2007) minus (B) the sum of (i) all voluntary prepayments of Term Loans during such fiscal year (except to the extent funded with the proceeds of Indebtedness), (ii) all voluntary prepayments of Working Capital RC Loans during such fiscal year (except to the extent funded with the proceeds of Indebtedness) to the extent the Working Capital RC Commitments are permanently reduced by the amount of such payments and (iii) all repayments or payments of Term Loans during such fiscal year pursuant to Section 2.08(a).

(v) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) and the related Compliance Certificate has been delivered

pursuant to Section 6.02(b), the Borrower shall cause an amount equal to 100% of True Cash Flow, if any, for the fiscal year (or, in the case of the fiscal year ending December 31, 2007, for the period commencing on the Closing Date and ending on December 31, 2007) covered by such financial statements (commencing with the fiscal year ending December 31, 2007) to be applied (i) first, to repay principal of outstanding Pre-Funded RC Loans and (ii) second, to the extent in excess of the amount required to be applied pursuant to preceding clause (i), to be delivered to the Administrative Agent for deposit by the Administrative Agent into the Capital Expenditures Account, provided that the maximum amount required to be so delivered to the Administrative Agent and deposited into the Capital Expenditures Account in respect of any fiscal year shall not exceed the remainder of (A) $100,000,000 minus (B) the aggregate amount of funds then on deposit in (or credited to) the Capital Expenditures Account. Amounts repaid or prepaid in respect of Pre-Funded RC Loans or deposited in the Capital Expenditures Account, in each case pursuant to this Section 2.08(b)(v), may be redrawn or reborrowed, as applicable, in each case in accordance with the terms of this Agreement.

(vi) If for any reason the aggregate Working Capital RC Exposures at any time exceeds the aggregate Working Capital RC Commitments then in effect, the Borrower shall promptly prepay or cause to be promptly prepaid Working Capital RC Loans and Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.06(b)(vi) unless after the prepayment in full of the Working Capital RC Loans and Swing Line Loans, such aggregate Outstanding Amount exceeds the aggregate Working Capital RC Commitments then in effect.

(vii) If for any reason the aggregate Pre-Funded RC Exposures at any time exceeds the aggregate Pre-Funded RC Commitment then in effect, the Borrower shall promptly prepay or cause to be promptly prepaid Pre-Funded RC Loans in an aggregate amount equal to such excess.

(viii) Each prepayment of Term Loans pursuant to this Section 2.06(b) shall be applied in direct order of maturity to repayments thereof required pursuant to Section 2.08(a) and shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares, subject to clause (ix) of this Section 2.06(b) in respect of Term Loans. Any prepayment of a Eurocurrency Rate Loan pursuant to this Section 2.06(b) shall be accompanied by all accrued interest thereon.

(ix) The Borrower shall notify the Administrative Agent in writing of (x) any mandatory prepayment of Term Loans required to be made pursuant to clauses (i) through (iv) of this Section 2.06(b) and (y) any mandatory prepayment of Pre-Funded RC Loans and/or mandatory deposit into the Capital Expenditures Account pursuant to clause (v) of this Section 2.06(b), in each case at least three (3) Business Days prior to the date of any such prepayment or deposit. Each such notice shall specify the date of such prepayment and/or deposit, as applicable, and provide a reasonably detailed calculation of the amount of such prepayment and/or deposit. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Appropriate Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment of Term Loans required to be made pursuant to clauses (i) through

(iii) of this Section 2.06(b) by providing written notice (each, a "Rejection Notice") to the Administrative Agent no later than 5:00 p.m. one Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender (such amounts so rejected, "Rejected Amounts"). If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory repayment of Term Loans. In the event a Lender rejects all or any portion of its Pro Rata Share of any mandatory prepayment of Term Loans required pursuant to clauses (i) through (iii) of this Section 2.06(b), the rejected portion of such Lender's Pro Rata share of such prepayment shall be retained by the Borrower (such Rejected Amounts, the "Borrower Retained Prepayment Amounts").

(c) *Funding Losses, Etc*. All prepayments under this Section 2.06 shall be made together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05(a). Notwithstanding any of the other provisions of this Section 2.06(b), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.06(b) (but excluding prepayments required under clauses (vi) or (vii) of this Section 2.06(b)), prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.06(b) in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.06(b). Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with this Section 2.06(b).

Section 2.07. Termination or Reduction of Commitments. (a) *Optional*. The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class; provided that (i) any such notice shall be received by the Administrative Agent at least three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $500,000 or any whole multiple of $100,000 in excess thereof and (iii) if, after giving effect to any reduction of the Working Capital RC Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Working Capital RC Facility, such sublimit shall be automatically reduced by the amount of such excess. The amount of any such Working Capital RC Commitment reduction shall not be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower. At the time of any termination or reduction of the Pre-Funded RC Commitments, the Administrative Agent shall request the Pre-Funded RC Deposit Bank to (and the Pre-Funded RC Deposit Bank agrees that it will promptly) withdraw from the Pre-Funded RC Deposit

Account and to pay same over to the Administrative Agent, and the Administrative Agent shall return to the Pre-Funded RC Lenders (ratably in accordance with their respective Pro Rata Shares) their Pre-Funded RC Deposits in an aggregate amount equal to such reduction or the amount of such Pre-Funded RC Commitment being terminated, as the case may be. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Commitments if such termination would have resulted from a refinancing in total of a Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) *Mandatory*. The Term Commitment of each Term Lender shall be automatically and permanently reduced to $0 upon the making of such Term Lender's Term Loans pursuant to Section 2.01(a).

(c) *Application of Commitment Reductions; Payment of Fees* . The Administrative Agent will promptly notify the Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit, the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.07. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07). All commitment fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

Section 2.08. Repayment of Loans. (a) *Term Loans.* The Borrower shall repay to the Administrative Agent for the ratable account of the Term Lenders (i) on the last Business Day of each March, June, September and December, commencing with the last Business Day of September, 2007, an aggregate amount equal to 0.25% of the aggregate principal amount of all Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.06) and (ii) on the Maturity Date for the Term Loans, the aggregate principal amount of all Term Loans outstanding on such date.

(b) *Working Capital RC Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for the Working Capital RC Facility the aggregate principal amount of all of its Working Capital RC Loans outstanding on such date.

(c) *Swing Line Loans*. The Borrower shall repay its Swing Line Loans on the earlier to occur of (i) the date five (5) Business Days after such Swing Line Loan is made and (ii) the Maturity Date for the Working Capital RC Facility.

(d) *Pre-Funded RC Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for the Pre-Funded RC Facility the aggregate principal amount of all of its Pre-Funded RC Loans outstanding on such date.

Section 2.09. Interest. (a) Subject to the provisions of Section 2.09(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each

Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for Working Capital RC Loans.

(b) The Borrower shall pay interest on past due amounts hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) All computations of interest hereunder shall be made in accordance with Section 2.11.

Section 2.10. Fees. In addition to certain fees described in Sections 2.03(h) and (i):

(a) *Commitment Fee*. The Borrower shall pay to the Administrative Agent for the account of each Working Capital RC Lender in accordance with its Pro Rata Share, a commitment fee equal to the Applicable Rate with respect to commitment fees times the actual daily amount by which the aggregate Working Capital RC Commitment exceeds the sum of (A) Outstanding Amount of Working Capital RC Loans and (B) the Outstanding Amount of L/C Obligations; provided that any commitment fee accrued with respect to any of the Working Capital RC Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and provided, further, that no commitment fee shall accrue on any of the Working Capital RC Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee shall accrue at all times from the date hereof until the Maturity Date for the Working Capital RC Facility, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date for the Working Capital RC Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) *Pre-Funded RC Facility Fee*. The Borrower shall pay to the Administrative Agent for account of each Pre-Funded RC Lender in accordance with its Pro Rata

Share, a facility fee equal to the sum of (I) the Applicable Rate with respect to Pre-Funded RC Loans maintained as Eurocurrency Rate Loans times the actually daily aggregate amount of the unapplied Pre-Funded RC Deposits from time to time plus (II) a rate per annum equal to the Pre-Funded RC Deposit Cost Amount as in effect from time to time multiplied by the actual daily aggregate amount of the unapplied Pre-Funded RC Deposits from time to time. The facility fee shall accrue at all times from the date hereof until the Maturity Date for the Pre-Funded RC Facility, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date for the Pre-Funded RC Facility. The facility fee shall be calculated quarterly in arrears.

(c) *Other Fees*. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

Section 2.11. Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by DBNY's "prime rate" shall be made on the basis of a year of three hundred and sixty-five (365) days (or three hundred and sixty six (366) days, as the case may be) and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one (1) day. In computing interest on any Loan, the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurocurrency Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurocurrency Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.12. Evidence of Indebtedness. (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest

error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.12(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.12(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.12(a) and (b), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.13. Payments Generally. (a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the

Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the applicable Federal Funds Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any 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 Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation 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 Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any 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 Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.04. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.14. Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations and Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.14 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.14 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

ARTICLE III

Taxes, Increased Costs Protection and Illegality

Section 3.01. Taxes. (a) Except as provided in this Section 3.01, any and all payments by the Borrower (the term Borrower under this Article III being deemed to include any Subsidiary for whose account a Letter of Credit is issued) to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, excluding, in the case of each Agent and each Lender, (i) taxes imposed on or measured by its net income or net profits (including branch profits), and franchise (and similar) taxes imposed on it in lieu of net income taxes, by the jurisdiction (or any political subdivision thereof) under the Laws of which such Agent or such Lender, as the case may be, is organized or maintains a Lending Office, (ii) taxes imposed on a Lender or Agent solely by reason of any connection between the Lender or Agent and the respective taxing jurisdiction other than by entering into any Loan Document and receiving payments thereunder, and (iii) all liabilities (including additions to tax, penalties and interest) with respect to clauses (i) and (ii) hereof (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as " Taxes"). If the Borrower shall be required by any Laws to deduct any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), each of such Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), the Borrower shall furnish to such Agent or Lender (as the case may be) the original or a certified copy of a receipt evidencing payment thereof to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Administrative Agent. If the Borrower fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to any Agent or any Lender the required receipts or other required documentary evidence, the Borrower shall indemnify such Agent or Lender, as applicable, for any incremental taxes, interest or penalties that may become payable by such Agent or such Lender arising out of such failure.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as " Other Taxes").

(c) The Borrower shall not be required pursuant to this Section 3.01 to pay any additional amount to, or to indemnify, any Lender or Agent, as the case may be, to the extent that such Lender or such Agent becomes subject to Taxes subsequent to the Closing Date (or, if later, the date such Lender or Agent becomes a party to this Agreement) as a result of a change in

the place of organization of such Lender or Agent or a change in the lending office of such Lender, except to the extent that any such change is requested or required in writing by the Borrower (and provided that nothing in this clause (c) shall be construed as relieving the Borrower from any obligation to make such payments or indemnification in the event of a change in lending office or place of organization that precedes a change in Law to the extent such Taxes result from a change in Law).

(d) Notwithstanding anything else herein to the contrary, if a Lender or an Agent is subject to withholding tax imposed by any jurisdiction in which the Borrower is formed or organized at a rate in excess of zero percent at the time such Lender or such Agent, as the case may be, first becomes a party to this Agreement, withholding tax imposed by such jurisdiction at such rate shall be considered excluded from Taxes unless and until such Lender or Agent, as the case may be, provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such forms; provided that, if at the date of the Assignment and Acceptance pursuant to which a Lender becomes a party to this Agreement, the Lender assignor was entitled to payments under clause (a) of this Section 3.01 in respect of withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) withholding tax, if any, applicable with respect to the Lender assignee on such date.

(e) If any Lender or Agent determines, in its reasonable discretion, that it has received a refund or overpayment credit in respect of any Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by the Loan Parties pursuant to this Section 3.01, it shall promptly remit such refund or the amount of such credit (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund (or such credit) plus any interest included in such refund by the relevant taxing authority attributable thereto) to the Borrower, net of all out-of-pocket expenses of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant taxing authority with respect to such refund); provided that the Borrower, upon the request of the Lender or Agent, as the case may be, agrees promptly to return such refund (or such credit) to such party in the event such party is required to repay such refund (or such credit) to the relevant taxing authority. Such Lender or Agent, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund (or such credit) received from the relevant taxing authority (provided that such Lender or Agent may delete any information therein that such Lender or Agent deems confidential). Nothing herein contained shall interfere with the right of a Lender or Agent to arrange its tax affairs in whatever manner it thinks fit nor oblige any Lender or Agent to claim any tax refund or to make available its tax returns or disclose any information relating to its tax affairs or any computations in respect thereof or require any Lender or Agent to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

(f) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.01(a) with respect to such Lender it will, if requested by the Borrower, use commercially reasonable efforts (subject to such Lender's overall internal policies of general application and legal and regulatory restrictions) to designate another Lending Office for any

Loan or Letter of Credit affected by such event; provided that such efforts are made on terms that, in the sole judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section 3.01(f) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.01(a).

(g) The Administrative Agent may deduct and withhold any taxes required by any Laws to be deducted and withheld from any payment under any of the Loan Documents.

Section 3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05(a). Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03. Inability to Determine Rates. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or that the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that Dollar deposits are not being offered to banks in the applicable interbank eurodollar market for the applicable amount and the Interest Period of such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04. Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurocurrency Rate Loans . (a) If any Lender determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the date hereof, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing

to make or making, funding or maintaining Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Taxes or Other Taxes as to which Section 3.01 shall govern, (ii) changes in taxation of overall net income or overall gross income (including branch profits), and franchise (and similar) taxes imposed in lieu of net income taxes, by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Lender is organized or maintains a Lending Office and (iii) reserve requirements contemplated by Section 3.04(c), then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, in each case after the date hereof, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within fifteen (15) days after receipt of such demand.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation except to the extent set forth in the first sentence of Section 3.06(b).

(e) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan or Letter of Credit affected by such event; provided that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(a), (b), (c) or (d).

Section 3.05. Funding Losses. (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 Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan; or

(ii) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such 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 Eurocurrency Rate Loan was in fact so funded.

(b) Upon demand of the Pre-Funded RC Deposit Bank, the Borrower shall promptly compensate the Pre-Funded RC Deposit Bank and hold the Pre-Funded RC Deposit Bank harmless from any loss, cost or expense incurred by the Pre-Funded RC Deposit Bank as a result:

(x) any withdrawals from the Pre-Funded RC Deposit Account pursuant to the terms of this Agreement prior to the end of the applicable Interest Period or Scheduled Investment Termination Date for the Pre-Funded RC Deposits; or

(y) the termination or reduction of any of the Pre-Funded RC Commitments (and the related termination of the investment of the funds held in the Pre-Funded RC Deposit Account) prior to the end of any applicable Interest Period or Schedule Investment Termination Date for the Pre-Funded RC Deposits.

Section 3.06. Matters Applicable to All Requests for Compensation . (a) Any Agent, any Lender or the Pre-Funded RC Deposit Bank claiming compensation under this

Article III shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01, 3.02, 3.03 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; provided that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another Eurocurrency Rate Loans, or to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue from one Interest Period to another any Eurocurrency Rate Loan, or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.01, 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.01, 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments.

Section 3.07. Replacement of Lenders under Certain Circumstances. (a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.04 as a result of any condition described in such Sections or any Lender ceases to make Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) any Lender becomes a Defaulting Lender or (iii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on five (5) Business Days' prior written notice to the Administrative Agent and such Lender, replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more Eligible Assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and provided, further, that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to the applicable departure, waiver or amendment of the Loan Documents.

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such assignment and assumption and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Note or Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. Without the consent of the Pre-Funded RC Deposit Bank, the Pre-Funded RC Deposit funded by any Pre-Funded RC Lender shall not be released in connection with any assignment of its Pre-Funded RC Commitment, but shall instead be purchased by the relevant assignee and continue to be held for application (if not already applied) pursuant to Section 2.05 in respect of such assignee's obligations under the Pre-Funded RC Commitment assigned to it.

(c) Notwithstanding anything to the contrary contained above, any Lender that acts as an L/C Issuer may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to each such outstanding Letter of Credit and the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.09.

(d) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of all affected Lenders in accordance with the terms of Section 10.01 or all the Lenders with respect to a certain Class of the Loans and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a " Non-Consenting Lender".

Section 3.08. Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

Conditions Precedent to Credit Extensions

Section 4.01. Conditions of Initial Credit Extension. The obligation of each Lender to make its initial Credit Extension hereunder and the obligation of each Pre-Funded RC Lender to fund its Pre-Funded RC Deposit hereunder are subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

(i) executed counterparts of this Agreement and each Guaranty;

(ii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two Business Days in advance of the Closing Date;

(iii) each Collateral Document set forth on Schedule 1.01B, duly executed by each Loan Party thereto, together with:

(A) certificates, if any, representing the Pledged Equity referred to therein (except as otherwise set forth on Schedule 1.01B) accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank, and

(B) evidence that all other actions, recordings and filings (except as otherwise set forth on Schedule 1.01B) that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent;

(iv) such certificates of resolutions or other action, incumbency

certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(v) opinion from Ropes & Gray LLP, New York counsel to the Loan Parties substantially in the form of Exhibit I;

(vi) a certificate signed by a Responsible Officer of the Borrower, certifying that there has been no event, development or state of circumstances since December 31, 2005 that has had, individually or in the aggregate, a Material Adverse Change;

(vii) a certificate attesting to the Solvency of the Loan Parties (taken as a whole) on the Closing Date after giving effect to the Transaction, from the Chief Financial Officer of the Borrower;

(viii) evidence that all insurance (other than title insurance) required to be maintained pursuant to the Loan Documents has been obtained and is in effect and that the Administrative Agent has been named as loss payee under each insurance policy with respect to such insurance as to which the Administrative Agent shall have reasonably requested to be so named;

(ix) certified copies of the Merger Agreement, the CMBS Facilities Documentation and the Senior Notes Documentation, in each case duly executed by the parties thereto, together with all material agreements and instruments and other material documents delivered in connection therewith as the Administrative Agent shall reasonably request, each including certification by a Responsible Officer of the Borrower that such documents are in full force and effect as of the Closing Date; and

(x) a Committed Loan Notice or Letter of Credit Application, as applicable, relating to the initial Credit Extension.

(b) All fees and expenses required to be paid hereunder and invoiced before the Closing Date shall have been paid in full in cash.

(c) Prior to, or substantially simultaneously with, the initial Credit Extensions, (i) the Equity Contributions shall have been consummated and (ii) the Merger shall be consummated in accordance with the terms and conditions of the Merger Agreement (and no provision of the Merger Agreement shall have been waived, amended, supplemented or otherwise modified in a manner material and adverse to the Lenders without the consent of the Arrangers (not to be unreasonably withheld or delayed).

(d) Substantially simultaneously with the initial Credit Extensions, the Borrower shall have received (i) at least $550,000,000 in gross cash proceeds from the issuance of the Senior Notes and (ii) at least $987,655,000 in gross cash proceeds from the consummation of the Specified Lease Transactions (of which approximately $790,000,000 shall have been received by the Specified Lease Entities from the CMBS Facilities).

(e) Prior to, or substantially simultaneously with, the initial Credit Extensions, the Borrower shall have terminated the Existing Credit Agreements and taken all other necessary actions such that, after giving effect to the Transaction, (i) Holdings and its Subsidiaries shall have outstanding no Indebtedness (including Disqualified Equity Interests), other than (A) the Loans and L/C Obligations, (B) the Senior Notes, and (C) Indebtedness otherwise permitted under 7.03, (ii) Holdings shall have outstanding no Equity Interests (or securities convertible into or exchangeable for Equity Interests or rights to acquire Equity Interests) other than Qualified Equity Interests beneficially owned, directly or indirectly, by the Equity Investors, and (iii) the Borrower shall have outstanding no Equity Interests (or securities convertible into or exchangeable for Equity Interests or rights or options to acquire Equity Interest) other than Equity Interests owned by Holdings.

(f) Prior to, or substantially simultaneously with, the initial Credit Extensions, the Administrative Agent shall have received, for deposit into the Capital Expenditures Account, $100,000,000 of cash proceeds funded by a portion of the Equity Contributions.

(g) The Arrangers and the Lenders shall have received (i) the Audited Financial Statements and the audit report for such financial statements and (ii) unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries, as may have been restated prior to the date hereof, for (A) each subsequent fiscal quarter ended after December 31, 2006 and at least forty five (45) days before the Closing Date (the "Unaudited Financial Statements"), and (B) to the extent reasonably available and, in any event, excluding footnotes, each fiscal month after the most recent fiscal period for which financial statements were received by the Arrangers and the Lenders as described above and ended at least thirty (30) days before the Closing Date, which financial statements described in preceding clauses (i) and (ii)(A) shall be prepared in accordance with GAAP.

(h) The Arrangers and the Lenders shall have received the Pro Forma Financial Statements.

(i) There not having occurred, since December 31, 2005, any event, development or state of circumstance that has had, individually or in the aggregate, a Material Adverse Change.

Section 4.02. Conditions to All Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans), and the obligation of each Pre-Funded RC Lender to fund its Pre-Funded RC Deposit on the Closing Date, are subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document (except, in the case of the initial Credit Extensions and the Pre-Funded RC Deposits made on the Closing Date, the representations contained in (A) Sections 5.03, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10, 5.11, 5.12, 5.14, 5.15, 5.16, 5.18 and, except to the extent that the Collateral Agent's security interest in the Collateral may be perfected by control of the Capital Expenditures Account or the filing of a Uniform Commercial Code financing statement, 5.19 and (B) any other Loan Document) shall be true and correct in all material respects on and as of the date of such Credit Extension; provided that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; provided, further, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on such respective dates (except, in the case of the initial Credit Extension only, any such representation and warranty that is qualified by the term "Material Adverse Effect" shall instead be deemed to be qualified by the term "Material Adverse Change").

(b) Except in the case of the initial Credit Extensions, no Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(c) The Administrative Agent and, if applicable, the relevant L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of any incurrence of Pre-Funded RC Loans only, (i) no funds shall be on deposit in (or credited to) the Capital Expenditures Account at the time of such incurrence and (ii) the applicable Committed Loan Notice shall contain a certification by a Responsible Officer of the Borrower that the proceeds of such Pre-Funded RC Loans are to be utilized for Capital Expenditures.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

Section 4.03. Conditions to Release of Funds from the Capital Expenditures Account. The obligation of the Administrative Agent to release funds in the Capital Expenditures Account to the Borrower is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such release; provided that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; provided, further, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on such respective dates.

(b) Except to the extent set forth in Section 8.05(a)(y), no Default shall exist, or would result from such proposed release or from the application of the proceeds therefrom.

(c) There shall be no Pre-Funded RC Loans outstanding at such time.

(d) The Administrative Agent shall have received, no later than 10:00 am. on the Business Day of the requested release date, a Request for Release of Capital Expenditure Funds in accordance with the requirements hereof.

Each Request for Release of Capital Expenditure Funds submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.03(a), (b) and (c) have been satisfied on and as of the date of the applicable release.

ARTICLE V

Representations and Warranties

The Borrower represents and warrants to the Agents and the Lenders that:

Section 5.01. Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its Subsidiaries (a) is a Person duly organized or formed, validly existing and, except as set forth on Schedule 5.01, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (c), (d) or (e), to the extent that failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transaction, are within such Loan Party's corporate or other powers, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents,

(b) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (i) (x) any Senior Notes Documentation, any Junior Financing Documentation and any other indenture, mortgage, deed of trust or loan agreement evidencing Indebtedness in an aggregate principal amount in excess of the Threshold Amount or (y) any Master Lease or other Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(i)(y), to the extent that such conflict, breach, contravention or payment, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.03. Governmental Authorization; Other Consents. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.04. Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to Debtor Relief Laws, general principles of equity (whether considered in a proceeding in equity or law) and an implied covenant of good faith and fair dealing.

Section 5.05. Financial Statements; No Material Adverse Effect. (a) (i) The Audited Financial Statements and the Unaudited Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein (subject, in the case of the Unaudited Financial Statements, to normal year-end audit adjustments and the absence of footnotes). During the period from December 31, 2005 to and including the Closing Date, there has been (i) no sale, transfer or other disposition by the Borrower or any of its Subsidiaries of any material part of the business or property of the Borrower or any of its Subsidiaries, taken as a whole and (ii) no purchase or other acquisition by the Borrower or any of its Subsidiaries of any business or property (including any Equity

Interests of any other Person) material in relation to the consolidated financial condition of the Borrower and its Subsidiaries taken as a whole, in each case, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in writing to the Administrative Agent prior to the Closing Date.

(ii) The unaudited pro forma consolidated balance sheet of the Borrower and its Subsidiaries as at March 31, 2007 (including the notes thereto) (the "Pro Forma Balance Sheet") and the unaudited pro forma consolidated statement of operations of the Borrower and its Subsidiaries for the three and twelve month period ended March 31, 2007 (together with the Pro Forma Balance Sheet, the "Pro Forma Financial Statements"), copies of which have heretofore been furnished to the Administrative Agent, have been prepared giving effect (as if such events had occurred on such date or at the beginning of such periods, as the case may be) to the Transaction, each material acquisition by the Borrower or any of its Subsidiaries consummated after March 31, 2007 and prior to the Closing Date and all other material transactions that would be required to be given pro forma effect by Regulation S-X promulgated under the Exchange Act (including other adjustments consistent with the definition of Pro Forma Adjustment or as otherwise agreed between the Borrower and the Arrangers). The Pro Forma Financial Statements have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis and in accordance with GAAP the estimated financial position of the Borrower and its Subsidiaries as at March 31, 2007 and their estimated results of operations for the periods covered thereby, assuming that the events specified in the preceding sentence had actually occurred at such date or at the beginning of the periods covered thereby.

(b) Since December 31, 2006, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) The forecasts of consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries for each fiscal year ending after the Closing Date until the seventh anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date in a form reasonably satisfactory to it, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts, it being understood that actual results may vary from such forecasts and that such variations may be material.

(d) As of the Closing Date, neither the Borrower nor any Subsidiary has any Indebtedness or other obligations or liabilities, direct or contingent (other than (i) such liabilities as are set forth in the financial statements described in clause (a) of this Section 5.05, (ii) obligations arising under the Loan Documents or otherwise permitted under Article VII and (iii) liabilities incurred in the ordinary course of business) that, either individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06. Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings or any of its Subsidiaries or against any of their properties or revenues that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The representations and warranties made in this Section 5.06 are subject to Schedule 5.06.

Section 5.07. No Default. Neither any Loan Party nor any Subsidiary is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.08. Ownership of Property; Liens. Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 5.09. Environmental Compliance. (a) There are no claims, actions, suits, or proceedings alleging potential liability or responsibility for violation of, or otherwise relating to, any Environmental Law that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect: (i) none of the properties currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and never have been any underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned, leased or operated by any Loan Party or any of its Subsidiaries or, to its knowledge, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Person on any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries and Hazardous Materials have not otherwise been released, discharged or disposed of by any of the Loan Parties and their Subsidiaries at any other location.

(c) The properties owned, leased or operated by any Loan Party or any of its Subsidiaries do not contain any Hazardous Materials in amounts or concentrations which (i) constitute, or constituted a violation of, (ii) require remedial action under, or (iii) could reasonably be expected to give rise to liability under, Environmental Laws, which violations, remedial actions and liabilities, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(d) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened

release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law except for such investigation or assessment or remedial or response action that, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(e) All Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(f) Except as could not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, none of the Loan Parties and their Subsidiaries has contractually assumed any liability or obligation under or relating to any Environmental Law.

Section 5.10. Taxes. Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Holdings, the Borrower and the Borrower's Subsidiaries have filed all Federal and other tax returns and reports required to be filed, and have paid all Federal and state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those (a) which are not overdue by more than thirty (30) days or (b) which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

Section 5.11. ERISA Compliance. (a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance in with the applicable provisions of ERISA, the Code and other Federal or state Laws.

(b) (i) No ERISA Event has occurred during the five year period prior to the date on which this representation is made or deemed made with respect to any Pension Plan; (ii) no Pension Plan has an "accumulated funding deficiency" (as defined in Section 412 of the Code), whether or not waived; (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.11(b), as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.12. Subsidiaries; Equity Interests. As of the Closing Date, (a) no Loan Party has any Subsidiaries other than those specifically disclosed in Schedule 5.12, and all of the outstanding Equity Interests in material Subsidiaries of the Loan Parties have been validly

issued, are fully paid and nonassessable and all Equity Interests owned by a Loan Party are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any nonconsensual Lien that is permitted under Section 7.01. As of the Closing Date and after giving effect to the Transaction, Schedule 5.12 (a) sets forth the name and jurisdiction of each Subsidiary of the Loan Parties, (b) sets forth the ownership interest of Holdings, the Borrower and any other Subsidiary of the Loan Parties in each Subsidiary (excluding any Restaurant LP set forth on Schedule 1.01I and any Employment Participation Subsidiary), including the percentage of such ownership and (c) identifies each Subsidiary of the Loan Parties, the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.13. Margin Regulations; Investment Company Act. (a) The Borrower is not engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for the purpose of purchasing or carrying margin stock or any other any purpose that violates Regulation U.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.14. Disclosure. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information and pro forma financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.15. Intellectual Property; Licenses, Etc. Each of the Loan Parties and their Subsidiaries own, license or possess the right to use, all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how database rights, right of privacy and publicity, and other intellectual property rights (collectively, "IP Rights") that are necessary for the operation of their respective businesses as currently conducted, and, without conflict with the rights of any Person, except to the extent such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The operation of the respective businesses of any Loan Party or Subsidiary as currently conducted does not infringe upon misuse, misappropriate or violate any rights held by any Person except for such infringements, misuses, misappropriations or violations which could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights, is pending or, to the knowledge of the Borrower, threatened against any Loan Party or Subsidiary, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.16. Solvency. On the Closing Date after giving effect to the Transaction, the Loan Parties, on a consolidated basis, are Solvent.

Section 5.17. Subordination of Junior Financing. The Obligations are "Senior Debt," "Senior Indebtedness," "Guarantor Senior Debt" or "Senior Secured Financing" (or any comparable term) under, and as defined in, any Junior Financing Documentation that is (or is required to be) subordinated to the Obligations.

Section 5.18. Labor Matters. Except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any of Holdings, the Borrower or its Subsidiaries pending or, to the knowledge of Holdings or the Borrower, threatened; (b) hours worked by and payment made to employees of each of Holdings, the Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from any of Holdings, the Borrower or its Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

Section 5.19. Perfection, Etc. All filings and other actions necessary or desirable to perfect and protect the Lien in the Collateral created under the Collateral Documents (except for such actions that the Security Agreement specifically excepts the Borrower from performing) have been or will, within the required time periods under the Collateral Documents, be duly made or taken or otherwise provided for and are (or so will be) in full force and effect, and the Collateral Documents create in favor of the Administrative Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected first priority Lien in the Collateral to the extent required by the Collateral Documents, securing the payment of the Secured Obligations, subject only to Permitted Liens.

ARTICLE VI

Affirmative Covenants

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, each of Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each Restricted Subsidiary to:

Section 6.01. Financial Statements. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) as soon as available, but in any event within ninety (90) days (or within 105 days for the 2007 fiscal year) after the end of each fiscal year of the Borrower beginning with the 2007 fiscal year, a consolidated balance sheet of the Borrower and its

Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with Public Company Oversight Board ("PCAOB") auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within forty-five (45) days (or within 75 days for the fiscal quarter ending on June 30, 2007 and 60 days for the fiscal quarter ending September 30, 2007) after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (x) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (y) consolidated statements of cash flows for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, and in any event no later than ninety (90) days after the end of each fiscal year of the Borrower, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "Projections");

(d) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b), the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; and

(e) simultaneously with the delivery of each set of financial statements referred to in Sections 6.01(a) and (b) above, the information required to be delivered to the trustee under the Senior Notes Indenture pursuant to Sections 4.03(a)(1) and (2) of the Senior Notes Indenture for the respective fiscal year or fiscal quarter, as the case may be.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of Holdings (or any direct or indirect parent of Holdings) or (B) the Borrower's or Holdings' (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to

each of preceding clauses (A) and (B), (i) to the extent such information relates to Holdings (or a parent thereof), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such parent), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a stand-alone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with PCAOB auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit.

Section 6.02. Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent registered public accounting firm certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Event of Default under Section 7.11 or, if any such Event of Default shall exist, stating the nature and status of such event;

(b) no later than five (5) days after the delivery of the financial statements referred to in Section 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower and, if such Compliance Certificate demonstrates an Event of Default of any covenant under Section 7.11, any of the Equity Investors may deliver, together with such Compliance Certificate, notice of their intent to cure (a " Notice of Intent to Cure") such Event of Default pursuant to Section 8.05; provided that the delivery of a Notice of Intent to Cure shall in no way affect or alter the occurrence, existence or continuation of any such Event of Default or the rights, benefits, powers and remedies of the Administrative Agent and the Lenders under any Loan Document;

(c) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which Holdings or the Borrower files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any material requests or material notices received by any Loan Party (other than in the ordinary course of business) from, or material statements or material reports furnished to, any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any Senior Notes Documentation, CMBS Facilities Documentation or Junior Financing Documentation in a principal amount greater than the Threshold Amount or any Master Lease and (in each case) not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 6.02;

(e) together with the delivery of each Compliance Certificate pursuant to Section 6.02(b) with respect to financial statements delivered pursuant to Section 6.01(a), (i) a report setting forth the information required by Section 3.03(c) of the Security Agreement or confirming that there has been no change in such information since the Closing Date or, if later, the date of the last such report), (ii) a description of each event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.06(b) and (iii) an updated list of each Subsidiary that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (or confirming that there has been no change in such information since the Closing Date or the date of the last such update); and

(f) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Loan Party, any Subsidiary or any Specified Lease Entity, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(b) to the Administrative Agent. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. For purposes of this Section 6.02, paper copies shall include copies delivered by facsimile transmission or electronically (such as "tif", "pdf" or similar file formats delivered by email).

Section 6.03. Notices. Promptly after obtaining knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default; and

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including arising out of or resulting from (i) breach or non-performance of, or any default or event of default under, a Contractual Obligation of any Loan Party or any Subsidiary, (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary and any Governmental Authority, (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws or in respect of IP Rights or the assertion or occurrence of any noncompliance by any Loan Party or as any of its Subsidiaries with, or liability under, any Environmental Law or Environmental Permit, or (iv) the occurrence of any ERISA Event.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a) or (b) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04. Payment of Taxes. Pay, discharge or otherwise satisfy as the same shall become due and payable, all of its obligations and liabilities in respect of taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, except in each case, to the extent the failure to pay or discharge the same, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 6.05. Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05 and (b) take all reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable in the normal conduct of its business except (i) to the extent that failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) pursuant to a transaction permitted by Section 7.04 or 7.05.

Section 6.06. Maintenance of Properties. Except if the failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice.

Section 6.07. Maintenance of Insurance. Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries or otherwise consistent with past practices) as are customarily carried under similar circumstances by such other Persons.

(a) Requirements of Insurance. All such insurance shall (i) provide that the insurer affording coverage will endeavor to mail 30 days written notice of cancellation of such insurance coverage to the Collateral Agent (in the case of property and liability insurance), (ii) name the Collateral Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable, (iii) be reasonably satisfactory in all other respects to the Administrative Agent.

(b) Flood Insurance. With respect to each Mortgaged Property, obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time reasonably require, if at any time the area in which any improvements located on any Mortgaged Property is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set for the in the Flood Disaster Protection Act of 1973, as amended from time to time.

Section 6.08. Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.09. Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Borrower or such Subsidiary, as the case may be.

Section 6.10. Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such independent public accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; provided, further, that when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants.

Section 6.11. Covenant to Guarantee Obligations and Give Security . At the Borrower's expense, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) upon the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (in each case, other than an Unrestricted Subsidiary or an Excluded Subsidiary) by any Loan Party or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Domestic Subsidiary as a Restricted Subsidiary (other than an Excluded Subsidiary):

(i) within thirty (30) days after such formation, acquisition or designation or such longer period as the Administrative Agent may agree in its discretion:

(A) cause each such Restricted Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement to furnish to the Administrative Agent a description of the Material Real Properties owned by such Restricted Subsidiary, in detail reasonably satisfactory to the Administrative Agent;

(B) cause (x) each such Restricted Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) Guarantee Supplements and Mortgages with respect to the Material Real Properties which are identified to the Administrative Agent pursuant to Section 6.11(a)(i)(A), Security Agreement Supplements, a counterpart of the Intercompany Note and other security agreements and documents (including, with respect to such Mortgages, the documents listed in Section 6.13(b)), as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Mortgages, Security Agreement and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement and (y) each direct or indirect parent of each such Restricted Subsidiary that is required to be a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent such Security Agreement Supplements and other security agreements as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Security Agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(C) (x) cause each such Restricted Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the

Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and instruments evidencing the intercompany Indebtedness held by such Restricted Subsidiary and required to be pledged pursuant to the Collateral Documents, indorsed in blank to the Collateral Agent and (y) cause each direct or indirect parent of such Restricted Subsidiary that is required to be a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing the outstanding Equity Interests (to the extent certificated) of such Restricted Subsidiary that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and instruments evidencing the intercompany Indebtedness issued by such Restricted Subsidiary and required to be pledged in accordance with the Collateral Documents, indorsed in blank to the Collateral Agent;

(D) take and cause such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guaranty Requirement to take whatever action (including the recording of Mortgages, the filing of Uniform Commercial Code financing statements and delivery of stock and membership interest certificates) may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, subject to Debtor Relief Laws, general principles of equity (whether considered in a proceeding in equity or at law) and an applied covenant of good faith and fair dealing,

(ii) within thirty (30) days after the request therefor by the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request, and

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each parcel of Material Real Property that is owned by such Restricted Subsidiary, any existing title reports, surveys or environmental assessment reports.

(b) (i) the Borrower shall obtain the security interests, Guarantees and related items set forth on Schedule 1.01B on or prior to the dates corresponding to such security interests, Guarantees and related items set forth on Schedule 1.01B;

(ii) after the Closing Date, promptly following (x) the acquisition of

any material personal property by any Loan Party or (y) the acquisition of any owned Material Real Property by any Loan Party, and such personal property or owned Material Real Property shall not already be subject to a perfected Lien pursuant to the Collateral and Guarantee Requirement, the Borrower shall give notice thereof to the Administrative Agent and promptly thereafter shall cause such assets to be subjected to a Lien to the extent required by the Collateral and Guarantee Requirement and will take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, including, as applicable, the actions referred to in Section 6.13(b) with respect to real property; and

(iii) within thirty (30) days after the Closing Date, each Loan Party and each other Subsidiary of Holdings which is an obligee or obligor with respect to any Intercompany Indebtedness shall have duly authorized, executed and delivered the Intercompany Note, and the Intercompany Note shall be in full force and effect.

(c) Notwithstanding the foregoing, the Borrower shall not be required to deliver any Mortgages or related documentation prior to the date that is 90 days after the Closing Date, or such later date as the Administrative Agent may so agree to.

Section 6.12. Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent required by Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws.

Section 6.13. Further Assurances and Post-Closing Conditions. (a) Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents (subject to the limitations set forth therein and in the definition of Collateral and Guarantee Requirement).

(b) (i) In the case of any Material Real Property referred to in Section 6.11(a)(i)(A) or 6.11(b)(ii), provide the Administrative Agent with Mortgages with respect to such owned Material Real Property within thirty (30) days of the acquisition thereof together with:

(ii) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem reasonably necessary or desirable in order to create a valid and subsisting perfected Lien on the property and/or rights described therein in favor of the Administrative Agent or the Collateral Agent (as appropriate) for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent;

(iii) fully paid American Land Title Association Lender's Extended Coverage title insurance policies or the equivalent or other form available in each applicable jurisdiction (the "Mortgage Policies") in form and substance, with endorsements and in amount, reasonably acceptable to the Administrative Agent (not to exceed the value of the real properties covered thereby), issued, coinsured and reinsured by title insurers reasonably acceptable to the Administrative Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, free and clear of all defects and encumbrances, subject to Permitted Liens, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents) and such coinsurance and direct access reinsurance as the Administrative Agent may reasonably request;

(iv) opinions of local counsel for the Loan Parties in states in which such real properties are located, with respect to the enforceability and perfection of the Mortgages and any related fixture filings in form and substance reasonably satisfactory to the Administrative Agent;

(v) flood certificates covering each Mortgaged Property in form and substance reasonably acceptable to the Collateral Agent, certified to the Collateral Agent in its capacity as such and certifying whether or not each such Mortgaged Property is located in a flood hazard zone by reference to the applicable FEMA map; and

(vi) such other evidence that all other actions that the Administrative Agent may reasonably deem necessary or desirable in order to create valid and subsisting Liens on the property described in the Mortgages has been taken.

Section 6.14. Designation of Subsidiaries. The board of directors of Holdings may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Borrower and the Restricted Subsidiaries shall be in compliance, on a Pro Forma Basis, with the covenants set forth in Section 7.11 (and, as a condition precedent to the effectiveness of any such designation, the Borrower shall deliver to the Administrative Agent a certificate setting forth in reasonable detail the calculations demonstrating such compliance), (iii) the Borrower may not be designated as an Unrestricted Subsidiary, (iv) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for the purpose of the Senior Notes or any other Junior Financing, as applicable, and (v) the Investment resulting from the designation of such Subsidiary as an Unrestricted Subsidiary as

described in the immediately succeeding sentence is permitted by Section 7.02. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the Fair Market Value of the net assets of the respective Subsidiary at the time that such Subsidiary is designated an Unrestricted Subsidiary. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

Section 6.15. Corporate Separateness. (a) Satisfy, and cause each of its Restricted Subsidiaries and Unrestricted Subsidiaries to satisfy, customary corporate and other formalities.

(b) Ensure that (i) no bank account of any Unrestricted Subsidiary shall be commingled with any bank account of the Borrower or any of the Borrower's Restricted Subsidiaries, and (ii) any financial statements distributed to any creditors of any Unrestricted Subsidiary shall clearly establish or indicate the corporate separateness of such Unrestricted Subsidiary from Holdings, the Borrower and the Borrower's Restricted Subsidiaries.

ARTICLE VII

Negative Covenants

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, Holdings and the Borrower shall not, nor shall they permit any of their Restricted Subsidiaries to, directly or indirectly:

Section 7.01. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.01(b) and any modifications, replacements, renewals, refinancings or extensions thereof; provided that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed or refinanced by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for taxes, assessments or governmental charges which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business which secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any Restricted Subsidiary;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects or minor irregularities affecting real property which, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary or the use of the property for its intended purpose;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.03(e); provided that (i) such Liens attach concurrently with or within two hundred and seventy (270) days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens (including reconstruction, refurbishment, renovation and development of real property), (ii) such Liens do not at any time encumber any property (except for accessions to such property) other than the property financed by such Indebtedness and the proceeds and the products thereof and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for accessions to such assets) other than the assets subject to such Capitalized Leases; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(j) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not interfere in any material respect with the business of the Borrower or any Restricted Subsidiary or secure any Indebtedness;

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

(l) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(m) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(i), (n) or (o) to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(n) Liens on property (i) of any Foreign Subsidiary that is not a Loan Party and (ii) that does not constitute Collateral, which Liens secure Indebtedness of the applicable Foreign Subsidiaries permitted under Section 7.03;

(o) Liens in favor of the Borrower or a Restricted Subsidiary securing Indebtedness permitted under Section 7.03(d);

(p) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the date hereof (other than Liens on the Equity Interests of any Person that becomes a Restricted Subsidiary) and the replacement, extension or renewal of any Lien permitted by this clause (p) upon or in the same property previously subject thereto in connection with the replacement, extension or renewal (without increase in the amount or any change in any direct or contingent obligor) of the Indebtedness secured thereby; provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03(e), (g), (h), or (k);

(q) any interest or title of a lessor under leases entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business (including in favor of a Specified Lease Entity, as a lessor, under any Master Lease);

(r) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business permitted by this Agreement;

(s) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.02; provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(t) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings, the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of business;

(u) Liens solely on any cash earnest money deposits made by Holdings, the Borrower or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(v) (i) Liens placed upon the Equity Interests of any Restricted Subsidiary acquired pursuant to a Permitted Acquisition to secure Indebtedness incurred pursuant to Section 7.03(g) in connection with such Permitted Acquisition and (ii) Liens placed upon the assets of such Restricted Subsidiary and any of its Subsidiaries to secure a Guarantee by such Restricted Subsidiary and its Subsidiaries of any such Indebtedness incurred pursuant to Section 7.03(g);

(w) Liens arising from precautionary UCC financing statement filings regarding operating leases entered into in the ordinary course of business;

(x) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(y) ground leases in respect of real property on which facilities or equipment owned or leased by the Borrower or any of its Subsidiaries are located;

(z) Liens encumbering reasonable and customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes; and

(aa) other Liens securing Indebtedness and other obligations of the Borrower and its Restricted Subsidiaries in an aggregate outstanding principal amount not to exceed $40,000,000.

Section 7.02. Investments. Make or hold any Investments, except:

(a) Investments by the Borrower or a Restricted Subsidiary in assets that were Cash Equivalents when such Investment was made;

(b) loans or advances to (A) officers, directors, consultants and employees of Holdings, the Borrower and the Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings (or any direct or indirect parent thereof or, after a Qualifying IPO, the Borrower or any Intermediate Holding Company) (provided that the amount of such loans and advances shall be contributed to the Borrower in cash as common equity) and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount outstanding not to exceed $5,000,000, and (B) restaurant employees of Employment Participation Subsidiaries to fund such employees purchase of Equity Interests of an Employment Participation Subsidiary in the ordinary course of business;

(c) Investments (i) by Holdings, the Borrower or any Restricted Subsidiary in any Loan Party (excluding Holdings), (ii) by any Restricted Subsidiary that is not a Loan Party in any other such Restricted Subsidiary that is also not a Loan Party, (iii) by the Borrower or any Restricted Subsidiary in any Domestic Subsidiary that is a Restricted Subsidiary but not a Loan Party that do not exceed the sum of $15,000,000 and the amount equal to the aggregate Returns in respect of such Investments, and (iv) by the Borrower or any Restricted Subsidiary (A) in any Foreign Subsidiary, *provided* that the aggregate amount of such Investments in Foreign Subsidiaries pursuant to this Section 7.02(c)(A) (together with, but without duplication, the aggregate consideration paid in respect of Permitted Acquisitions of Persons that do not become Loan Parties pursuant to Section 7.02(i)(B)) shall not exceed the sum of $50,000,000 and an amount equal to the aggregate Returns in respect of such Investments), and (B) in any Foreign Subsidiary consisting of a contribution of Equity Interests of any other Foreign Subsidiary held directly by the Borrower or such Restricted Subsidiary and if the Foreign Subsidiary to which such contribution is made is not a wholly-owned Foreign Subsidiary, such contribution shall be in exchange for Indebtedness, Equity Interests (including increases in capital accounts) or a combination thereof of the Foreign Subsidiary to which such contribution is made, provided that the Equity Interests of a wholly owned Foreign Subsidiary only may be contributed to another wholly owned Foreign Subsidiary under this sub-clause (B), and (C) constituting Guarantees of Indebtedness or other monetary obligations of Foreign Subsidiaries owing to any Loan Party (other than Holdings) (for the avoidance of doubt, it being understood that Investments made pursuant to clause (ii) above shall not be deemed to be a utilization of, or an Investment made pursuant to, this clause (iv));

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(e) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions and Restricted Payments permitted under Sections 7.01, 7.03, 7.04, 7.05, 7.06 and 7.13, respectively;

(f) Investments (i) existing or contemplated on the date hereof and set forth on Schedule 7.02(f) and any modification, replacement, renewal, reinvestment or extension thereof and (ii) existing on the date hereof by the Borrower or any Restricted Subsidiary in the Borrower or any other Restricted Subsidiary and any modification, exchange in kind, renewal or extension thereof; provided that (x) the amount of the original Investment is not increased except by the terms of such Investment or as otherwise permitted by this Section 7.02 and (y) any Investment in the form of Indebtedness of any Loan Party owed to any Restricted Subsidiary that is not a Loan Party shall be subject to the subordination terms set forth in the Intercompany Note;

(g) Investments in Swap Contracts permitted under Section 7.03;

(h) (i) promissory notes and other noncash consideration received in connection with Dispositions permitted by Section 7.05 and (ii) Investments received solely from (x) equity contributions to Holdings (which in turn are contributed by Holdings to the Borrower) from its shareholder or shareholders and (y) distributions to the Borrower and the Restricted Subsidiaries from Persons that are not Restricted Subsidiaries; provided that, with respect to each Investment described in this clause (h)(ii):

(A) any Subsidiary acquired as a result of such Investment (other than an Excluded Subsidiary) (and, to the extent required under the Collateral and Guarantee Requirement, the Subsidiaries of such acquired Subsidiary) shall be a Guarantor and shall have complied with the requirements of Section 6.11, within the times specified therein;

(B) after giving effect to such Investment, the Borrower and the Restricted Subsidiaries shall be in compliance with Section 7.07;

(C) immediately before and immediately after giving Pro Forma Effect to any such Investment, no Default shall have occurred and be continuing and (2) immediately after giving effect to such Investment, the Borrower and the Restricted Subsidiaries shall be in Pro Forma Compliance with (x) the covenant set forth in Section 7.11(a) and (y) in the case of a distribution from an Unrestricted Subsidiary, the covenant set forth in Section 7.11(b), each such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such Investment had been consummated as of the first day of the fiscal period covered thereby and, in the case of a given Investment the aggregate Fair Market Value for which is in excess of $20,000,000, evidenced by a certificate from the Chief Financial Officer of the Borrower demonstrating such compliance calculation in reasonable detail; and

(D) the Borrower shall have delivered to the Administrative Agent, on behalf of the Lenders, no later than five (5) Business Days after the date on which any such

Investment is consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this clause (h)(ii) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(i) the purchase or other acquisition of property and assets or businesses of any Person or of assets constituting a business unit, a line of business or division of such Person, or Equity Interests in a Person that, upon the consummation thereof, will be a wholly owned Restricted Subsidiary of the Borrower (including as a result of a merger or consolidation); provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.02(i) (each, a "Permitted Acquisition"):

(A) subject to clause (B) below, any such newly created or acquired Subsidiary (and, to the extent required under the Collateral and Guarantee Requirement, the Subsidiaries of such created or acquired Subsidiary) shall be a Guarantor and shall have complied with the requirements of Section 6.11, within the times specified therein;

(B) the aggregate amount of consideration paid in respect of acquisitions of Persons that do not become Loan Parties shall not exceed the sum of $50,000,000 and an amount equal to the aggregate Returns in respect of such Investments);

(C) after giving effect to such purchase or acquisition, the Borrower and the Restricted Subsidiaries shall be in compliance with Section 7.07;

(D) (1) immediately before and immediately after giving Pro Forma Effect to any such purchase or other acquisition, no Default shall have occurred and be continuing and (2) immediately after giving effect to such purchase or other acquisition (and any concurrent Disposition), the Borrower and the Restricted Subsidiaries shall be in Pro Forma Compliance with all of the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such purchase or other acquisition (and any concurrent Disposition) had been consummated as of the first day of the fiscal period covered thereby and, in the case of a given acquisition or purchase the aggregate consideration for which is in excess of $20,000,000, evidenced by a certificate from the Chief Financial Officer of the Borrower demonstrating such compliance calculation in reasonable detail; and

(E) the Borrower shall have delivered to the Administrative Agent, on behalf of the Lenders, no later than five (5) Business Days after the date on which any such purchase or other acquisition is consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this clause (i) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(j) the Transaction and Investments made in connection with the Transaction;

(k) Investments in the ordinary course of business consisting of Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances to Holdings (or any direct or indirect parent thereof) in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to Holdings (or such parent) in accordance with Section 7.06(h), (i), (j) or (k);

(n) so long as immediately after giving effect to any such Investment, no Default has occurred and is continuing, other Investments that do not exceed the sum of $100,000,000 and an amount equal to the aggregate Returns in respect of such Investments;

(o) so long as immediately after giving effect to any such Investment, no Default has occurred and is continuing, and the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11, other Investments in an amount not to exceed the Cumulative Growth Amount immediately prior to the time of the making of such Investment;

(p) advances of payroll payments to employees in the ordinary course of business;

(q) Investments to the extent that payment for such Investments is made solely with capital stock of Holdings (or, after a Qualifying IPO of the Borrower or an Intermediate Holding Company, the Borrower or such Intermediate Holding Company, as the case may be);

(r) Investments of a Restricted Subsidiary acquired after the Closing Date or of a corporation merged into the Borrower or merged or consolidated with a Restricted Subsidiary in accordance with Section 7.04 after the Closing Date, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(s) Guarantees by Holdings, the Borrower or any Restricted Subsidiary of leases (other than Capitalized Leases) or of other obligations of the Borrower or any Restricted Subsidiary otherwise permitted hereunder that do not constitute Indebtedness, in each case entered into in the ordinary course of business; and

(t) Investments consisting of licensing of intellectual property pursuant to joint marketing arrangements with other Persons so long as such licensing arrangements do not limit in any material respect the Collateral Agent's security interest (if any) in the intellectual property so licensed.

provided that no Investment in an Unrestricted Subsidiary that would otherwise be permitted under this Section 7.02 shall be permitted hereunder, to the extent that any portion of such Investment is used to make any prepayments, redemptions, purchases, defeasances and other payments in respect of the Senior Notes or other Junior Financings that would otherwise not be permitted under Section 7.13 (and any such prepayment, redemption, purchase, defeasance and other payment shall be treated as having been made pursuant to Section 7.13).

Section 7.03. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of Holdings, the Borrower and any of its Subsidiaries under the Loan Documents;

(b) Indebtedness (i) outstanding on the date hereof and listed on Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the date hereof;

(c) Guarantees by Holdings, the Borrower and the Restricted Subsidiaries in respect of Indebtedness of the Borrower or any Restricted Subsidiary otherwise permitted hereunder; provided that (A) no Guarantee by any Restricted Subsidiary of any Senior Note or other Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Obligations substantially on the terms set forth in the Subsidiary Guaranty and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary owing to Holdings, the Borrower or any other Restricted Subsidiary, to the extent constituting an Investment expressly permitted by Section 7.02(c), (m) or (s) or, in the case of Indebtedness of the Borrower or any Restricted Subsidiary owing to Holdings, the Borrower or any other Restricted Subsidiary, Section 7.02(n); provided that all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be subject to the subordination terms set forth in the Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) of the Borrower and the Restricted Subsidiaries financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets (including reconstruction, refurbishment, renovation and development of real property); provided that such Indebtedness is incurred concurrently with or within two hundred and seventy (270) days after the applicable acquisition, construction, repair, replacement or improvement, (ii) Attributable Indebtedness of the Borrower and the Restricted

Subsidiaries arising out of sale-leaseback transactions permitted by Section 7.05(f) and (iii) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clauses (i) and (ii);

(f) Indebtedness in respect of Swap Contracts designed to hedge against interest rates, foreign exchange rates risks or commodities pricing incurred in the ordinary course of business and not for speculative purposes;

(g) Indebtedness of the Borrower or any Restricted Subsidiaries:

(i) consisting of Attributable Indebtedness and other Indebtedness (including Capitalized Leases) of a Person financing fixed or capital assets of such Person (including real property) assumed in connection with any Permitted Acquisition that is secured only by the assets subject to such Attributable Indebtedness or the assets financed by such other Indebtedness, as the case may be (provided that neither such Attributable Indebtedness nor such other Indebtedness is incurred in contemplation of such Permitted Acquisition) and any Permitted Refinancing thereof and so long as both immediately prior and after giving effect thereto, (A) no Default shall exist or result therefrom, (B) the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11, and (C) in the case of any Indebtedness secured by real property, such real property would not otherwise constitute a Material Real Property; and

(ii) incurred to finance a Permitted Acquisition that is secured only by the assets or business acquired in the applicable Permitted Acquisition (including any acquired Equity Interests) and so long as both immediately prior and after giving effect thereto, (A) no Default shall exist or result therefrom, (B) the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11, and (C) the aggregate principal amount of such Indebtedness and all Indebtedness resulting from any Permitted Refinancing thereof at any time outstanding pursuant to this clause (g)(ii) does not exceed $25,000,000;

(h) Indebtedness of the Borrower and the Guarantors (A) assumed in connection with any Permitted Acquisition (provided that such Indebtedness is not incurred in contemplation of such Permitted Acquisition) or (B) incurred to finance a Permitted Acquisition and, in the case of either (A) or (B), any Permitted Refinancing thereof; provided, in each case that such Indebtedness and all Indebtedness resulting from any Permitted Refinancing thereof, (w) is unsecured and is subordinated to the Obligations on terms no less favorable to the Lenders than the subordination terms consistent with indentures in connection with senior subordinated notes issued in high yield transactions with the Sponsors ("Senior Subordinated Notes Precedent") or otherwise reasonably acceptable to the Administrative Agent, (x) both immediately prior and after giving effect thereto, (1) no Default shall exist or result therefrom, (2) the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11 and (3) to the extent that Holdings is the issuer, borrower or obligor of such Indebtedness, the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with an Interest Coverage Ratio of at least 2.00:1.00

(and determined as if the Borrower was the issuer, borrower or obligor of such Indebtedness), (y) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the Maturity Date of the Term Loans (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemptions provisions satisfying the requirement of clause (z) hereof), and (z) has terms and conditions (other than interest rate, redemption premiums and subordination terms), taken as a whole, that are not materially less favorable to Holdings, the Borrower or any of the Restricted Subsidiaries as the terms and conditions of the Senior Notes are to the Borrower and the Restricted Subsidiaries as of the Closing Date or otherwise reasonably satisfactory to the Administrative Agent; provided that a certificate of a Responsible Officer delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower or Holdings, as applicable, has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower or Holdings, as applicable, within such five (5) Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees);

(i) Indebtedness representing deferred compensation to employees of the Borrower and the Restricted Subsidiaries incurred in the ordinary course of business;

(j) Indebtedness consisting of promissory notes (A) issued by any Loan Party to current or former officers, directors, consultants and employees, their respective estates, heirs, permitted transferees, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings permitted by Section 7.06; provided that (i) such Indebtedness shall be subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent and (ii) the aggregate amount of all cash payments (whether principal or interest) made by the Loan Parties in respect of such notes in any calendar year, when combined with the aggregate amount of Restricted Payments made pursuant to Section 7.06(g) in such calendar year, shall not exceed $10,000,000 (or, after a Qualifying IPO, $30,000,000), *provided* that any unused amounts in any calendar year may be carried over to succeeding calendar years, so long as the aggregate amount of all cash payments made in respect of such notes in any calendar year (after giving effect to such carry forward), when aggregated with the aggregate amount of Restricted Payments made pursuant to Section 7.06(g) in such calendar year (after giving effect to such carry forward), shall not exceed $20,000,000 (or, after a Qualifying IPO, $40,000,000), *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed the remainder of (x) the sum of (1) the amount of Net Cash Proceeds of Permitted Equity Issuances (other than Permitted Equity Issuances made pursuant to Section 8.05) to the extent that such Net Cash Proceeds shall have been actually received by the Borrower through a capital contribution of such Net Cash Proceeds by Holdings (and to the extent not used to make an Investment pursuant to Section 7.02(o), prepay Senior Notes or other Junior Financings pursuant to Section 7.13(a)(v), make Restricted Payments pursuant to Section 7.06(g) or (j) or make Capital Expenditures pursuant to Section 7.16(a)(ii)), in each case to employees, directors,

officers, members of management or consultants of Holdings (or any direct or indirect parent of Holdings) or of its Subsidiaries that occurs after the Closing Date plus (2) the net cash proceeds of key man life insurance policies received by Holdings, the Borrower or any of its Restricted Subsidiaries after the Closing Date less (y) the aggregate amount of all cash payments made in respect of any promissory notes pursuant to this Section 7.03(j) after the Closing Date with the net cash proceeds described in preceding clause (x) (2) less (z) the aggregate amount of all Restricted Payments made after the Closing Date in reliance on the last proviso appearing in Section 7.06(g), and (B) issued by Employment Participation Subsidiaries to current or former restaurant employees, and development partners of Employment Participation Subsidiaries as consideration in respect of repurchases, redemptions or acquisitions of Equity Interests in Employment Participation Subsidiaries permitted under Section 7.06(m) in the ordinary course of business and consistent with past practice;

(k) Indebtedness incurred by Holdings, the Borrower or the Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in any such case solely constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments;

(l) Indebtedness consisting of obligations of Holdings, the Borrower or the Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transaction and Permitted Acquisitions or any other Investment expressly permitted hereunder;

(m) Cash Management Obligations and other Indebtedness in respect of netting services, overdraft protections and similar arrangements in each case in connection with deposit accounts;

(n) Indebtedness of the Borrower and the Restricted Subsidiaries in an aggregate principal amount not to exceed $100,000,000 at any time outstanding;

(o) Indebtedness consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(p) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the incurrence thereof;

(q) obligations in respect of performance, bid, stay, custom, appeal and surety bonds and other obligations of a like nature and performance and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practices;

(r) unsecured Indebtedness of Holdings ("Permitted Holdings Debt") (i) that is not subject to any Guarantee by the Borrower or any Restricted Subsidiary, (ii) that will not mature prior to the date that is ninety-one (91) days after the Maturity Date of the Term Loans, (iii) that has no scheduled amortization or payments of principal (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (v) hereof), (iv) that does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of (A) the date that is four (4) years from the date of the issuance or incurrence thereof and (B) the date that is ninety-one (91) days after the Maturity Date of the Term Loans, (v) that has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive than those set forth in the Senior Notes Indenture as of the Closing Date, taken as a whole (other than provisions customary for senior discount notes of a holding company), and (vi) that is subordinated to the Obligations on subordination terms no less favorable to the Lenders than the subordination terms set forth in the Senior Subordinated Notes Precedent or otherwise reasonably acceptable to the Administrative Agent; *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees); provided, further that any such Indebtedness shall constitute Permitted Holdings Debt only if (1) both before and after giving effect to the issuance or incurrence thereof, no Default shall have occurred and be continuing and (2) the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11 (it being understood that any capitalized or paid-in-kind or accreted principal on such Indebtedness is not subject to this proviso);

(s) Indebtedness of the Borrower and the Restricted Subsidiaries supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(t) Indebtedness of Holdings, the Borrower and the Restricted Subsidiaries so long as (u) the Net Cash Proceeds therefrom are used to prepay Term Loans pursuant to Section 2.06(b)(iii) (unless applied to effect a Permitted Refinancing of any Indebtedness theretofore issued under this Section 7.03(t)), (x) such Indebtedness is subordinated to the Obligations on terms no less favorable to the Lenders than the subordination terms set forth in the Senior Subordinated Notes Precedent or otherwise reasonably acceptable to the Administrative Agent, (y) both immediately prior and after giving effect thereto, (1)

no Default shall exist or result therefrom, (2) the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11 and (3) to the extent that Holdings is the issuer, borrower or obligor of such Indebtedness, the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with an Interest Coverage Ratio of at least 2.00:1.00 (and determined as if the Borrower was the issuer, borrower or obligor of such Indebtedness) and (z) such Indebtedness matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the Maturity Date of the Term Loans (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemptions provisions satisfying the requirement of clause (y) hereof), (y) such Indebtedness has terms and conditions (other than interest rate, redemption premiums and subordination terms), taken as a whole, that are not materially less favorable to the Borrower and the Restricted Subsidiaries as the terms and conditions of the Senior Notes as of the Closing Date; provided that a certificate of a Responsible Officer delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees); and (z) such Indebtedness is incurred by the Borrower or a Guarantor and (ii) any Permitted Refinancing of the Indebtedness referred to in preceding clause (i);

(u) Indebtedness in respect of the Senior Notes and any Permitted Refinancing thereof;

(v) Indebtedness of Foreign Subsidiaries in an aggregate principal amount not to exceed $50,000,000 at any time outstanding; and

(w) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (v) above.

Section 7.04. Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Restricted Subsidiary may merge with (i) the Borrower (including a merger, the sole purpose of which is to reorganize the Borrower into a new jurisdiction); *provided*, *that* (x) the Borrower shall be the continuing or surviving Person and (y) such merger does not result in the Borrower ceasing to be incorporated under the Laws of the United States, any state thereof or the District of Columbia, or (ii) any one or more other Restricted Subsidiaries; provided that when any Restricted Subsidiary that is a Loan Party is merging with another Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person;

(b) (i) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary of the Borrower may liquidate or dissolve or change its legal form (subject, (x) in the case of any change of legal form, to any such Restricted Subsidiary that is a Guarantor remaining a Guarantor and (y) in the case of a liquidation or distribution of a Loan Party, the assets of such Loan Party are transferred to a Loan Party and the security interests of the Collateral Agent in the assets so transferred remain perfected at least to the same extent that such security interests were perfected immediately prior thereto) if Holdings determines in good faith that such action is in the best interests of Holdings and its Subsidiaries and such change is not materially disadvantageous to the Lenders;

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; provided that if the transferor in such a transaction is a Guarantor or the Borrower, then (i) the transferee must either be the Borrower or a Guarantor or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 and 7.03, respectively;

(d) so long as no Default exists or would result therefrom, the Borrower may merge or consolidate with any other Person; provided that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "Successor Company"), (A) the Successor Company shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Guaranty confirmed that its Guarantee shall apply to the Successor Company's obligations under this Agreement, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement confirmed that its obligations thereunder shall apply to the Successor Company's obligations under this Agreement, (E) each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage confirmed that its obligations thereunder shall apply to the Successor Company's obligations under this Agreement, (F) immediately after giving effect to such merger or consolidation, the Successor Company and the Restricted Subsidiaries shall be in Pro Forma Compliance with all of the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such merger or consolidation had been consummated as of the first day of the fiscal period covered thereby and

evidenced by a certificate from the Chief Financial Officer of the Successor Company demonstrating such compliance calculation in reasonable detail, and (G) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; provided, further, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Default exists or would result therefrom, any Restricted Subsidiary may merge with any other Person in order to effect an Investment permitted pursuant to Section 7.02; provided that the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11;

(f) the Borrower and the Restricted Subsidiaries may consummate the Merger and the other Transactions; and

(g) so long as no Default exists or would result therefrom, a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05. Dispositions. Make any Disposition, except:

(a) (x) Dispositions of obsolete or worn out property and assets, whether now owned or hereafter acquired, in the ordinary course of business, and (y) Dispositions of property or assets no longer used or useful in the conduct of the business of the Borrower and the Restricted Subsidiaries;

(b) Dispositions of inventory and assets of de minimus value, in any case in the ordinary course of business;

(c) Dispositions of property in the ordinary course of business to the extent that (x) such property is exchanged for credit against the purchase price of similar replacement property or (y) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or to a Restricted Subsidiary; provided that if the transferor of such property is the Borrower or a Guarantor, (i) the transferee thereof must either be a Guarantor or the Borrower or (ii) to the extent such transaction constitutes an Investment, such transaction is permitted under Section 7.02;

(e) Dispositions permitted by Sections 7.04 and 7.06, Investments permitted by Section 7.02, Liens permitted by Section 7.01 and Dispositions of Equity Interests in Employment Participation Subsidiaries to restaurant employees of, and development partners with, the Borrower and its Subsidiaries;

(f) Dispositions of property (other than IP Collateral) for cash pursuant to sale-leaseback transactions; provided that (i) with respect to such property owned by the

Borrower and the Restricted Subsidiaries on the Closing Date, the Fair Market Value of all property so Disposed of after the Closing Date (taken together with the aggregate Fair Market Value of all property Disposed of pursuant to Section 7.05(k)) shall not exceed $35,000,000, and (ii) with respect to such property acquired by the Borrower or any Restricted Subsidiary after the Closing Date, the applicable sale-leaseback transaction occurs within two hundred and seventy (270) days after the acquisition or construction (as applicable) of such property or any material repair, replacement or improvement thereof (including reconstruction, refurbishment, renovation and development of real property);

(g) Dispositions of Cash Equivalents;

(h) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof and not as part of a financing transaction;

(i) leases, subleases, licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of Holdings, the Borrower and the Restricted Subsidiaries;

(j) transfers of property subject to Casualty Events upon receipt of the Net Cash Proceeds of such Casualty Event;

(k) Dispositions of property not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default exists), no Default shall exist or would result from such Disposition, (ii) the aggregate Fair Market Value of all property Disposed of in reliance on this clause (k) (taken together with the aggregate Fair Market Value of all property Disposed of pursuant to Section 7.05(f)) does not exceed $35,000,000, and (iii) with respect to any Disposition pursuant to this clause (k) for a purchase price in excess of $2,500,000, the Borrower or a Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(l) and clauses (i) and (ii) of Section 7.01(t)); provided, however, that for the purposes of this clause (iii), (A) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the payment in cash of the Obligations) that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by the Borrower or such Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable Disposition and (C) any Designated Non-Cash Consideration received by the Borrower or such Restricted Subsidiary in respect of such Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-Cash

Consideration received pursuant to this clause (C) and Section 7.05(l) that is at that time outstanding, the greater of (1) $20,000,000 and (2) 1% of Total Tangible Assets at the time of the receipt of such Designated Non-Cash Consideration, with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash;

(l) Dispositions listed on Schedule 7.05(l); provided that with respect to any Disposition pursuant to this clause (l) for a purchase price in excess of $2,500,000, the Borrower or a Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(l) and clauses (i) and (ii) of Section 7.01(t)); provided, however, that for the purposes of this clause (ii), (A) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the payment in cash of the Obligations) that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by the Borrower or such Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable Disposition shall be deemed to be cash and (C) any Designated Non-Cash Consideration received by the Borrower or such Restricted Subsidiary in respect of such Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) and Section 7.05(k)(iii) that is at that time outstanding, the greater of (1) $20,000,000 and (2) 1% of Total Tangible Assets at the time of the receipt of such Designated Non-Cash Consideration, with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash;

(m) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(n) Dispositions as part of the Transaction; and

(o) Dispositions of Equity of Unrestricted Subsidiaries;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a)(y), (d), (e), (j) and (n) and except for Dispositions from a Loan Party to another Loan Party), shall be for no less than the Fair Market Value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than Holdings, the Borrower or any Restricted Subsidiary, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06. Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower and to other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) Holdings, the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person;

(c) (i) so long as no Default shall have occurred and be continuing or would result therefrom, from and after the date the Borrower delivers an irrevocable written notice to the Administrative Agent stating that the Borrower will make Restricted Payments to Holdings that are used by Holdings solely to fund cash interest payments required to be made by Holdings with respect to Indebtedness permitted to be incurred by Holdings pursuant to Sections 7.03(h), (j), (l), (r) and (t) (the "Holdings Restricted Payments Election"), the Borrower may make such Restricted Payments to Holdings in each case so long as immediately after giving effect to such Restricted Payment, the Borrower and the Restricted Subsidiaries shall be in Pro Forma Compliance with an Interest Coverage Ratio of at least 2.00:1.00 for the Test Period then most recently ended for which financial information has been delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) and evidenced by a certificate from the Chief Financial Officer of the Borrower demonstrating such compliance calculation in reasonable detail;

(d) Restricted Payments made on the Closing Date used to fund the Transaction (including any amounts to be paid under, or contemplated by, the Merger Agreement) and the fees and expenses related thereto or owed to Affiliates, in each case with respect to any Restricted Payment to or owed to an Affiliate to the extent permitted by Section 7.08 and including any payment to holders of Equity Interests of the Borrower (immediately prior to giving effect to the Transaction) after the Closing Date in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect to such appraisal rights (in each case) as a result of the Merger;

(e) to the extent constituting Restricted Payments, Holdings, the Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.04 or 7.08 (other than Sections 7.08(f) and (g));

(f) repurchases of Equity Interests in Holdings, the Borrower or any Restricted Subsidiary deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(g) Holdings (or, after a Qualifying IPO of the Borrower or an Intermediate Holding Company, the Borrower or such Intermediate Holding Company, as the case may be) may (i) pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Holdings (or of any parent of Holdings or, after a Qualifying IPO of the Borrower or an Intermediate Holding Company, the Borrower or such Intermediate Holding Company, as the case may be) by any future, present or former employee, consultant or director of Holdings (or any direct or indirect parent of Holdings) or any of its Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow any direct or indirect parent of Holdings to pay principal or interest on promissory notes that were issued to any future, present or former employee, consultant or director of Holdings (or any direct or indirect parent of Holdings) or any of its Subsidiaries in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests held by such Persons, in each case, pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, consultant or director of Holdings (or any direct or indirect parent of Holdings) or any of its Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (g) in any calendar year, when combined with the aggregate amount of all cash payments (whether principal or interest) made by the Loan Parties in respect of any promissory notes pursuant to Section 7.03(j) in such calendar year, shall not exceed $10,000,000 (or, after a Qualifying IPO, $30,000,000), *provided* that any unused amounts in any calendar year may be carried over to succeeding calendar years, so long as the aggregate amount of all Restricted Payments made pursuant to this Section 7.06(g) in any calendar year (after giving effect to such carry forward), when aggregated with the aggregate amount of all cash payments made in respect of promissory notes pursuant to Section 7.03(j) in such calendar year (after giving effect to such carry forward), shall not exceed $20,000,000 (or, after a Qualifying IPO, $40,000,000); *provided* that any cancellation of Indebtedness owing to the Borrower in connection with and as consideration for a repurchase of Equity Interests of Holdings (or any of its direct or indirect parents) shall not be deemed to constitute a Restricted Payment for purposes of this clause (g); *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed the remainder of (x) the sum of (1) the amount of Net Cash Proceeds of Permitted Equity Issuances (other than Permitted Equity Issuances made pursuant to Section 8.05) to the extent that such Net Cash Proceeds shall have been actually received by the Borrower through a capital contribution of such Net Cash Proceeds by Holdings (and to the extent not used to make an Investment pursuant to Section 7.02(o), a payment pursuant to Section 7.03(j), a prepayment of Senior Notes or other Junior Financings pursuant to Section 7.13(a)(v), make Restricted Payments pursuant to Section 7.06(g) or (j) or make Capital Expenditures pursuant to Section 7.16(a)(ii)), in each case to employees, directors, officers, members of management or consultants of Holdings (or any direct or indirect parent of Holdings) or of its Subsidiaries that occurs after the Closing Date plus (2) the

net cash proceeds of key man life insurance policies received by Holdings, the Borrower or any of its Restricted Subsidiaries after the Closing Date less (y) the aggregate amount of all Restricted Payments made after the Closing Date with the net cash proceeds described in preceding clause (x) (2) less (z) the aggregate amount of all cash payments made in respect of any promissory notes pursuant to Section 7.03(j) after the Closing Date in reliance on the last proviso appearing in Section 7.03(j);

(h) the Borrower and the Restricted Subsidiaries may make Restricted Payments to Holdings:

(i) the proceeds of which will be used to pay (or to make Restricted Payments to allow any direct or indirect parent of Holdings to pay) the amount any direct or indirect parent company of the Borrower would be required to pay in respect of Income Taxes attributable to the income of such direct or indirect parent company, the Borrower and its Restricted Subsidiaries and Other Parent Subsidiaries; provided, however, that in each case the amount of such payments in any tax year are reduced by Income Taxes required to be paid by such direct or indirect parent company arising from businesses that are unrelated to the businesses conducted by the Other Parent Subsidiaries on the Closing Date after giving effect to the Transactions (except Income Taxes attributable to the income of Unrestricted Subsidiaries shall not reduce such payments to the extent such payments would otherwise be reduced by such Income Taxes and amounts are received from Unrestricted Subsidiaries to pay such Income Taxes);

(ii) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent of Holdings to pay) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business, in an aggregate amount not to exceed $2,500,000 in any fiscal year plus any reasonable and customary indemnification claims made by directors or officers of Holdings (or any parent thereof) attributable to the ownership or operations of the Borrower and its Subsidiaries;

(iii) the proceeds of which shall be used by Holdings to pay franchise taxes and other fees, taxes and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iv) the proceeds of which shall be used by Holdings to make Restricted Payments permitted to be made by Holdings pursuant to this Section 7.06;

(v) to finance any Investment permitted to be made by Holdings pursuant to Section 7.02 (other than clause (e) thereof); provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) Holdings shall, immediately following the closing

thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or its Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition, in each case, in accordance with the requirements of Section 6.11; and

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering permitted by this Agreement;

(i) so long as no Default shall have occurred and be continuing or would result therefrom, the Borrower may make additional Restricted Payments to Holdings the proceeds of which may be utilized by Holdings to make additional Restricted Payments, in an aggregate amount, together with the aggregate amount of (1) prepayments, redemptions, purchases, defeasances and other payments in respect of Senior Notes and other Junior Financings made pursuant to Section 7.13(a)(iv) and (2) loans and advances to Holdings made pursuant to Section 7.02(m) in lieu of Restricted Payments permitted by this clause (i), $50,000,000;

(j) so long as no Default shall have occurred and be continuing or would result therefrom, the Borrower may make additional Restricted Payments to Holdings the proceeds of which may be utilized by Holdings to make additional Restricted Payments, in an amount not to exceed the Cumulative Growth Amount immediately prior to the making of such Restricted Payment;

(k) cash payments in lieu of the issuance of fractional shares or interests in connection with the exercise of warrants, options or other rights or securities convertible into or exchangeable for Equity Interests of Holdings or any direct or indirect parent of Holdings; *provided*, *that* any such cash payment shall not be for the purpose of evading the limitation of this covenant (as determined in good faith by the Board of Directors of the Borrower);

(l) Holdings may make Restricted Payments with the Net Cash Proceeds of Permitted Holdings Debt and Permitted Equity Issuances by Holdings (in each case, to the extent any such proceeds are not otherwise contributed to (or required to be contributed to) the Borrower); and

(m) repurchases, redemptions and other acquisitions of Equity Interests in Employment Participation Subsidiaries held by current or former restaurant employees of, and development partners with, the Borrower or any of its Restricted Subsidiaries.

Section 7.07. Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the date hereof or any business reasonably related or ancillary thereto.

Section 7.08. Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than (a) transactions among Loan Parties or any Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transaction in each case to the extent that such transactions are not otherwise prohibited by this Agreement, (b) on terms substantially as favorable to Holdings, the Borrower or such Restricted Subsidiary as would be obtainable by Holdings, the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) consummation of the Transaction, including the payment of fees and expenses related to the Transaction, (d) the issuance of Equity Interests of Holdings (other than Disqualified Equity Interests) to the Sponsors, or to any director, officer, consultant or employee of the Borrower or any of its Subsidiaries in connection with the Transaction, (e) the payment (including Restricted Payments to permit payment) of management, consulting, monitoring, transaction and advisory fees to, or for the benefit of, the Sponsors and the Founders or their respective Affiliates in an aggregate amount in any fiscal year not to exceed the amount permitted to be paid (including accrued amounts) pursuant to the Sponsor Management Agreement, as in effect on the Closing Date and any amendment, modification or replacement thereof or any similar agreement that is not, when taken as a whole, less favorable to the Lenders in any material respect as compared to the Sponsor Management Agreement as in effect on the Closing Date (it being agreed, however, that termination fees (or similar amounts) payable upon the occurrence of an initial public offering or a Change of Control (or any events or circumstances of a substantially similar nature (including with respect to a Change of Control as defined in the Senior Notes Indenture)) not to exceed an amount equal to the present value (as determined (or pursuant to a determination agreed to) by the Borrower in good faith) of the aggregate amount of any fees that would otherwise have been payable under the Sponsor Management Agreement as in effect on the Closing Date during the stated term thereof shall in any event be permitted) and related indemnities, reimbursements and reasonable expenses, (f) Restricted Payments permitted under Section 7.06, (g) loans and other transactions by Holdings, the Borrower and the Restricted Subsidiaries to the extent permitted under this Article VII, (h) employment, consulting and severance arrangements between Holdings, the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business, (i) payments by Holdings (and any direct or indirect parent thereof), the Borrower and the Restricted Subsidiaries pursuant to the tax sharing agreements among Holdings (and any such parent thereof), the Borrower and the Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operations of the Borrower and the Restricted Subsidiaries, (j) the payment of customary fees and reasonable out of pocket costs and expenses to, and indemnities provided on behalf of, directors, officers and employees of Holdings, the Borrower and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings, the Borrower and the Restricted Subsidiaries, (k) transactions pursuant to permitted agreements in existence on the Closing Date and set forth on Schedule 7.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect, and (l) customary payments by Holdings, the Borrower and any Restricted Subsidiaries to the Sponsors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions, divestitures or securities offerings), which payments are approved by the majority of the members of the board of directors or a majority of the disinterested members of the board of directors of Holdings or the Borrower, in good faith (it

being agreed that fees of up to 1.0% of the gross amount of any applicable transaction shall in any event be permitted), and (m) transactions with suppliers, joint venture partners or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement and the Senior Notes Indenture which are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the board of directors of the Borrower or the senior management thereof, or are on terms at least as favorable as would reasonably have been obtained at such time from an unaffiliated party.

Section 7.09. Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of (a) any Restricted Subsidiary of the Borrower that is not a Guarantor to make Restricted Payments, intercompany loans or other advances to the Borrower or any Guarantor or (b) the Borrower or any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Secured Parties with respect to the Facilities and the Obligations or under the Loan Documents; provided that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the date hereof and (to the extent not otherwise permitted by this Section 7.09) are listed on Schedule 7.09 and (y) to the extent Contractual Obligations permitted by preceding clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted renewal, extension or refinancing of such Indebtedness so long as such renewal, extension or refinancing does not expand the scope of such Contractual Obligation in any material respect, (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower; provided further that this clause (ii) shall not apply to Contractual Obligations that are binding on a Person that becomes a Restricted Subsidiary pursuant to Section 6.14, (iii) represent Indebtedness of a Restricted Subsidiary of the Borrower which is not a Loan Party which is permitted by Section 7.03, (iv) arise in connection with any Disposition permitted by Section 7.05, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness (and excluding in any event any Indebtedness constituting any Junior Financing), (vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e) or 7.03(g), to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Indebtedness incurred pursuant to Section 7.03(g) only, to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, and (xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

Section 7.10. Use of Proceeds; etc. (a) Use the proceeds of any Credit Extension, whether directly or indirectly, in a manner inconsistent with the uses set forth in the preliminary statements to this Agreement.

(b) Use the proceeds of any funds in (or credited to) the Capital Expenditures Account, whether directly or indirectly, for any purpose other than (i) to finance Capital Expenditures, (ii) to make any mandatory prepayment of Term Loans otherwise required pursuant to Section 2.06(b)(iv) or 8.05(a) and (iii) to make Investments, Restricted Payments, prepayments or redemptions, as, and to the extent, permitted under the definition "Cumulative Growth Amount."

(c) Deposit, or cause to be deposited, whether directly or indirectly, any funds into the Capital Expenditures Account other than (i) with True Cash Flow as, and to the extent, required by Section 2.06(b)(v) and (ii) with the Net Cash Proceeds from Permitted Equity Issuances after the Closing Date (other than Permitted Equity Issuances made pursuant to Section 8.05).

Section 7.11. Financial Covenants. (a) *Total Leverage Ratio*. Permit the Total Leverage Ratio as of the last day of any Test Period (beginning with the Test Period ending on September 30, 2007) to be greater than the ratio set forth below opposite the last day of such Test Period:

Fiscal Year	**March 31**	**June 30**	**September 30**	**December 31**
2007	—	—	6.50:1.00	6.50:1.00
2008	6.50:1.00	6.00:1.00	6.00:1.00	6.00:1.00
2009	6.00:1.00	6.00:1.00	6.00:1.00	6.00:1.00
2010	6.00:1.00	6.00:1.00	6.00:1.00	6.00:1.00
2011	6.00:1.00	6.00:1.00	6.00:1.00	6.00:1.00
2012	6.00:1.00	6.00:1.00	6.00:1.00	6.00:1.00
2013	6.00:1.00	6.00:1.00	6.00:1.00	6.00:1.00
2014	6.00:1.00	6.00:1.00	6.00:1.00	6.00:1.00

(b) *Minimum Free Cash Flow*. If the Rent Adjusted Leverage Ratio as of the last day of any fiscal year of the Borrower (beginning with its fiscal year ending December 31, 2007) is greater than or equal to 5.25:1.00, permit Minimum Free Cash Flow for any Test Period ending on such date to be less than (i) in the case of the Borrower's fiscal year ended December 31, 2007, $50,000,000, and (ii) in the case of each fiscal year of the Borrower thereafter, $75,000,000.

Section 7.12. Accounting Changes. Make any change in fiscal quarter or fiscal year; provided, however, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal quarter or fiscal year to any other fiscal quarter or fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal quarter or fiscal year.

Section 7.13. Prepayments, Etc. of Indebtedness. (a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted) the Senior Notes, any Permitted Holdings Debt, any Indebtedness incurred under Section 7.03(h)(B) or (t), any other Indebtedness that is required to be subordinated to the Obligations pursuant to the terms of the Loan Documents or any Permitted Refinancing of any of the foregoing Indebtedness (all of the foregoing items of Indebtedness, collectively, " Junior Financing") or make any payment in violation of any subordination terms of any Junior Financing Documentation that is subordinated to the Obligations, except, so long as no Default shall have occurred and be continuing or would result therefrom, (i) the refinancing thereof with the Net Cash Proceeds of Permitted Holdings Debt or any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if applicable, is permitted pursuant to Section 7.03(h)), to the extent not required to prepay any Loans or Facility pursuant to Section 2.06(b), (ii) the conversion of any Senior Notes or Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary to the extent permitted by the subordination provisions contained in the Intercompany Note, (iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Senior Notes and other Junior Financings prior to their scheduled maturity in an aggregate amount, together with the aggregate amount of (1) Restricted Payments made pursuant to Section 7.06(i) and (2) loans and advances to Holdings made pursuant to Section 7.02(m) in lieu of Restricted Payments permitted by Section 7.06(i), not to exceed $50,000,000, (v) prepayments, redemptions, purchases, defeasances and other payments in respect of the Senior Notes and other Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed the Cumulative Growth Amount immediately prior to the making of such payment and (vi) prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Holdings Debt and other Junior Financing incurred by Holdings with the Net Cash Proceeds of Permitted Equity Issuances by Holdings (to the extent any such proceeds are not otherwise contributed to (or required to be contributed to) the Borrower).

(b) Amend, modify or change (x) the subordination provisions of any Junior Financing Documentation (and the component definitions as used therein) or (y) any other term or condition of the Senior Notes Documentation or any other Junior Financing Documentation, in the case of this clause (y) in any manner materially adverse to the interests of the Lenders, in any such case without the consent of the Administrative Agent.

(c) Designate any Indebtedness (or related interest obligations) as "Designated Senior Debt" or any similar term (as defined in any Junior Financing Documentation that is subordinated to the Obligations), in each case, except for Obligations of the type described in clause (x) of the definition thereof.

(d) Amend, modify or waive any of its rights under (a) any Master Lease or (b) the nature of the obligations under any guaranty of recourse obligations or any environmental indemnity agreement executed and delivered in connection with the CMBS Facilities, in each case to the extent that such amendment, modification or waiver, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 7.14. Equity Interests of the Borrower and Restricted Subsidiaries . Permit any Domestic Subsidiary that is a Restricted Subsidiary to be (or become) a non-wholly owned Subsidiary, except (i) such non-wholly owned Domestic Subsidiaries existing on the Closing Date, (ii) as a result of or in connection with a dissolution, liquidation, merger, consolidation, or Disposition of a Restricted Subsidiary permitted by Section 7.04 or 7.05 or an Investment in any Person permitted under Section 7.02 or (iii) so long as such Restricted Subsidiary continues to be a Guarantor.

Section 7.15. Holding Company. In the case of Holdings, conduct, transact or otherwise engage in any business or operations other than those incidental to (i) its ownership of the Equity Interests of the Borrower and the Specified Lease Entities, (ii) the maintenance of its legal existence, (iii) the performance of the Loan Documents, the Merger Agreement and the other agreements contemplated by the Merger Agreement, (iv) any public offering of its common stock or any other issuance of its Equity Interests not prohibited by Article VII, (v) the entering into and performance of customary guaranty of recourse obligations and environmental indemnity agreements under the applicable CMBS Facilities Documentation and (vi) any transaction that Holdings is permitted to enter into or consummate under this Article VII.

Section 7.16. Capital Expenditures.

(a) Make any Capital Expenditure (i) except for Capital Expenditures not exceeding, in the aggregate for the Borrower and the Restricted Subsidiaries on a consolidated basis during each fiscal year set forth below, the amount set forth opposite such fiscal year:

Fiscal Year	**Amount**
2007	$ 235,000,000
2008	$ 200,000,000
2009	$ 210,000,000
2010	$ 240,000,000
2011	$ 250,000,000
2012	$ 250,000,000
2013	$ 250,000,000
2014	$ 250,000,000

; provided that the amount of Capital Expenditures permitted to be made in respect of any fiscal year shall be increased after the consummation of any Permitted Acquisition in an amount equal to 115% of the average annual capital expenditures of the Acquired Entity or Business so acquired during the fiscal year of such Acquired Entity or Business for the period of 36 consecutive months prior to such Permitted Acquisition (which increase, however, shall be pro rated for the fiscal year in which such Permitted Acquisition occurs).

(ii) In addition, so long as no Default shall have occurred and being continuing or would result therefrom, the Borrower and the Restricted Subsidiaries may make Capital Expenditures in an amount not to exceed the Cumulative Growth Amount immediately prior to the making of such Capital Expenditures.

(b) Notwithstanding anything to the contrary contained in clause (a) above, to the extent that the aggregate amount of Capital Expenditures made by the Borrower and the Restricted Subsidiaries in any fiscal year pursuant to Section 7.16(a)(i) is less than the maximum amount of Capital Expenditures permitted by Section 7.16(a)(i) with respect to such fiscal year, the amount of such difference (the " Rollover Amount") may be carried forward and used to make additional Capital Expenditures in the immediately succeeding fiscal year; provided that Capital Expenditures in any fiscal year shall be counted against the base amount set forth in Section 7.16(a) with respect to such fiscal year prior to being counted against any Rollover Amount available with respect to such fiscal year.

(c) Notwithstanding anything to the contrary contained in clause (a)(i) or (b) above, in the event that the Borrower and the Restricted Subsidiaries have made Capital Expenditures in any fiscal year of the Borrower pursuant to clauses (a)(i) and (b) above in an amount equal to the maximum aggregate amount permitted to be made by the Borrower and the Restricted Subsidiaries during such fiscal year and so long as no Default then exists or would result therefrom, the Borrower and the Restricted Subsidiaries may utilize up to 50% of the applicable permitted scheduled Capital Expenditure amount as set forth in clause (a)(i) above for the immediately succeeding fiscal year of the Borrower (the " Carry-Back Amount") to make additional Capital Expenditures in the then current fiscal year of the Borrower (which shall reduce the base amount of Capital Expenditures permitted to be made in such succeeding fiscal year pursuant to Section 7.16(a)(i) by the Carry-Back Amount so utilized).

(d) Notwithstanding anything to the contrary contained above in this Section 7.16, if on the last day of any fiscal year of the Borrower (after giving pro forma effect to any repayments and deposits actually made from True Cash Flow pursuant to Section 2.06(b)(v) as if such repayments and deposits had been made on such day) both (i) the Capital Expenditures Account is fully utilized with a zero balance on such date and (ii) the Rent Adjusted Leverage Ratio as of such date is greater than or equal to 5.25:1.00, then the aggregate amount of Capital Expenditures permitted to be made by the Borrower and the Restricted Subsidiaries in the succeeding fiscal year pursuant to Sections 7.16(a)(i) and (c) shall be limited to $100,000,000 until the earlier to occur of (x) the date on which no Pre-Funded RC Loans are outstanding and the amount on deposit in the Capital Expenditures Account is greater than zero and (y) the Rent Adjusted Leverage Ratio as of the last day of any Test Period thereafter is less than 5.25:1.00.

ARTICLE VIII

Events of Default and Remedies

Section 8.01. Events of Default. Any of the following shall constitute an Event of Default:

(a) *Non-Payment*. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants*. Holdings or the Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a), 6.05(a) (solely with respect to Holdings and the Borrower) or Article VII; provided that any Event of Default under Section 7.11 is subject to cure as contemplated by Section 8.05; or

(c) *Other Defaults*. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after notice thereof by the Administrative Agent to the Borrower; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default*. Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder), together with any other Indebtedness (other than Indebtedness hereunder) in respect of which such a payment default exists, having an aggregate principal amount for all such Indebtedness of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness having an aggregate principal amount for all such Indebtedness of not less than the Threshold Amount, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Agreements, termination events or equivalent events pursuant to the terms of such Swap Agreements), the effect of which default or other event is to cause, or to permit the holder or holders 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 or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any of the Restricted Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment*. (i) Any Loan Party or any Restricted Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts in excess of the Threshold Amount as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Loan Parties, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments*. There is entered against any Loan Party or any Restricted Subsidiary one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgments or orders shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *ERISA*. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect; or

(j) *Invalidity of Loan Documents*. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or any Lien on any material portion of the Collateral created thereby; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(k) *Change of Control*. There occurs any Change of Control; or

(l) *Collateral Documents*. (i) Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 shall for any reason (other than pursuant to the terms thereof including as a result of a transaction permitted under Section 7.04 or 7.05) cease to create a valid and perfected lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Permitted Liens, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage, or (ii) any of the Equity Interests of the Borrower ceasing to be pledged pursuant to the Security Agreement free of Liens other than Liens created by the Security Agreement or any nonconsensual Liens arising solely by operation of Law; or

(m) *Junior Financing Documentation*. (i) Any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in, any Junior Financing Documentation that is subordinated (or required to be subordinated) to the Obligations and having an aggregate principal amount (for all such Junior Financing Documentation) of not less than the Threshold Amount, (ii) the subordination provisions set forth in any Junior Financing Documentation shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any such Junior Financing having an aggregate principal amount (for all such Junior Financing Documentation) of not less than the Threshold Amount, if applicable or (iii) any Loan Party contests in writing the validity or enforceability of any subordination provision set forth in any Junior Financing Documentation; or

(n) *Termination of Master Lease.* Any Master Lease is terminated for any reason either (i) as to all or substantially all of the properties subject thereto as a result of which the Borrower or its Restricted Subsidiaries no longer have the right to use such properties or any similar substitute properties on substantially the same basis as immediately prior to such termination or (ii) the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 8.02. Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an Event of Default under Section 8.01(f) with respect to the Borrower, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03. Exclusion of Immaterial Subsidiaries. Solely for the purpose of determining whether a Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to include any Immaterial Subsidiary (it being agreed that all Immaterial Subsidiaries affected by any event or circumstance referred to in any such clause shall be considered together, as a single consolidated Immaterial Subsidiary, for purposes of determining whether the condition specified above is satisfied).

Section 8.04. Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to each of the Administrative Agent and the Collateral Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees (other than commitment fees, letter of credit fees and facility fees), indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid commitment fees, letter of credit fees, facilities fees and interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, the termination value under Secured Hedge Obligations and the Cash Management Obligations, ratably among the Lenders and the other Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Sixth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, to the Borrower.

Section 8.05. Borrower's Right to Cure. (a) Notwithstanding anything to the contrary contained in Section 8.01, (x) in the event of any Event of Default under any covenant set forth in Section 7.11 and until the expiration of the tenth (10th) day after the date on which financial statements are required to be delivered with respect to the applicable fiscal quarter hereunder, Holdings or the Borrower may engage in a Permitted Equity Issuance to any of the Equity Investors and apply the amount of the Net Cash Proceeds thereof to increase Consolidated EBITDA with respect to such applicable quarter; provided that such Net Cash Proceeds (i) are actually received by the Borrower (including through capital contribution of such Net Cash Proceeds by Holdings to the Borrower) no later than ten (10) days after the date on which financial statements are required to be delivered with respect to such fiscal quarter hereunder and (ii) do not exceed the aggregate amount necessary to cure such Event of Default under Section 7.11 for any applicable period, and (y) in the event of any Event of Default under Section 7.11(b) and until the expiration of the tenth (10th) day after the date on which financial statements are required to be delivered with respect to the applicable fiscal year hereunder, the Borrower may direct the Administrative Agent to withdraw amounts from the Capital Expenditures Account solely to cure such Event of Default and the amount of such withdrawal shall be treated as the receipt of cash proceeds from a Permitted Equity Issuance by the Borrower with respect to such applicable fiscal year (and not as an increase to Consolidated EBITDA with respect to such applicable fiscal year); provided that (i) such withdrawal does not exceed the aggregate amount necessary to cure such Event of Default under Section 7.11(b) for any applicable fiscal year and (ii) such funds are immediately applied to repay (and the Borrower hereby authorizes the Administrative Agent to repay) outstanding Term Loans. The parties hereby acknowledge that this Section 8.05(a) may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 7.11 and shall not result in any adjustment to any amounts other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

(b) Notwithstanding the provisions of Section 8.05(a), in each period of four consecutive fiscal quarters, there shall be at least two (2) fiscal quarters in which no cure set forth in Section 8.05(a) is made.

ARTICLE IX

Administrative Agent and Other Agents

Section 9.01. Appointment and Authorization of Agents. (a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such

action on its behalf under the provisions of this Agreement and each other Loan Document (which, for purposes of this Article IX, and for purposes of Sections 10.04 and 10.05, shall include the CMBS Intercreditor Agreement) and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to any 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each such L/C Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Agent" as used in this Article IX and in the definition of "Agent-Related Person" included such L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such L/C Issuer.

(c) The Administrative Agent shall also act as the " collateral agent" under the Loan Documents, and each of the Lenders (in its capacities as a Lender, Swing Line Lender (if applicable), L/C Issuer (if applicable) and a potential Hedge Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or on trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as " collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX (including, Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

(d) The Administrative Agent shall also act as the Pre-Funded RC Deposit Bank under this Agreement, and each of the Pre-Funded RC Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as Pre-Funded RC Deposit Bank for the purposes set forth in this Agreement. In this connection, the Administrative Agent, as "Pre-Funded RC Deposit Bank", shall be entitled to the benefits of all provisions of this Article IX (including, Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the " Pre-Funded RC Deposit Bank" under this Agreement) as if set forth in full herein with respect thereto.

Section 9.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, employees or attorneys-in-fact, such sub-agents as shall be deemed necessary by the Administrative Agent and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final judgment of a court of competent jurisdiction).

Section 9.03. Liability of Agents. No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

Section 9.04. Reliance by Agents. (a) Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by such Agent. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 4.01, 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 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders in accordance with Article VIII; provided that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.06. Credit Decision; Disclosure of Information by Agents . Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

Section 9.07. Indemnification of Agents. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction; provided that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower and without limiting the Borrower's obligation to do so. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

Section 9.08. Agents in their Individual Capacities. DBNY and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though DBNY were not the Administrative Agent, the Swing Line Lender, the Pre-funded RC Deposit Bank or an L/C Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, DBNY or its Affiliates may receive information regarding any Loan Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans, DBNY shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent, the Swing Line Lender, the Pre-Funded RC Deposit Bank or an L/C Issuer, and the terms "Lender" and "Lenders" include DBNY in its individual capacity.

Section 9.09. Successor Agents. The Administrative Agent may resign as the Administrative Agent upon thirty (30) days' notice to the Lenders and the Borrower. If the Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) or (g) (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor agent is appointed prior to the effective date of the resignation of the

Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Borrower, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent," shall mean such successor administrative agent and/or supplemental administrative agent, as the case may be, and the retiring Administrative Agent's appointment, powers and duties as the Administrative Agent shall be terminated. After the retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article IX and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement. If no successor agent has accepted appointment as the Administrative Agent by the date which is thirty (30) days following the retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (a) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (b) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, the Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After the retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article IX shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

Section 9.10. Administrative Agent May File Proofs of Claim . In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.03(h) and (i), 2.10 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Section 2.10 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.11. Collateral and Guaranty Matters. The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (x) obligations under Secured Hedge Agreements not yet due and payable, (y) Cash Management Obligations not yet due and payable and (z) contingent indemnification obligations not yet accrued and payable) and the expiration or termination of all Letters of Credit (or upon cash collateralization of all Letters of Credit in a manner and pursuant to arrangements reasonably satisfactory to the Administrative Agent or receipt of backstop letters of credit, in form and substance and from a financial institution, reasonably satisfactory to the Administrative Agent), (ii) at the time the property subject to such Lien is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Loan Document to any Person other than Holdings, the Borrower or any other Guarantor (whether as a Disposition or Investment), (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and

(c) that any Guarantor shall be automatically released from its obligations under the Guaranty if such Person ceases to be a Restricted Subsidiary as a result of a transaction or designation permitted hereunder (including as a result of a Guarantor being redesignated as an Unrestricted Subsidiary); provided that no such release shall occur if such Guarantor continues (after giving effect to the consummation of such transaction or designation) to be a guarantor in respect of the Senior Notes or any other Junior Financing.

Upon request by the Administrative Agent at any time, the Required Lenders (or such greater number of Lenders as may be required pursuant to Section 10.01) will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.11 In each case as specified in this Section 9.11, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.11

Section 9.12. Other Agents; Arrangers and Managers . None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent", "joint bookrunner" or "arranger" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. 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.

Section 9.13. Appointment of Supplemental Administrative Agents . (a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a " Supplemental Administrative Agent " and collectively as "Supplemental Administrative Agents ").

(b) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental

Administrative Agent, and (ii) the provisions of this Article 9 and of Section 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or such Supplemental Administrative Agent, as the context may require.

(c) Should any instrument in writing from the Borrower, Holdings or any other Loan Party be required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower or Holdings, as applicable, shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

ARTICLE X

Miscellaneous

Section 10.01. Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment, modification, supplement or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the other applicable Loan Party, as the case may be, and each such waiver, amendment, modification, supplement or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, modification, supplement, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.08 or 2.09 without the written consent of each Lender directly affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Term Loans or the Pre-Funded RC Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby, it being

understood that any change to the definition of Total Leverage Ratio, Rent Adjusted Leverage Ratio or in the component definitions of each thereof shall not constitute a reduction in the rate; provided that only the consent of the Required Lenders shall be necessary to amend the definition of " Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01, the definition of " Required Lenders" or "Pro Rata Share" or Section 2.07(c), 8.04 or 2.14 without the written consent of each Lender directly affected thereby;

(e) other than in connection with a transaction permitted under Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in connection with a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender; or

(g) except as expressly permitted by Section 7.04(d), consent to the assignment or transfer by Holdings or the Borrower of any of its rights or obligations under this Agreement or any other Loan Document;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of an L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; (iv) no amendment, waiver or consent shall, unless in writing and signed by the Pre-Funded RC Deposit Bank in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Pre-Funded RC Deposit Bank under this Agreement or any other Loan Document; (v) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; and (vi) the consent of Lenders holding more than 50% of any Class of Commitments shall be required with respect to any amendment that by its terms adversely affects the rights of such Class in respect of payments hereunder in a manner different than such amendment affects other Classes. Any such waiver and any such amendment, modification or supplement in accordance with the terms of this Section 10.01 shall apply equally to each of the Lenders and shall be binding on the Loan Parties, the Lenders, the Agents and all future holders of the Loans and Commitments. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders).

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans, the Working Capital RC Loans and the Pre-Funded RC Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, (a) this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans to permit the refinancing of all outstanding Term Loans (" Refinanced Term Loans") with a replacement term loan tranche denominated in Dollars (" Replacement Term Loans") hereunder; provided that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans, (b) the Applicable Rate for such Replacement Term Loans shall not be higher than the Applicable Rate for such Refinanced Term Loans, (c) the Weighted Average Life to Maturity of such Replacement Term Loans shall not be shorter than the Weighted Average Life to Maturity of such Refinanced Term Loans at the time of such refinancing (except to the extent of nominal amortization for periods where amortization has been eliminated as a result of prepayment of the applicable Term Loans) and (d) all other terms applicable to such Replacement Term Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Term Loans than, those applicable to such Refinanced Term Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of the Term Loans in effect immediately prior to such refinancing, and (b) this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Pre-Funded RC Loans to permit the refinancing of all outstanding Pre-Funded RC Loans ("Refinanced Pre-Funded RC Loans") with a replacement pre-funded revolving credit loan tranche denominated in Dollars (" Replacement Pre-Funded RC Loans") hereunder; provided that (a) the aggregate principal amount of such Replacement Pre-Funded RC Loans shall not exceed the aggregate principal amount of such Refinanced Pre-Funded RC Loans and the aggregate unused Pre-Funded RC Commitments at such time, (b) the Applicable Rate for such Replacement Pre-Funded RC Loans and facility fee in respect thereof shall not be higher than the Applicable Rate for such Refinanced Pre-Funded RC Loans and facility fee in respect thereof, (c) the Weighted Average Life to Maturity of such Replacement Pre-Funded RC Loans shall not be shorter than the Weighted Average Life to Maturity of such Refinanced Pre-Funded RC Loans at the time of such refinancing and (d) all other terms applicable to such Replacement Pre-Funded RC Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Pre-Funded RC Loans than, those applicable to such Refinanced Pre-Funded RC Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of the Pre-Funded RC Loans in effect immediately prior to such refinancing.

Section 10.02. Notices and Other Communications; Facsimile Copies . (a) *General*. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent, an L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower, the Administrative Agent, the L/C Issuers, the Pre-Funded RC Deposit Bank and the Swing Line Lender.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 10.02(c)), when delivered; provided that notices and other communications to the Administrative Agent, the L/C Issuers, the Pre-Funded RC Deposit Bank and the Swing Line Lender pursuant to Article II shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) *Effectiveness of Facsimile Documents and Signatures* . Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Agents and the Lenders.

(c) *Reliance by Agents and Lenders*. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices, Swing Line Loan Notices and Requests for Release of Capital Expenditure Funds) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct. All telephonic notices to the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 10.04. Attorney Costs, Expenses and Taxes. The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Syndication Agent, each Co-Documentation Agent and the Arrangers for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of White & Case LLP, and (b) to pay or reimburse the Administrative Agent, the Syndication Agent, each Co-Documentation Agent, the Arrangers and each Lender for all out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of counsel (including local counsel in each relevant jurisdiction) to the Administrative Agent and all Attorney Costs of one joint counsel to the Lenders as a group (except to the extent that the use of joint counsel for the Lenders as a group could reasonably be expected to give rise to any conflict of interest for any such counsel or any Lender shall have determined that it may have legal defenses available to it that are different from, additional to or in conflict with those available to any other Lender in which case the affected Lenders may have separate counsel)). The foregoing costs and expenses shall include all reasonable search, filing, recording and title insurance charges and fees and taxes related thereto, and other (reasonable, in the case of Section 10.04(a)) out-of-pocket expenses incurred by any Agent. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

Section 10.05. Indemnification by the Borrower. Whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents, trustees, investment advisors and attorneys-in-fact (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including

Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an L/C Issuer 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), or (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower, any Subsidiary or any other Loan Party, or any Environmental Liability related in any way to the Borrower, any Subsidiary or any other Loan Party, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from the gross negligence or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee as determined by a court of competent jurisdiction in a final and non-appealable decision. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within ten (10) Business Days after demand therefor; provided, however, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification or contribution rights with respect to such payment pursuant to the express terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

Section 10.06. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion)

to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

Section 10.07. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Holdings nor the Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as expressly permitted by Section 7.04(d)) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) and (i) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto 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 Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than to Disqualified Institutions) ("Assignees") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing, any Assignee;

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment (i) of all or any portion of a Term Loan or a Pre-Funded RC Loan to a Lender, an Affiliate of a Lender or an Approved Fund or (ii) to an Agent or an Affiliate of an Agent;

(C) each Principal L/C Issuer at the time of such assignment, provided that no consent of the Principal L/C Issuers shall be required for any assignment of a Term Loan or a Pre-Funded RC Loan or any assignment to an Agent or an Affiliate of an Agent; and

(D) the Swing Line Lender; provided that no consent of the Swing Line Lender shall be required for any assignment of a Term Loan or a Pre-Funded RC Loan or any assignment to an Agent or an Affiliate of an Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 (in the case of the Working Capital RC Facility), or $1,000,000 (in the case of the Pre-Funded RC Facility and in the case of a Term Loan) unless each of the Borrower and the Administrative Agent otherwise consents, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) 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, unless waived or reduced by the Administrative Agent in its sole discretion, provided that only one such fee shall be payable in the event of simultaneous assignments from any Lender or its Approved Funds to one or more other Approved Funds; and

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, the Eligible 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 Section 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) 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 Section 10.07(e). Without the consent of the Pre-Funded RC Deposit Bank, the Pre-Funded RC Deposit funded by any Pre-Funded RC Lender shall not be released in connection with any assignment of its Pre-Funded RC Commitment, but shall instead be purchased by the relevant assignee and continue to be held for application (if not already applied) pursuant to Section 2.05 in respect of such assignee's obligations under the Pre-Funded RC Commitment assigned to it.

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office 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 related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and amounts due under Section 2.03, 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 Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) 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) (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 Loans (including such Lender's participations in L/C Obligations and/or Swing Line 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 Agents, the Pre-Funded RC Deposit Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that directly affects such Participant. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Section 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(c) but shall not be entitled to recover greater amounts under such Sections than the selling Lender would be entitled to recover. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.14 as though it were a Lender.

(f) Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 10.15 as though it were a Lender.

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) 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.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a " Granting Lender") may, without the consent of the Borrower or the Administrative Agent, grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, (1) any Lender may, without the consent of the Borrower or the Administrative Agent, in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may, without the consent of the Borrower or the Administrative Agent, create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; provided that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, any L/C Issuer, the Swing Line Lender or the Pre-Funded RC Deposit Bank may, upon thirty (30) days' notice to the Borrower and the Lenders, resign as an L/C Issuer, the Swing Line Lender or the Pre-Funded RC Deposit Bank, respectively; provided that on or prior to the expiration of such 30-day period with respect to such resignation, the relevant L/C Issuer, the Swing Line Lender or the Pre-Funded RC Deposit Bank shall have identified a successor L/C Issuer, Swing Line

Lender or Pre-Funded RC Deposit Bank reasonably acceptable to the Borrower willing to accept its appointment as successor L/C Issuer, Swing Line Lender or Pre-Funded RC Deposit Bank, as applicable. In the event of any such resignation of an L/C Issuer, the Swing Line Lender or the Pre-Funded RC Deposit Bank, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor L/C Issuer, Swing Line Lender or Pre-Funded RC Deposit Bank hereunder; provided that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant L/C Issuer, the Swing Line Lender or the Pre-Funded RC Deposit Bank, as the case may be, except as expressly provided above. If an L/C Issuer resigns as an L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

Section 10.08. Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' directors, officers, employees, trustees, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions substantially the same as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any pledgee referred to in Section 10.07(g), counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08; (h) to any Governmental Authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender or its Affiliates; or (i) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender). In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments and the Credit Extensions. For the purposes of this Section 10.08, " Information" means all information received from any Loan Party relating to any Loan Party or its business, other than any such information that is publicly available to any Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08; provided that, in the case of information received from a Loan Party after the date hereof, such information is clearly identified at the time of delivery as confidential or (ii) is delivered pursuant to Section 6.01, Section 6.02 or 6.03.

Section 10.09. Setoff. (a) In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Agent, each Lender and their respective Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party) 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) at any time held by, and other Indebtedness at any time owing by, such Agent, such Lender and/or such Affiliates to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Agent, such Lender and/or such Affiliates hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that such Agent and such Lender may have.

(b) NOTWITHSTANDING THE FOREGOING SUBSECTION (a), AT ANY TIME THAT THE LOANS OR ANY OTHER OBLIGATION SHALL BE SECURED BY REAL PROPERTY LOCATED IN CALIFORNIA, NO LENDER OR AGENT SHALL EXERCISE A RIGHT OF SETOFF, LIEN OR COUNTERCLAIM OR TAKE ANY COURT OR ADMINISTRATIVE ACTION OR INSTITUTE ANY PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR ANY NOTE UNLESS IT IS TAKEN WITH THE CONSENT OF THE REQUIRED LENDERS OR, TO THE EXTENT REQUIRED BY Section 10.01 OF THIS AGREEMENT, ALL OF THE LENDERS, OR APPROVED IN WRITING BY THE ADMINISTRATIVE AGENT, IF SUCH SETOFF OR ACTION OR PROCEEDING WOULD OR MIGHT (PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 580a, 580b, 580d AND 726 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR SECTION 2924 OF THE CALIFORNIA CIVIL CODE, IF APPLICABLE, OR OTHERWISE) AFFECT OR IMPAIR THE VALIDITY, PRIORITY, OR ENFORCEABILITY OF THE LIENS GRANTED TO THE COLLATERAL AGENT PURSUANT TO THE COLLATERAL DOCUMENTS OR THE ENFORCEABILITY OF THE NOTES AND OTHER OBLIGATIONS HEREUNDER, AND ANY ATTEMPTED EXERCISE BY ANY LENDER OR ANY AGENT OF ANY SUCH RIGHT WITHOUT OBTAINING SUCH CONSENT OF THE REQUIRED LENDERS OR THE ADMINISTRATIVE AGENT SHALL BE NULL AND VOID. THIS SUBSECTION (b) SHALL BE SOLELY FOR THE BENEFIT OF EACH OF THE LENDERS AND THE ADMINISTRATIVE AGENT HEREUNDER.

Section 10.10. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the " Maximum Rate"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the

interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11. Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier.

Section 10.12. Integration. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.13. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied (other than Obligations under Secured Hedge Agreements, Cash Management Obligations or contingent indemnification obligations, in any such case, not then due and payable) or any Letter of Credit shall remain outstanding.

Section 10.14. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.15. Tax Forms. (a) Each Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "Foreign Lender") agrees to complete

and to deliver to the Borrower, prior to the date on which the first payment to the Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, two copies of (i) an Internal Revenue Service Form W-8BEN certifying that it is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest or (ii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States or (iii) if the Lender is not a bank described in Section 881(c)(3)(A) of the Code an accurate and complete original signed copy of Internal Revenue Service Form W-8BEN, certifying that the Lender is not a United States person, together with a statement certifying that such Lender is not a bank described in Section 881(c)(3)(A) of the Code, as appropriate. The Lender further agrees to complete and to deliver to the Borrower from time to time, so long as it is eligible to do so, two copies of any successor or additional form required by the Internal Revenue service or reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, U.S. withholding tax.

(b) (i) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Foreign Lender under any of the Loan Documents (for example, in the case of a typical participation by such Foreign Lender), shall deliver to the Borrower and the Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of the Borrower or the Administrative Agent (in either case, in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Foreign Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Foreign Lender acts for its own account that is not subject to United States withholding tax, and (B) two duly signed completed copies of IRS Form W 8IMY (or any successor thereto), together with any information such Foreign Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Foreign Lender is not acting for its own account with respect to a portion of any such sums payable to such Foreign Lender.

(c) Each Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "U.S. Lender") agrees to deliver to the Borrower a duly completed and executed copy of Internal Revenue Service Form W-9 or successor form establishing that such U.S. Lender is a United States person that is not subject to U.S. backup withholding tax.

(d) The Borrower shall not be required to pay any additional amount or any indemnity payment under Section 3.01 to (A) any Foreign Lender to the extent Taxes would not have been imposed but for the failure of such Foreign Lender to satisfy the provisions of Section 10.15(a) or (b) as applicable, or (B) any U.S. Lender to the extent would not have been imposed but for the failure of such U.S. Lender to satisfy the provisions of Section 10.15(c); provided that (i) if such Lender shall have satisfied the requirement of Section 10.15(a), (b) or (c), as applicable, on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents, nothing in this Section 10.15 shall relieve the Borrower of its obligation to pay any amounts pursuant to Section 3.01 in the event that, as a result of any change in any applicable Law, treaty or governmental rule,

regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other Person for the account of which such Lender receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate and (ii) nothing in this Section 10.15 shall relieve the Borrower of its obligation to pay any amounts pursuant to Section 3.01 in the event that the requirements of 10.15(a)(ii) have not been satisfied if the Borrower is entitled, under applicable Law, to rely on any applicable forms and statements required to be provided under this Section 10.15 by the Foreign Lender that does not act or has ceased to act for its own account under any of the Loan Documents, including in the case of a typical participation.

Section 10.16. GOVERNING LAW. (a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER, HOLDINGS, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE BORROWER, HOLDINGS, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO.

Section 10.17. WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS Section 10.17 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.18. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and Holdings and the Administrative Agent shall have been notified by each Lender, each L/C Issuer, the Swing Line Lender and the Pre-Funded RC Deposit Bank that each such Lender, each such L/C Issuer, the Swing Line Lender and the Pre-Funded RC Deposit Bank has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender, each L/C Issuer, the Swing Line Lender and the Pre-Funded RC Deposit Bank and their respective successors and assigns, except that neither Holdings nor the Borrower shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders, except for the Borrower as permitted by Section 7.04(d).

Section 10.19. Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents or the Secured Hedge Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.20. USA PATRIOT Act. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender to identify the Loan Parties in accordance with the Act.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

OSI RESTAURANT PARTNERS, LLC,
as the Borrower

By: /s/ Dirk A. Montgomery
Name: Dirk A. Montgomery
Title: Chief Financial Officer and
Senior Vice President

OSI HOLDCO, INC.,
as Holdings and a Guarantor

By: /s/ Andrew Balson
Name:
Title:

DEUTSCHE BANK AG NEW YORK BRANCH ,
Individually and as Administrative Agent, L/C Issuer, Swing Line Lender and Pre-Funded RC Deposit Bank

By: /s/ Scottye Lindsey
Name: Scottye Lindsey
Title: Director

By: /s/ Evelyn Thierry
Name: Evelyn Thierry
Title: Vice President

BANK OF AMERICA, N.A.

By: /s/ Bradford Jones
Name: Bradford Jones
Title: Managing Director

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NEWYORK 5862090 v26 (2K)

EXHIBIT A

[FORM OF]

COMMITTED LOAN NOTICE

To: Deutsche Bank AG New York Branch, as Administrative Agent

100 Plaza One, 8th Floor

Jersey City, NJ 07311

Attention: James Cullenl

[Date]

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated as of June 14, 2007 (as amended, supplemented, restated and/or otherwise modified from time to time, the "Credit Agreement"), among OSI Restaurant Partners, LLC (the "Borrower"), OSI Holdco, Inc., the lenders from time to time party thereto (the "Lenders"), Deutsche Bank AG New York Branch, as Administrative Agent (in such capacity, the "Administrative Agent"), Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The undersigned Borrower hereby requests (select one):

- A Borrowing of new Loans

- A conversion of Loans

- A continuation of Loans

to be made on the terms set forth below:

(A) Class of Borrowing[2] _____

(B) Date of Borrowing,
conversion or continuation
(which is a Business Day) _____

(C) Principal amount _____

(D) Type of Loan [3] _____

1 For Pre-Funded RC Loans Notices, with a copy to: Deutsche Bank AG New York Branch, 60 Wall Street, MS

NYC60-0208, New York, NY 10005, Attention: Scottye Lindsey.

2 Term Loans, Working Capital RC Loans or Pre-Funded RC Loans.

(E) Interest Period[4] _____

The above request has been made to the Administrative Agent by telephone at [(___) ____ ____].

3 Specify Eurocurrency or Base Rate.

4 Applicable for Eurocurrency Borrowings/Loans only.

[The Borrower hereby represents and warrants to the Administrative Agent and the

Lenders that, on the date of this Committed Loan Notice and on the date of the related

Borrowing, [(i)] the conditions to lending specified in paragraphs (a) and (b) of Section 4.02 of

the Credit Agreement have been satisfied [and (ii) the conditions to the lending specified in paragraph (d) of Section 4.02 of the Credit Agreement have been satisfied and the proceeds of the Pre-Funded RC Loans requested hereby are to be utilized for Capital Expenditures only].] [5]

OSI RESTAURANT PARTNERS, LLC

By:
Name:
Title:

5 Insert bracketed language if the Borrower is requesting a Borrowing of new Loans.

EXHIBIT B

[FORM OF]

SWING LINE LOAN NOTICE

To: Deutsche Bank AG New York Branch,

as Swing Line Lender and Administrative Agent 100 Plaza One, 8th Floor
Jersey City, NJ 07311
Attention: James Cullen

[Date]

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated as of June 14, 2007 (as amended, supplemented, restated and/or otherwise modified from time to time, the "Credit Agreement"), among OSI Restaurant Partners, LLC (the "Borrower"), OSI Holdco, Inc., the lenders from time to time party thereto (the "Lenders"), Deutsche Bank AG New York Branch, as Administrative Agent (in such capacity, the "Administrative Agent"), Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The undersigned Borrower hereby gives you notice pursuant to Section 2.04(b) of the Credit Agreement that it requests a Swing Line Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Swing Line Borrowing is requested to be made:

(A) Principal Amount to be Borrowed' _____

(B) Date of Borrowing (which is a Business Day) _____

The above request has been made to the Swing Line Lender and Administrative Agent by telephone at [(__) _-_____].

The undersigned Borrower hereby represents and warrants to the Administrative Agent and the Lenders that, on the date of this Swing Line Loan Notice and on the date of the related Swing Line Borrowing, the conditions to lending specified in paragraphs (a) and (b) of

Section 4.02 of the Credit Agreement have been satisfied.

' Shall be a minimum of $100,000.

OSI RESTAURANT PARTNERS, LLC

By: _____
Name:
Title:

EXHIBIT C-1

LENDER: [•]

PRINCIPAL AMOUNT: $[•]

[FORM OF] TERM NOTE

New York, New York

[Date]

FOR VALUE RECEIVED, the undersigned, OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the Lender set forth above (the "Lender") or its registered assigns, in lawful money of the United States of America in immediately available funds at the Administrative Agent's Office (such term, and each other capitalized term used but not defined herein, having the meaning assigned to it in the Credit Agreement dated as of June 14, 2007 (as the same may be amended, supplemented, restated and/or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, OSI Holdco, Inc., the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, (i) on the dates set forth in the Credit Agreement, the principal amounts set forth in the Credit Agreement with respect to Term Loans made by the Lender to the Borrower pursuant to the Credit Agreement and (ii) on each Interest Payment Date, interest at the rate or rates per annum as provided in the Credit Agreement on the unpaid principal amount of all Term Loans made by the Lender to the Borrower pursuant to the Credit Agreement.

The Borrower promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at the rate or rates provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The nonexercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; provided, however, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this note.

This note is one of the Term Notes referred to in the Credit Agreement that,

among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior

to the maturity hereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

OSI RESTAURANT PARTNERS, LLC

By: _____

Name:

Title:

Exhibit C- 1

LENDER: [•]

PRINCIPAL AMOUNT: $[•]

LOANS AND PAYMENTS

Date	Amount of Loan	Maturity, Date	Payments of Principal/Interest	Principal Balance of Note	Name of Person Making the Notation

NEWYORK 5896443 (2K)

EXHIBIT C-2

LENDER: [•]
PRINCIPAL AMOUNT: $[•]

[FORM OF] WORKING CAPITAL RC NOTE

New York, New York
[Date]

FOR VALUE RECEIVED, the undersigned, OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the Lender set forth above (the "Lender") or its registered assigns, in lawful money of the United States of America in immediately available funds at the Administrative Agent's Office (such term, and each other capitalized term used but not defined herein, having the meaning assigned to it in the Credit Agreement dated as of June 14, 2007 (as amended, supplemented, restated and/or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, OSI Holdco, Inc., the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, (A) on the dates set forth in the Credit Agreement, the lesser of (i) the principal amount set forth above and (ii) the aggregate unpaid principal amount of all Working Capital RC Loans made by the Lender to the Borrower pursuant to the Credit Agreement, and (B) interest from the date hereof on the principal amount from time to time outstanding on each such Working Capital RC Loan at the rate or rates per annum and payable on such dates as provided in the Credit Agreement.

The Borrower promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at a rate or rates provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The nonexercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this note and all payments and prepayments of the

principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; provided, however, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this note.

This note is one of the promissory notes referred to in the Credit Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior

to the maturity hereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

OSI RESTAURANT PARTNERS, LLC

By: _____
Name:
Title:

LOANS AND PAYMENTS

Date	Amount of Loan	Maturity, Date	Payments of Principal/Interest	Principal Balance of Note	Name of Person Making the Notation

EXHIBIT C-3

LENDER: [•]

PRINCIPAL AMOUNT: $[•]

[FORM OF] SWING LINE NOTE

New York, New York

[Date]

FOR VALUE RECEIVED, the undersigned, OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the Lender set forth above (the "Lender") or its registered assigns, in lawful money of the United States of America in immediately available funds at the Administrative Agent's Office (such term, and each other capitalized term used but not defined herein, having the meaning assigned to it in the Credit Agreement dated as of June 14, 2007 (as amended, supplemented, restated and/or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, OSI Holdco, Inc., the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, (A) on the dates set forth in the Credit Agreement, the lesser of (i) the principal amount set forth above and (ii) the aggregate unpaid principal amount of all Swing Line Loans made by the Lender to the Borrower pursuant to the Credit Agreement, and (B) interest from the date hereof on the principal amount from time to time outstanding on each such Swing Line Loan at the rate or rates per annum and payable on such dates as provided in the Credit Agreement.

The Borrower promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at a rate or rates provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The nonexercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in

its internal records; provided, however, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this note.

This note is one of the promissory notes referred to in the Credit Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior

to the maturity hereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

OSI RESTAURANT PARTNERS, LLC

By: _____

Name:

Title:

LOANS AND PAYMENTS

Date	Amount of Loan	Maturity, Date	Payments of Principal/Interest	Balance of Note	Name of Person Making the Notation

EXHIBIT C-4

LENDER: [•]

PRINCIPAL AMOUNT: $[•]

[FORM OF] PRE-FUNDED RC NOTE

New York, New York

[Date]

FOR VALUE RECEIVED, the undersigned, OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the Lender set forth above (the "Lender") or its registered assigns, in lawful money of the United States of America in immediately available funds at the Administrative Agent's Office (such term, and each other capitalized term used but not defined herein, having the meaning assigned to it in the Credit Agreement dated as of June 14, 2007 (as amended, supplemented, restated and/or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, OSI Holdco, Inc., the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, (A) on the dates set forth in the Credit Agreement, the lesser of (i) the principal amount set forth above and (ii) the aggregate unpaid principal amount of all Pre-Funded RC Loans made by the Lender to the Borrower pursuant to the Credit Agreement, and (B) interest from the date hereof on the principal amount from time to time outstanding on each such Pre-Funded RC Loan at the rate or rates per annum and payable on such dates as provided in the Credit Agreement.

The Borrower promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at a rate or rates provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The nonexercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in

its internal records; provided, however, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this note.

This note is one of the promissory notes referred to in the Credit Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior

to the maturity hereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

OSI RESTAURANT PARTNERS, LLC

By: _____

Name:

Title:

LOANS AND PAYMENTS

Date	Amount of Loan	Maturity, Date	Payments of Principal/Interest	Balance of Note	Name of Person Making the Notation

NEWYORK 5898665 (2K)

Exhibit D

[FORM OF]

COMPLIANCE CERTIFICATE

Reference is made to the Credit Agreement dated as of June 14, 2007 (as amended, supplemented, waived, restated and/or otherwise modified from time to time, the "Credit Agreement"), among OSI Restaurant Partners, LLC, OSI HoldCo, Inc., the lenders from time to time party thereto (the " Lenders"), Deutsche Bank AG New York Branch, as Administrative Agent (in such capacity, the "Administrative Agent"), Pre--Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperative Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents (capitalized terms used herein have the meanings attributed thereto in the Credit Agreement unless otherwise defined herein). Pursuant to Section 6.02(b) of the Credit Agreement, the undersigned, in his/her capacity as a Responsible Officer of the Borrower, certifies as follows:

1, [Attached hereto as Exhibit [A] is the audited consolidated balance sheet of the Borrower and its Subsidiaries as of December 31, 20[ ] and related consolidated statements of income or operations, stockholders' equity and cash flows for the fiscal year then ended, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of [_____], prepared in accordance with generally accepted auditing standards in the United States and not subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit.]

2. [Attached hereto as Exhibit [B] is the consolidated balance sheet of the Borrower and its Subsidiaries as of [_____] and the related (i) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail. These present fairly in all material respects the financial condition, results of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.]

3. To my knowledge, except as otherwise disclosed to the Administrative Agent in writing pursuant to the Credit Agreement, at no time during the period between [_____] and [_____] (the "Certificate Period") did a Default or an Event of Default exist. [If unable to provide the foregoing certification, fully describe the reasons therefor and circumstances thereof and any action taken or proposed to be taken with respect thereto (including the delivery of a "Notice of Intent to Cure" concurrently with delivery of this Compliance Certificate) on Annex A attached hereto.]

4. The following represent true and accurate calculations, as of the last day of the Certificate Period, to be used to determine whether the Borrower is in compliance with the covenants set forth in Section 7.11 of the Credit Agreement:

(i) Total Leverage Ratio.

Consolidated Total Debt=	[ ]
Consolidated EBITDA=	[ ]
Actual Ratio=	[ ] to 1.0
Required Ratio=	[ ] to 1.0

[(ii) Minimum Free Cash Flow.

Consolidated Total Debt=	[ ]
Consolidated Lease Expense=	[ ]
Consolidated Lease Expense multiplied by 8	[ ]
Consolidated EBITDA=	[ ]
Rent Adjusted Leverage Ratio=	[ ] to 1.0
Actual Minimum Free Cash Flow=	[ ]
Required Minimum Free Cash Flow=	[ ] [1]2

Supporting detail showing the calculation of Consolidated Total Debt is attached hereto as Schedule 1. Supporting detail showing the

calculation of Consolidated EBITDA is attached hereto as Schedule 2. [Supporting detail showing the calculation of Consolidated Lease Expense is attached hereto as Schedule 3. Supporting detail showing the calculation of Minimum Free Cash Flow is attached hereto as Schedule 4.][3]

5. The Borrower and its Restricted Subsidiaries are in compliance with Section 7.16 of the Credit Agreement. For the current fiscal year, the limit on Capital Expenditures pursuant to Sections 7.16(a)(i) and 7.16(b) of the Credit Agreement is $[___], which amount includes $[_____] of unused amounts carried forward from previous fiscal years pursuant to Section 7.16(b) of the Credit Agreement and reflects any adjustments required to be made as a result of Capital Expenditures made pursuant to Section 7.16(c) of the Credit Agreement. The amount of such Capital Expenditures incurred by the Borrower and the Restricted Subsidiaries in the current fiscal year through the end of the fiscal quarter most recently ended is $[_____]. In addition, the Borrower and the Restricted Subsidiaries have made additional Capital Expenditures in the current fiscal year through the end of the fiscal quarter most recently ended pursuant to Section 7.16(c) of the Credit Agreement in the amount of $[_____] The calculation of the foregoing amounts is set out in reasonable detail in Schedule 5 attached hereto.

_____

[1]Insert N/A if Rent Adjusted Leverage Ratio is less than 5.25:1.00.

[2]Insert only for Compliance Certificates delivered in respect of a Test Period ending on December 31 of each fiscalyear of the Borrower.

[3]Insert only for Compliance Certificates delivered in respect of a Test Period ending on December 31 of each fiscal year of the Borrower.

IN WITNESS WHEREOF, the undersigned, in his/her capacity as a Responsible Officer of the Borrower, has executed this certificate for and on behalf of the Borrower and has caused this certificate to be delivered this _____ day of _____, 200__.

OSI RESTAURANT PARTNERS, LLC

By: _____
Name:
Title:

EXHIBIT E

[FORM OF]

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between the Assignor (as defined below) and the Assignee (as defined below). Capitalized terms used in this Assignment and Assumption and not otherwise defined herein have the meanings specified in the Credit Agreement, dated as of June 14, 2007 (as amended, supplemented, restated and/or otherwise modified from time to time, the "Credit Agreement"), among OSI Restaurant Partners, LLC, OSI Holdco, Inc., the lenders from time to time party thereto (the "Lenders"), Deutsche Bank AG New York Branch, as Administrative Agent (in such capacity, the "Administrative Agent"), Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below (including participations in any Letters of Credit or Swing Line Loans included in such facility) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory

claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the " Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor (the "Assignor"):
2. Assignee (the "Assignee"):

Assignee is an Affiliate of. [Name of Lender]

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Assignee is an Approved Fund of. [Name of Lender]

3. Borrower:

4. Administrative Agent:

5. Assigned Interest:

Facility		Aggregate Amount of Commitment/Loans of all Lenders		Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/ Loans'
Working Capital RC Facility	$		$		%
Pre-Funded RC Facility	$		$		%
Term Loans	$		$		%
	$		$		%

Date:

1 Set forth, to at least 8 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

The terms set forth in this Assignment and Assumption are hereby agreed to:

[NAME OF ASSIGNOR], as Assignor

By: _____

Name:

Title:

[NAME OF ASSIGNEE], as Assignee

By: _____

Name:

Title:

[Consented to and][2] Accepted:

DEUTSCHE BANK AG NEW YORK BRANCH

as Administrative Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

[Consented to:

[PRINCIPAL L/C ISSUER], as L/C Issuer

By: _____

Name:

Title:

By: _____

Name:

Title:

DEUTSCHE BANK AG NEW YORK BRANCH, as Swing Line Lender

By: _____

Name:

Title:

By: _____

Name:

Title:]][3]

2 No consent of the Administrative Agent shall be required for (i) an assignment to an Agent or an Affiliate of an

Agent or (ii) an assignment of a Term Loan or a Pre-Funded RC Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

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OSI RESTAURANT PARTNERS, LLC

By: _____

Name:

Title:][4]

3 No consent of any Principal L/C Issuer or the Swing Line Lender shall be required for (i) an assignment to an Agent or an Affiliate of an Agent or (ii) an assignment of a Term Loan or a Pre-Funded RC Loan.

4 No consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default under Section 8.01(a), (f) or (g) of the Credit Agreement has occurred and is continuing, any other assignee.

ANNEX 1

CREDIT AGREEMENT'

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, (iii) the financial condition of Holdings, the Borrower or any of their Subsidiaries or Affiliates or any other Person obligated in respect of the Credit Agreement or (iv) the performance or observance by Holdings, the Borrower or any of their Subsidiaries or Affiliates or any other Person of any of their obligations under the Credit Agreement.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on any Agent or any other Lender, and (v) if it is a Foreign Lender, attached to this Assignment and Assumption is any documentation required to be delivered by it pursuant to Section 10.15 of the Credit Agreement, duly completed and executed by the Assignee; and

(b) agrees that (i) it will, independently and without reliance on the Assignor, any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall

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Capitalized terms used in this Assignment and Assumption and not otherwise defined herein have the meanings specified in the Credit Agreement dated of June 14, 2007 (as amended, supplemented or otherwise modified from time to time, the " Credit Agreement"), among OSI Restaurant Partners, LLC, OSI Holdco, Inc., the lenders from time to time party thereto (the " Lenders"), Deutsche Bank AG New York Branch, as Administrative Agent (in such capacity, the "Administrative Agent"), Pre-Funded RC Deposit Bank, Swing Line Lender and an LJC Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale RaiffeisenBoerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents.

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make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be construed in accordance with and governed by the law of the State of New York.

Exhibit F

[FORM OF]

GUARANTEE AGREEMENT

dated as of

June 14, 2007,

among
OSI RESTAURANT PARTNERS, LLC,
OSI HOLDCO, INC.,

THE SUBSIDIARIES OF OSI RESTAURANT PARTNERS, LLC

IDENTIFIED HEREIN

and

DEUTSCHE BANK AG NEW YORK BRANCH,

as Administrative Agent

Table of Contents

GUARANTEE AGREEMENT dated as of June 14, 2007 among OSI RESTAURANT PARTNERS, LLC (the "Borrower"), OSI HOLDCO, INC. ("Holdings"), the Subsidiaries of the Borrower identified herein and DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent.

Reference is made to the Credit Agreement dated as of June 14, 2007 (as amended, restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Holdings, each Lender from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents.

The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement, the Hedge Banks have agreed to enter into and/or maintain one or more Secured Hedge Agreements on the terms and conditions set forth therein and the Cash Management Banks have agreed to provide and/or maintain Cash Management Services on the terms and conditions agreed upon by the Borrower or the respective Restricted Subsidiary and such Cash Management Bank. The obligations of the Lenders to extend such credit, the obligation of the Hedge Banks to enter into and/or maintain such Secured Hedge Agreements and the obligation of the Cash Management Banks to provide and/or maintain Cash Management Services are, in each case, conditioned upon, among other things, the execution and delivery of this Agreement by each Guarantor. Holdings, the Borrower and the Subsidiary Parties are affiliates of one another, are an integral part of a consolidated enterprise and will derive substantial direct and indirect benefits from (i) the extensions of credit to the Borrower pursuant to the Credit Agreement, (ii) the entering into and/or maintaining by the Hedge Banks of Secured Hedge Agreements with the Borrower and/or one or more of its Restricted Subsidiaries and (iii) the providing and/or maintaining of Cash Management Services by the Cash Management Banks to the Borrower and/or one or more of its Restricted Subsidiaries, and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit, the Hedge Banks to enter into and/or maintain such Secured Hedge Agreements and the Cash Management Banks to provide and/or maintain such Cash Management Services.

Accordingly, in consideration of the foregoing and other benefits accruing to each Guarantor, the receipt and sufficiency of which are hereby acknowledged, each Guarantor hereby makes the following representations and warranties to the Administrative Agent for the benefit of the Secured Parties and hereby covenants and agrees with each other Guarantor and the Administrative Agent for the benefit of the Secured Parties as follows:

ARTICLE 1

Definitions

Section 1.01. Credit Agreement. (a)Capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Credit Agreement.

(b) The rules of construction specified in Article I of the Credit Agreement also apply to this Agreement.

Section 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Agreement" means this Guarantee Agreement.

"Credit Agreement" has the meaning assigned to such term in the preliminary statement of this Agreement.

"Guarantee Agreement Supplement" means an instrument substantially in the form of Exhibit I hereto.

"Guaranteed Obligations" mean the "Obligations" as defined in the Credit Agreement.

"Guaranteed Party" means Holdings, the Borrower, each Subsidiary Guarantor and each Restricted Subsidiary of the Borrower party to any Secured Hedge Agreement.

"Guarantor " means each of Holdings, the Borrower and each Subsidiary Party.

"Secured Credit Document" shall mean each Loan Document, each Secured Hedge Agreement and any agreement evidencing any Cash Management Obligation.

"Secured Parties" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Hedge Banks, the Cash Management Banks, the Pre-Funded RC Deposit Bank, the Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(c) or Section 9.01(d) of the Credit Agreement.

"Subsidiary Parties" means (a) the Restricted Subsidiaries identified on Schedule I and (b) each other Restricted Subsidiary that becomes a party to this Agreement as a Subsidiary Party after the Closing Date.

ARTICLE II

Guarantee

Section 2.01. Guarantee. Each Guarantor irrevocably, absolutely and unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Guaranteed Obligations, in each case, whether such Guaranteed Obligations are now existing or hereafter incurred under, arising out of or in connection with any Secured Credit Document, and whether at maturity, by acceleration or otherwise. Each of the Guarantors further agrees that the Guaranteed Obligations may be extended, increased or renewed, in whole or in part, without notice to, or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee notwithstanding any extension, increase or renewal of any Guaranteed Obligation. Each of the Guarantors waives, to the fullest extent permitted under applicable law, presentment to, demand of payment from, and protest to, the applicable Guaranteed Party or any other Loan Party of any of the Guaranteed Obligations, and also waives, to the fullest extent permitted under applicable law, notice of acceptance of its guarantee and notice of protest for nonpayment.

Section 2.02. Guarantee of Payment. Each of the Guarantors further agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the Administrative Agent or any other Secured Party to any security held for the payment of the Guaranteed Obligations, or to any balance of any deposit account or credit on the books of the Administrative Agent or any other Secured Party in favor of any Guaranteed Party or any other Person. The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor, any other guarantor, the Borrower or any other Guaranteed Party, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor, any other guarantor, the Borrower or any other Guaranteed Party and whether or not any other Guarantor, any other guarantor, the Borrower or any other Guaranteed party be joined in any such action or actions. Any payment required to be made by a Guarantor hereunder may be required by the Administrative Agent or any other Secured Party on any number of occasions.

Section 2.03. No Limitations. (a)Except for termination of a Guarantor's obligations hereunder as expressly provided in Section 4.13, but without prejudice to Section 2.04, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations, or otherwise. Without limiting the generality of the foregoing, except for termination of a Guarantor's obligations hereunder as expressly provided in Section 4.13, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by (i) the failure of the Administrative Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy under the provisions of any Secured Credit Document or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Secured Credit Document or any other agreement, including with respect to any other Guarantor under this Agreement; (iii) the release of any security held by the Collateral Agent or any other Secured Party for the Guaranteed Obligations; (iv) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; (v) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured party; (vi) the lack of legal existence of the Borrower or any Guarantor or legal obligation to discharge any of the Guaranteed Obligations by Borrower or any Guarantor for any reason whatsoever, including, without limitation, in any insolvency, bankruptcy or reorganization of any Loan party; or (vii) any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all the Guaranteed Obligations). Each Guarantor expressly authorizes the applicable Secured Parties to take and hold security for the payment and performance of the Guaranteed Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Guaranteed Obligations all without affecting the obligations of any Guarantor hereunder.

(b) Except for termination of a Guarantor's obligations hereunder as expressly permitted in Section 4.13, but without prejudice to Section 2.04, to the fullest extent permitted by applicable law, each Guarantor waives any defense based on or arising out of any defense of the Borrower of any other Guaranteed Party or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower or any other Guaranteed Party, other than the indefeasible payment in full in cash of all the Guaranteed Obligations. The Administrative Agent and the other Secured Parties may in accordance with the terms of the Collateral Documents, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Guaranteed Obligations make any other accommodation with the Borrower or any other Guaranteed Party or exercise any other right or remedy available to them against the Borrower or any other Guaranteed Party, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been indefeasibly paid in full in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against the Borrower or any other Guaranteed Party, as the case may be, or any security.

Section 2.04. Reinstatement. Notwithstanding anything to the contrary contained in this Agreement, each of the Guarantors agrees that (i) its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored by the Administrative Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower or any other Guaranteed Party or otherwise and (ii) the provisions of this Section 2.04 shall survive termination of this Agreement.

Section 2.05. Agreement To Pay; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Borrower or any other Guaranteed Party to pay any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Administrative Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Guaranteed Obligation. Upon payment by any Guarantor of any sums to the Administrative Agent as provided above, all rights of such Guarantor against the Borrower or any other Guaranteed Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article III.

Section 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's and

each other Guaranteed Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that none of the Administrative Agent or the other Secured Parties will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

ARTICLE III

Indemnity, Subrogation and Subordination

Section 3.01. Indemnity and Subrogation. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 3.03), each Guaranteed Party agrees that in the event a payment shall be made by any Guarantor under this Agreement on account of any Guaranteed Obligation owed directly by such Guaranteed Party (i.e., other than any obligation arising under this Agreement), such Guaranteed Party shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment.

Section 3.02. Contribution and Subrogation. At any time a payment by any Subsidiary Party in respect of the Guaranteed Obligations is made under this Agreement that shall not have been fully indemnified as provided in Section 3.01, the right of contribution of each Subsidiary Party against each other Subsidiary Party shall be determined as provided in the immediately succeeding sentence, with the right of contribution of each Subsidiary Party to be revised and restated as of each date on which an unreimbursed payment (a "Relevant Payment") is made on the Guaranteed Obligations under this Agreement. At any time that a Relevant Payment is made by a Subsidiary Party that results in the aggregate payments made by such Subsidiary Party in respect of the Guaranteed Obligations to and including the date of the Relevant Payment exceeding such Subsidiary Party's Contribution Percentage (as defined below) of the aggregate payments made by all Subsidiary Parties in respect of the Guaranteed Obligations to and including the date of the Relevant Payment (such excess, the "Aggregate Excess Amount"), each such Subsidiary Party shall have a right of contribution against each other Subsidiary Party who has made payments in respect of the Guaranteed Obligations to and including the date of the Relevant Payment in an aggregate amount less than such other Subsidiary Party's Contribution Percentage of the aggregate payments made to and including the date of the Relevant Payment by all Subsidiary Parties in respect of the Guaranteed Obligations (the aggregate amount of such deficit, the "Aggregate Deficit Amount") in an amount equal to (x) a fraction the numerator of which is the Aggregate Excess Amount of such Subsidiary Party and the denominator of which is the Aggregate Excess Amount of all Subsidiary Parties multiplied by (y) the Aggregate Deficit Amount of such other Subsidiary Party. A Subsidiary Party's right of contribution pursuant to the preceding sentences shall arise at the time of each computation, subject to adjustment to the time of each computation; provided that all contribution rights of such Subsidiary Party shall be subject to Section 3.03. As used in this Section 3.02: (i) each Subsidiary Party's "Contribution Percentage" shall mean the percentage obtained by dividing (x) the Adjusted Net Worth (as defined below) of such Subsidiary Party by (y) the aggregate Adjusted Net Worth of all Subsidiary Parties; (ii) the "Adjusted Net Worth" of each Subsidiary Party shall mean the greater of (x) the Net Worth (as defined below) of such Subsidiary Party and (y) zero; and (iii) the "Net Worth" of each Subsidiary Party shall mean the amount by which the fair saleable value of such Subsidiary Party's assets on the date of any Relevant Payment exceeds its existing debts and other liabilities (including contingent liabilities, but without giving effect to any Guaranteed Obligations arising under this Agreement or any guaranteed obligations arising under any guaranty of any Junior Financing) on such date. Notwithstanding anything to the contrary contained above, any Subsidiary Party that is released from this Agreement pursuant to Section 4.13 hereof shall thereafter have no contribution obligations, or rights, pursuant to this Section 3.02, and at the time of any such release, if the released Subsidiary Party had an Aggregate Excess Amount or an Aggregate Deficit Amount, same shall be deemed reduced to $0, and the contribution rights and obligations of the remaining Subsidiary Parties shall be recalculated on the respective date of release (as otherwise provided above) based on the payments made hereunder by the remaining Subsidiary Parties. Each of the Subsidiary Parties recognizes and acknowledges that the rights to contribution arising hereunder shall constitute an asset in favor of the party entitled to such contribution. In this connection, each Subsidiary Party has the right to waive its contribution right against any other Subsidiary Party to the extent that after giving effect to such waiver such Subsidiary Party would remain solvent, in the determination of the Required Lenders.

Section 3.03. Subordination. Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 3.01 and 3.02 and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the indefeasible payment in full in cash of the Guaranteed Obligations; provided, that if any amount shall be paid to such Guarantor on account of such subrogation rights at any time prior to the irrevocable payment in full in cash of all the Guaranteed Obligations, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Administrative Agent to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with Section 8.04 of the Credit Agreement. No failure on the part of the Borrower or any Guarantor to make the payments required by Sections 3.01 and 3.02 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Guarantor with respect to its obligations hereunder, and subject to Section 4.16, each Guarantor shall remain liable for the full amount of the obligations of such Guarantor hereunder.

ARTICLE IV

Miscellaneous

Section 4.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.02 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Party shall be given to it in care of the Borrower as provided in Section 10.02 of the Credit Agreement.

Section 4.02. Waivers; Amendment. (a)No failure or delay by the Administrative Agent, any L/C Issuer, any Lender or any other Secured Party in exercising any right, remedy, power or privilege hereunder or under any other Secured Credit Document shall operate as a waiver thereof,

nor shall any single or partial exercise of any such right, remedy, power or privilege or any abandonment or discontinuance of steps to enforce such a right, remedy, power or privilege, preclude any other or further exercise thereof, or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Secured Parties hereunder and under the other Secured Credit Documents are cumulative and are not exclusive of any rights, remedies, powers or privileges that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 4.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any L/C Issuer may have had notice or knowledge of such Default at the time. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.01 of the Credit Agreement.

(c) Each Guarantor hereby acknowledges and affirms that it understands that to the extent the Guaranteed Obligations are secured by real property located in the State of California, such Guarantor shall be liable for the full amount of the liability hereunder notwithstanding foreclosure on such real property by trustee sale or any other reason impairing such Guarantor's or any Secured Party's right to proceed against the Borrower or any other guarantor of the Guaranteed Obligations.

(d) Each Guarantor hereby waives, to the fullest extent permitted by applicable law, all rights and benefits under Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure. Each Guarantor hereby further waives, to the fullest extent permitted by applicable law, without limiting the generality of the foregoing or any other provision hereof, all rights and benefits which might otherwise be available to such Guarantor under Sections 2809, 2810, 2815, 2819, 2821, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 and 3433 of the California Civil Code.

(e) Each Guarantor waives its rights of subrogation and reimbursement and any other rights and defenses available to such Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code, including, without limitation, (1) any defenses such Guarantor may have to this Guaranty by reason of an election of remedies by the Secured Parties and (2) any rights or defenses such Guarantor may have by reason of protection afforded to the Borrower pursuant to the antideficiency or other laws of California limiting or discharging the Borrower's indebtedness, including, without limitation, Section 580a, 580b, 580d and 726 of the California Code of Civil Procedure. In furtherance of such provisions, each Guarantor hereby waives all rights and defenses arising out of an election of remedies of the Secured Parties, even though that election of remedies, such as a nonjudicial foreclosure destroys such Guarantor's rights of subrogation and reimbursement against a Borrower by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(f) Each Guarantor warrants and agrees that each of the waivers set forth above is made with full knowledge of its significance and consequences and that if any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by law.

Section 4.03. Administrative Agent's Fees and Expenses; Indemnification. (a)The parties hereto agree that the Administrative Agent shall be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.04 of the Credit Agreement.

(b) Without limitation of its indemnification obligations under the other Secured Credit Documents, each Guarantor jointly and severally agrees to indemnify the Administrative Agent and the other Indemnitees (as defined in Section 10.05 of the Credit Agreement) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of, the execution, delivery, performance or enforcement of this Agreement or any claim, litigation, investigation or proceeding relating to any of the foregoing agreements or instruments contemplated hereby, whether or not 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 are determined by a court of competent jurisdiction by a final and non-appeasable decision to have resulted from the gross negligence or willful misconduct of such Indemnitee or of any Affiliate, director, officer, employee, counsel, agent, trustee, investment advisor or attorney-in-fact of such Indemnitee.

(c) Any such amounts payable as provided hereunder shall be additional Guaranteed Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 4.03 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Secured Credit Document, the consummation of the transactions contemplated hereby, the repayment of any of the Guaranteed Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Secured Credit Document, or any investigation made by or on behalf of the Administrative Agent or any other Secured Party. All amounts due under this Section 4.03 shall be payable within ten Business Days of written demand therefor.

Section 4.04. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Guarantor or the Administrative Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

Section 4.05. Survival of Agreement. All covenants, agreements, representations and warranties made by the Guaranteed Parties in the Secured Credit Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Secured Credit Document shall be considered to have been relied upon by the relevant Secured Parties and shall survive the execution and delivery of the relevant Secured Credit Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any Secured Party or on its behalf and notwithstanding that the Administrative Agent, any L/C Issuer, any Lender or any other Secured Party may have had notice or knowledge of any Default or default under any other Secured Credit Document or any incorrect representation or warranty at the time any credit is

extended under any Secured Credit Document, and shall continue in full force and effect with respect to each Guarantor until this Agreement is terminated with respect to such Guarantor or such Guarantor is otherwise released from its obligations under this Agreement in each case pursuant to Section 4.13.

Section 4.06. Counterparts; Effectiveness; Several Agreement . This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective as to any Loan Party when a counterpart hereof executed on behalf of such Loan Party shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent, and thereafter shall be binding upon such Loan Party and the Administrative Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Loan Party, the Administrative Agent and the other Secured Parties and their respective successors and assigns, except that no Loan Party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, restated, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 4.07. Severability . Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 4.08. Right of Set-Off . In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any other Guaranteed Party, any such notice being waived by the Borrower and each other Guaranteed Party 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 at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates to or for the credit or the account of the respective Loan Parties against any and all Guaranteed Obligations owing to such Lender and its Affiliates hereunder, now or hereafter existing, irrespective of whether or not such Lender or Affiliate shall have made demand under this Agreement and although such Guaranteed Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 4.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have.

Section 4.09. Governing Law; Jurisdiction; Consent to Service of Process . (a)This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the Loan Parties hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York City and of the United States District Court for the Southern District 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 Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, any L/C Issuer, any Lender or any other Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Guarantor, or its properties in the courts of any jurisdiction.

(c) Each of the Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 4.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 4.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 4.10. WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.10.

Section 4.11. Headings . Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 4.12. Obligations Absolute . All rights of the Administrative Agent hereunder and all obligations of each Guarantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any other

Secured Hedge Agreement, any other agreement with respect to any of the Guaranteed Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document, any other Secured Hedge Agreement or any other agreement or instrument, (c) any release or amendment or waiver of or consent under or departure from any guarantee guaranteeing all or any portion of the Guaranteed Obligations or (d) subject to the terms of Section 4.13, any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Guarantor in respect of the Guaranteed Obligations or this Agreement.

Section 4.13. Termination or Release . (a)Subject to Section 2.04, this Agreement and the Guarantees made herein shall terminate with respect to all Guaranteed Obligations when all the outstanding Guaranteed Obligations (other than Guaranteed Obligations in respect of Secured Hedge Agreements and Cash Management Obligations not yet due and payable (to the extent permitted by the terms thereof) and contingent indemnification obligations not yet accrued and payable) have been indefeasibly paid in full and the Lenders have no further commitment to lend under the Credit Agreement, the L/C Obligations have been reduced to zero (other than L/C Obligations that have been fully cash collateralized or supported by a backstop letter of credit in each case in an amount and on terms reasonably satisfactory to the Administrative Agent and the L/C Issuer) and the L/C Issuers have no further obligations to issue Letters of Credit under the Credit Agreement.

(b) A Subsidiary Party shall automatically be released from its obligations hereunder upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Subsidiary Party ceases to be a Restricted Subsidiary of the Borrower or becomes an Excluded Subsidiary; provided that the Required Lenders shall have consented to such transaction (to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise.

(c) In connection with any termination or release pursuant to paragraph (a) or (b), the Administrative Agent shall promptly execute and deliver to any Guarantor, at such Guarantor's expense, all documents that such Guarantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 4.13 shall be without recourse to or warranty by the Administrative Agent.

(d) At any time that the Borrower desires that the Administrative Agent take any of the actions described in the immediately preceding clause (c), it shall, upon request of the Administrative Agent, deliver to the Administrative Agent an officer's certificate certifying that the release of the respective Subsidiary Party is permitted pursuant to paragraph (a) or (b). The Administrative Agent shall have no liability whatsoever to any Secured Party as the result of any release of any Subsidiary Party by it as permitted (or which the Administrative Agent in good faith believes to be permitted) by this Section 4.13.

(e) Notwithstanding anything to the contrary set forth in this Agreement, each Cash Management Bank and each Hedge Bank by the acceptance of the benefits under this Agreement hereby acknowledge and agree that (i) the obligations of the Borrower or any Subsidiary under any Secured Hedge Agreement and the Cash Management Obligations shall be guaranteed pursuant to this Agreement only to the extent that, and for so long, the other Guaranteed Obligations are so guaranteed and (ii) any release of a Guarantor effected in the manner permitted by this Agreement shall not require the consent of any Hedge Bank or Cash Management Bank.

Section 4.14. Additional Restricted Subsidiaries . Pursuant to Section 6.11 of the Credit Agreement, certain Restricted Subsidiaries of the Loan Parties that were not in existence or not Restricted Subsidiaries on the date of the Credit Agreement are required to enter in this Agreement as Subsidiary Parties upon becoming a Restricted Subsidiary. Upon execution and delivery by the Administrative Agent and a Restricted Subsidiary of a Guarantee Agreement Supplement, such Restricted Subsidiary shall become a Subsidiary Party hereunder with the same force and effect as if originally named as a Subsidiary Party herein. The execution and delivery of any such instrument shall not require the consent of any other Loan Party hereunder. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Loan Party as a party to this Agreement.

Section 4.15. Recourse . This Agreement is made with full recourse to each Guarantor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Guarantor contained herein, in the Loan Documents and the other Secured Credit Documents and otherwise in writing in connection herewith or therewith.

Section 4.16. Limitation on Guaranteed Obligations . Each Guarantor that is a Subsidiary Party and each Secured Party (by its acceptance of the benefits of this Agreement) hereby confirms that it is its intention that this Agreement not constitute a fraudulent transfer or conveyance for purposes of any Debtor Relief Laws (including the Bankruptcy Code, the Uniform Fraudulent Conveyance Act or any similar Federal or state law). To effectuate the foregoing intention, each Guarantor that is a Subsidiary Party and each Secured Party (by its acceptance of the benefits of this Agreement) hereby irrevocably agrees that the Guaranteed Obligations owing by such Guarantor under this Agreement shall be limited to such amount as will, after giving effect to such amount and all other (contingent or otherwise) liabilities of such Guarantor that are relevant under such Debtor Relief Laws (it being understood that it is the intention of the parties to this Agreement and the parties to any guaranty of any Junior Financing that is subordinated to the any of the Guaranteed Obligations, to the maximum extent permitted under applicable laws, the liabilities in respect of the guarantees of such Junior Financing shall not be included for the foregoing purposes and that, if any reduction is required to the amount guaranteed by any Guarantor hereunder and with respect to such Junior Financing that its guarantee of amounts owing in respect of such Junior Financing shall first be reduced) and after giving effect to any rights to contribution and/or subrogation pursuant to any agreement providing for an equitable contribution and/or subrogation among such Guarantor and the other Guarantors, result in the Guaranteed Obligations of such Guarantor in respect of such amount not constituting a fraudulent transfer or conveyance and the maximum liability of each Guarantor hereunder and under the Secured Credit Documents shall in no event exceed such amount.. Notwithstanding the provisions of the two preceding sentences, as between the Secured Parties and the holders of such Junior Financing, it is agreed (and the provisions of Junior Financing Documentation shall so provide) that any diminution (whether pursuant to court decree or otherwise) of any Guarantor's obligation to make any distribution or payment pursuant to this Agreement shall have no force or effect for purposes of the subordination provisions contained in such Junior Financing Documentation, and that any payments received in respect of a Guarantor's obligations with respect to such Junior Financing shall be turned over to the holders of the "Senior Indebtedness" (as defined in such Junior Financing Documentation) (or obligations which would have constituted Senior Indebtedness if same had not been reduced or disallowed) of such Guarantor (which Senior Indebtedness shall be calculated as if there were no diminution thereto pursuant to this Section 4.16 or for any other reason other than the indefeasible payment in full in cash of the respective obligations which would

otherwise have constituted Senior Indebtedness) until all such Senior Indebtedness (or obligations which would have constituted Senior Indebtedness if same had not been reduced or disallowed) has been indefeasibly paid in full in cash.

* * *

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

OSI RESTAURANT PARTNERS, LLC

By:

Name:

Title:

OSI HOLDCO, INC.

By:

Name:

Title:

EACH OF THE SUBSIDIARIES

LISTED ON SCHEDULE I HERETO

By:

Name:

Title:

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent

By:

Name:

Title:

By:

Name:

Title:

SCHEDULE I to the
Guarantee Agreement

SUBSIDIARY PARTIES

NEWYORK 6154457 v1 (2K)

EXHIBIT I to the
Guarantee Agreement

SUPPLEMENT NO. __ dated as of [●], to the Guarantee Agreement dated as of June 14, 2007, among OSI RESTAURANT PARTNERS, LLC (the "Borrower"), OSI HOLDCO, INC. ("Holdings"), the Subsidiaries of the Borrower identified therein and DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent.

A Reference is made to (i) the Credit Agreement dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Holdings, each Lender from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, (ii) each Secured Hedge Agreement (as defined in the Credit Agreement) and (iii) the Cash Management Obligations (as defined in the Credit Agreement).

B Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Guarantee Agreement referred to therein.

C The Guarantors have entered into the Guarantee Agreement in order to induce (x) the Lenders to make Loans and the L/C Issuers to issue Letters of Credit, (y) the Hedge Banks to enter into and/or maintain Secured Hedge Agreements and (z) the Cash Management Banks to provide Cash Management Services. Section 4.14 of the Guarantee Agreement provides that additional Restricted Subsidiaries of the Borrower may become Subsidiary Parties under the Guarantee Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Restricted Subsidiary (the "New Subsidiary") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Subsidiary Party under the Guarantee Agreement in order to induce the Lenders to make additional Loans and the L/C Issuers to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Administrative Agent and the New Subsidiary agree as follows:

Section 1. In accordance with Section 4.14 of the Guarantee Agreement, the New Subsidiary by its signature below becomes a Subsidiary Party and Guarantor under the Guarantee Agreement with the same force and effect as if originally named therein as a Subsidiary Party and the New Subsidiary hereby (a) agrees to all the terms and provisions of the Guarantee Agreement applicable to it as a Subsidiary Party and Guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Guarantor thereunder are true and correct on and as of the date hereof. Each reference to a "Guarantor" in the Guarantee Agreement shall be deemed to include the New Subsidiary. The Guarantee Agreement is hereby incorporated herein by reference.

Section 2. The New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Section 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Administrative Agent shall have received a counterpart of this Supplement that bears the signature of the New Subsidiary and the Administrative Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Supplement.

Section 4. Except as expressly supplemented hereby, the Guarantee Agreement shall remain in full force and effect.

Section 5. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 6. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Guarantee Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7. All communications and notices hereunder shall be in writing and given as provided in Section 4.01 of the Guarantee Agreement.

Section 8. The New Subsidiary agrees to reimburse the Administrative Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Administrative Agent.

* * *

IN WITNESS WHEREOF, the New Subsidiary and the Administrative Agent have duly executed this Supplement to the Guarantee Agreement as of the day and year first above written.

[NAME OF NEW SUBSIDIARY]

By:

Name:

Title:

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent

By:

Name:

Title:

By:

Name:

Title:

Exhibit G

[FORM OF]

SECURITY AGREEMENT

dated as of

June 14, 2007

among

OSI RESTAURANT PARTNERS, LLC,

OSI HOLDCO, INC.,

THE SUBSIDIARIES OF OSI RESTAURANT PARTNERS, LLC

IDENTIFIED HEREIN

and

DEUTSCHE BANK AG NEW YORK BRANCH,

as Collateral Agent

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SCHEDULES

EXHIBITS

SECURITY AGREEMENT dated as of June 14, 2007, among OSI RESTAURANT PARTNERS, LLC (the "Borrower"), OSI HOLDCO, INC. ("Holdings"), the Subsidiaries of the Borrower identified herein and DEUTSCHE BANK AG NEW YORK BRANCH, as Collateral Agent for the Secured Parties (as defined below).

Reference is made to (i) the Credit Agreement dated as of June 14, 2007 (as amended, restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Holdings, each Lender (as defined in the Credit Agreement) from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, (ii) each Guaranty (as defined in the Credit Agreement), (iii) each Secured Hedge Agreement (as defined in the Credit Agreement) and (iv) the Cash Management Obligations (as defined in the Credit Agreement).

The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement, the Hedge Banks have agreed to enter into and/or maintain one or more Secured Hedge Agreements on the terms and conditions set forth therein and the Cash Management Banks have agreed to provide and/or maintain Cash Management Services on the terms and conditions agreed upon by the Borrower or the respective Restricted Subsidiary and the respective Cash Management Bank. The obligations of the Lenders to extend such credit, the obligation of the Hedge Banks to enter into and/or maintain such Secured Hedge Agreements and the obligation of the Cash Management Bank to provide and/or maintain such Cash Management Services are, in each case, conditioned upon, among other things, the execution and delivery of this Agreement by each Grantor. Holdings, the Borrower and the Subsidiary Parties are affiliates of one another, will derive substantial benefits from (i) the extensions of credit to the Borrower pursuant to the Credit Agreement, (ii) the entering into and/or maintaining by the Hedge Banks of Secured Hedge Agreements with the Borrower and/or one or more of the Restricted Subsidiaries and (iii) the providing and/or maintaining of Cash Management Services by the Cash Management Banks to the Borrower and/or one or more of its Restricted Subsidiaries, and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit, the Hedge Banks to enter into and maintain such Secured Hedge Agreements and the Cash Management Banks to provide and/or maintain such Cash Management Services. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Credit Agreement . (a)Capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Credit Agreement. All terms defined in the New York UCC (as defined herein) and not defined in this Agreement have the meanings specified therein; the term "instrument" shall have the meaning specified in Article 9 of the New York UCC.

(b) The rules of construction specified in Article I of the Credit Agreement also apply to this Agreement.

Section 1.02. Other Defined Terms

. As used in this Agreement, the following terms have the meanings specified below:

"Account Debtor" means any Person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

"After-Acquired Intellectual Property" has the meaning assigned to such term in Section 4.02(d).

"Agreement " means this Security Agreement.

"Article 9 Collateral" has the meaning assigned to such term in Section 3.01(a).

"Bankruptcy Event of Default" shall mean any Event of Default under Section 8.01(f) of the Credit Agreement.

"Cash Collateral Account" shall mean a non-interest bearing cash collateral account maintained with, and in the sole dominion and control of, the Collateral Agent for the benefit of the Secured Parties.

"Collateral" means the Article 9 Collateral and the Pledged Collateral.

"Controlled" means, with respect to any Intellectual Property right, the possession (whether by ownership or license, other than pursuant to this Agreement) by a party of the right to grant to another party an interest as provided herein under such item or right without violating the terms of any agreement or other arrangements with any third party existing before or after the Closing Date.

"Copyright License" means any written agreement, now or hereafter in effect, (1) granting to any third party any right under an Owned Copyright or any Copyright that a Grantor otherwise has the right to grant a license under, or (2) granting to any Grantor any right under a Copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

"Copyright Security Agreement" shall mean an agreement substantially in the form of Exhibit II hereto.

"Copyrights" means: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether the holder of such rights is an author, assignee, transferee or otherwise entitled to such rights, whether registered or unregistered and whether published or unpublished; (b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office, including those listed on Schedule IV; and (c) all (i) rights and privileges arising under applicable law with respect to the use of such copyrights, (ii) reissues, renewals, continuations and extensions or restorations 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 of future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

"Credit Agreement" has the meaning assigned to such term in the preliminary statement of this Agreement.

"Domain Names" means all Internet domain names and associated URL addresses in or to which any Grantor now or hereafter has any right, title or interest, including those listed on Schedule V.

"General Intangibles" has the meaning provided in Article 9 of the New York UCC and shall in any event include all chooses in action and causes of action and all other intangible personal property of every kind and nature now owned or hereafter acquired by any Grantor, as the case may be, including corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Swap Contracts and other agreements), goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by or granted to any Grantor, as the case may be, to secure payment by an Account Debtor of any of the Accounts.

"Grantor" means each of Holdings, the Borrower and each Subsidiary Party.

"Intellectual Property" means all intellectual and similar property of every kind and nature, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know-how, show-how or other data or information, software, databases, all other proprietary information, including but not limited to Domain Names, and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

"Intellectual Property Collateral" means Collateral consisting of Owned Intellectual Property.

"License" means any Patent License, Trademark License, Copyright License, or other license or sublicense agreement to which any Grantor is a party, including those listed on Schedule VI.

"New York UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"Owned Copyrights" means Copyrights now Controlled by, or that hereafter become Controlled by Grantor, whether by acquisition, assignment, or an exclusive license, including those listed on Schedule IV.

"Owned Intellectual Property" means Intellectual Property now Controlled by, or that hereafter becomes Controlled by, any Grantor, whether by acquisition, assignment, or an exclusive license including, but not limited to, all Intellectual Property listed on Schedules IV, V and VII.

"Owned Patents" means Patents now Controlled by, or that hereafter become Controlled by, any Grantor whether by acquisition, assignment, or an exclusive license, including those listed on Schedule VII.

"Owned Trademarks" means Trademarks now Controlled by, or that hereafter become Controlled by, any Grantor, whether by acquisition, assignment, or an exclusive license, including those listed on Schedule VIII.

"Patent License" means any written agreement, now or hereafter in effect, (1) granting to any third party any right arising under an Owned Patent or any Patent that a Grantor otherwise has the right to grant a license under, or (2) granting to any Grantor any right arising under a Patent now or hereafter owned by any third party; and all rights of any Grantor under any such agreement.

"Patent Security Agreement" shall mean an agreement substantially in the form of Exhibit III hereto.

"Patents" means: (a) all letters patent of the United States or the equivalent thereof in any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or the equivalent thereof in any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country, including those listed on Schedule VII; and (b) (i) rights and privileges arising under applicable law with respect to the use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, reexaminations, divisions, continuations, renewals, extensions or restorations 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.

"Perfection Certificate" means a certificate substantially in the form of Exhibit II hereto, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by the chief financial officer and the chief legal officer of the Borrower.

"Permit" has the meaning provided in the Credit Agreement.

"Pledged Collateral" has the meaning assigned to such term in Section 2.01.

"Pledged Debt" has the meaning assigned to such term in Section 2.01.

"Pledged Equity" has the meaning assigned to such term in Section 2.01.

"Pledged Securities" means any promissory notes, stock certificates or other securities now or hereafter included in the Pledged Collateral, including all Pledged Equity, Pledged Debt and all other certificates, instruments or other documents representing or evidencing any Pledged Collateral.

"Secured Credit Document" means each Loan Document, each Secured Hedge Agreement and any agreement evidencing any Cash Management Obligations.

"Secured Obligations" means the "Obligations" as defined in the Credit Agreement; it being acknowledged and agreed that the term "Secured Obligations" as used herein shall include each extension of credit under the Credit Agreement and all obligations of the Borrower and/or its Restricted Subsidiaries under the Secured Hedge Agreements and all Cash Management Obligations, in each case, whether outstanding on the date of this Agreement or extended from time to time after the date of this Agreement.

"Secured Parties" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each L/C Issuer, the Hedge Banks, the Cash Management Banks, the Pre-Funded RC Deposit Bank, the Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(c) or Section 9.01(d) of the Credit Agreement.

"Security Agreement Supplement" means an instrument substantially in the form of Exhibit I hereto.

"Security Interest " has the meaning assigned to such term in Section 3.01(a).

"Subsidiary Parties" means (a) the Restricted Subsidiaries identified on Schedule I and (b) each other Restricted Subsidiary that becomes a party to this Agreement as a Subsidiary Party after the Closing Date.

"Trademark License" means any written agreement, now or hereafter in effect, (1) granting to any third party any right to use any Owned Trademark or any Trademark that a Grantor otherwise has the right to grant a license under, or (2) granting to any Grantor any right to use any Trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

"Trademark Security Agreement" shall mean an agreement substantially in the form of Exhibit IV hereto.

"Trademarks " means: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, slogans, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, whether registered or unregistered, now existing or hereafter adopted, acquired or assigned to, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof, including those listed on Schedule VIII, together with (b) any and all (i) rights and privileges arising under applicable law with respect to the 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.

ARTICLE II

Pledge of Securities

Section 2.01. Pledge . As security for the payment or performance, as the case may be, in full of the Secured Obligations, including each Guaranty, each Grantor hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in, all of such Grantor's right, title and interest in, to and under (i) all Equity Interests of the Borrower and of each other Subsidiary directly owned by such Grantor held by it and listed on Schedule II and any other Equity Interests of Subsidiaries directly owned in the future by such Grantor and the certificates representing all such Equity Interests (the "Pledged Equity"); provided that the Pledged Equity shall not include (A) Equity Interests of any Employment Participation Subsidiary, (B) more than 65% of the total issued and outstanding voting Equity Interests of any Foreign Subsidiary at any time, (C) Equity Interests of Unrestricted Subsidiaries (until such time as any Unrestricted Subsidiary becomes a Restricted Subsidiary in accordance with the Credit Agreement, at which time, and without further action, this clause (C) shall no longer apply to the Equity Interests of such Subsidiary), (D) Equity Interests of any Subsidiary of a Foreign Subsidiary, (E) Equity Interests of any Subsidiary acquired pursuant to a Permitted Acquisition financed with Indebtedness incurred pursuant to Section 7.03(g)(ii) of the Credit Agreement; provided that the Equity Interests of any such Subsidiary shall cease to be excluded by this clause (E) if such secured Indebtedness is repaid or becomes unsecured or if such Subsidiary ceases to Guarantee such secured Indebtedness, as applicable, (F) specifically identified Equity Interests of any Subsidiary with respect to which the Administrative Agent has confirmed in writing to the Borrower its determination that the costs or other consequences (including adverse tax consequences) of providing a pledge of its Equity Interests is excessive in view of the benefits to be obtained by the Lenders and (G) Equity Interests of any non-wholly owned Subsidiary if (but only to the extent that) the grant of a security interest therein would constitute a violation of a valid and enforceable restriction in respect of any joint venture, stockholders or similar agreement governing such Equity Interests, unless and until all

required consents shall have been obtained (for the avoidance of doubt, the restrictions described herein are not negative pledges or similar undertakings in favor of a lender or other financial counterparts), provided however, that the limitation set forth in clause (G) above shall not affect, limit, restrict or impair the grant by a Grantor of a security interest pursuant to this Agreement in any such Equity Interests to the extent that an otherwise applicable prohibition or restriction on such grant is rendered ineffective by any applicable law, including the New York UCC and provided further that the Proceeds from any such Equity Interests shall not be excluded from the definition of Article 9 Collateral; (ii) (A) promissory notes and instruments evidencing indebtedness owned by a Grantor and listed opposite the name of such Grantor on Schedule II, and (B) any promissory notes and instruments evidencing indebtedness obtained in the future by such Grantor (the "Pledged Debt"); (iii) all other property that may be delivered to and held by the Collateral Agent pursuant to the terms of this Section 2.01; (iv) subject to Section 2.06, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the securities referred to in clauses (i) and (ii) above; (v) subject to Section 2.06, all rights and privileges of such Grantor with respect to the securities and other property referred to in clauses (i), (ii), (iii) and (iv) above; and (vi) all Proceeds of, and Security Entitlements in, any of the foregoing (the items referred to in clauses (i) through (vi) above being collectively referred to as the "Pledged Collateral").

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and assigns, for the benefit of the applicable Secured Parties, forever; subject, however, to the terms, covenants and conditions hereinafter set forth.

Section 2.02. Delivery of the Pledged Collateral. (a)Each Grantor agrees promptly (but in any event within 30 days after receipt thereof by such Grantor) to deliver or cause to be delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, any and all Pledged Securities (other than any uncertificated securities, but only for so long as such securities remain uncertificated) to the extent such Pledged Securities, in the case of promissory notes and instruments evidencing Indebtedness, are required to be delivered pursuant to paragraph (b) of this Section 2.02.

(b) Each Grantor will cause any Indebtedness for borrowed money having an aggregate principal amount that is in excess of $5,000,000 owed to such Grantor by any Person to be evidenced by a duly executed promissory note to be pledged and delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, pursuant to the terms hereof.

(c) Upon delivery to the Collateral Agent, (i) any Pledged Securities shall be accompanied by stock powers duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request and (ii) all other property comprising part of the Pledged Collateral shall be accompanied by proper instruments of assignment (if appropriate) duly executed by the applicable Grantor and such other instruments or documents as the Collateral Agent may reasonably request. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be deemed to supplement Schedule II and made a part hereof; provided that failure to supplement Schedule II hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.

Section 2.03. Representations, Warranties and Covenants. Each of Holdings and the Borrower jointly and severally represents, warrants and covenants, as to themselves and the other Grantors, to and with the Collateral Agent, for the benefit of the Secured Parties, that:

(a) Schedule II, or the supplement thereto, as applicable, correctly sets forth, as of the Closing Date and as of each date on which a supplement to Schedule II is delivered pursuant to Section 2.02(c), the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by the Pledged Equity and includes all Equity Interests, debt securities and promissory notes required to be pledged hereunder in order to satisfy the Collateral and Guarantee Requirement;

(b) the Pledged Equity issued by the Borrower or a Subsidiary and Pledged Debt (solely with respect to Pledged Debt issued by a Person other than Holdings or a Subsidiary of Holdings, to the best of Holdings' and the Borrower's knowledge) have been duly and validly authorized and issued by the issuers thereof and (i) in the case of Pledged Equity, are fully paid and nonassessable and (ii) in the case of Pledged Debt (solely with respect to Pledged Debt issued by a Person other than Holdings or a Subsidiary of Holdings, to the best of Holdings' and the Borrower's knowledge), are legal, valid and binding obligations of the issuers thereof;

(c) except for the security interests granted hereunder, each of the Grantors (i) is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule II as owned by such Grantors, (ii) holds the same free and clear of all Liens, other than (A) Liens created by the Collateral Documents and (B) Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement, (iii) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than transfers made in accordance with the Credit Agreement and (A) Liens created by the Collateral Documents and (B) Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement, and (iv) will defend its title or interest thereto or therein against any and all Liens (other than the Liens permitted pursuant to this Section 2.03(c)), however, arising, of all Persons whomsoever;

(d) except for (i) restrictions and limitations imposed by the Loan Documents or securities laws generally, (ii) in the case of Pledged Equity of Persons that are not Subsidiaries, transfer restrictions that exist at the time of acquisition of such Equity Interests and (iii) as described in the Perfection Certificate, the Pledged Collateral is and will continue to be freely transferable and assignable, and none of the Pledged Collateral is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect in any manner material and adverse to the Secured Parties the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(e) each of the Grantors has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(f) no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the

validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

(g) by virtue of the execution and delivery by the Grantors of this Agreement, when any Pledged Securities are delivered to the Collateral Agent in accordance with this Agreement, the Collateral Agent will obtain a legal, valid and first-priority perfected lien upon and security interest in such Pledged Securities as security for the payment and performance of the Secured Obligations, subject only to any Lien permitted pursuant to Section 7.01 of the Credit Agreement; and

(h) the pledge effected hereby is effective to vest in the Collateral Agent, for the benefit of the Secured Parties, the rights of the Collateral Agent in the Pledged Collateral as set forth herein.

Section 2.04. Certification of Limited Liability Company and Limited Partnership Interests . No interest in any limited liability company or limited partnership controlled by any Grantor that constitutes Pledged Equity (x) shall be represented by a certificate unless (i) the limited liability company agreement or partnership agreement expressly provides that such interests shall be a "security" within the meaning of Article 8 of the UCC of the applicable jurisdiction, and (ii) such certificate shall be delivered to the Collateral Agent in accordance with Section 2.02 or (y) shall be an uncertificated "security" within the meaning of Article 8 of the UCC of the applicable jurisdiction unless a control agreement, in form and substance reasonably satisfactory to the Collateral Agent, has been executed and delivered by the relevant Grantor and the issuer of such interests to the Collateral Agent.

Section 2.05. Registration in Nominee Name; Denominations . If an Event of Default shall occur and be continuing and the Collateral Agent shall give the Borrower notice of its intent to exercise such rights, (a) the Collateral Agent, on behalf of the Secured Parties, shall have the right (in its sole and absolute discretion) to hold the Pledged Securities in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent and each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor and (b) the Collateral Agent shall have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement and, in the case of Pledged Securities of persons that are not Subsidiaries, to the extent permitted by the documentation governing such Pledged Securities; provided that, notwithstanding the foregoing, if a Bankruptcy Event of Default shall have occurred and be continuing, the Collateral Agent shall not be required to give the notice referred to above in order to exercise the rights described above.

Section 2.06. Registration Voting Rights; Dividends and Interest . (a)Unless and until an Event of Default shall have occurred and be continuing and the Collateral Agent shall have notified the Borrower that the rights of the Grantors under this Section 2.06 are being suspended:

ach Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Securities or any part of for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; provided that such rights and powers not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Securities or the rights and remedies of of the Collateral Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Secured Credit Document or the ability of the red Parties to exercise the same.

he Collateral Agent shall promptly (after reasonable advance notice) execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, ch proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above.

Each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the ged Securities, to the extent (and only to the extent) that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or ibuted in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable Laws; provided that any noncash lends, interest, principal or other distributions that would constitute Pledged Equity or Pledged Debt, whether resulting from a subdivision, combination or ssification of the outstanding Equity Interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in mption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be become part of the Pledged Collateral, and, if received by any Grantor, shall not be commingled by such Grantor with any of its other funds or property but be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent and the applicable Secured Parties and shall be forthwith ered to the Collateral Agent in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). So long as no ult or Event of Default has occurred and is continuing, the Collateral Agent shall promptly deliver to each Grantor any Pledged Securities in its possession if ested to be delivered to the issuer thereof in connection with any exchange or redemption of such Pledged Securities in accordance with this Section 2.06(a)(iii).

(b) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified the Borrower of the suspension of the rights of the Grantors under paragraph (a)(iii) of this Section 2.06, then all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (a)(iii) of this Section 2.06 shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 2.06 shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 5.02. After all Events of Default have been cured or waived, the Collateral Agent shall promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) of this Section 2.06 in the absence of an Event of Default and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified the Borrower of the suspension of the rights of the Grantors under paragraph (a)(i) of this Section 2.06, then all rights of any Grantor to exercise the

voting and consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 2.06, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.06, shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that, unless otherwise directed by the Required Lenders, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all Events of Default have been cured or waived, each Grantor shall have the exclusive right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (a)(i) above, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.06 shall be reinstated.

(d) Any notice given by the Collateral Agent to the Borrower suspending the rights of the Grantors under paragraph (a) of this Section 2.06 (i) shall be given in writing, (ii) may be given with respect to one or more of the Grantors at the same or different times and (iii) may suspend the rights of the Grantors under paragraph (a)(i) or paragraph (a)(iii) in part without suspending all such rights (as specified by the Collateral Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Collateral Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing. Notwithstanding anything to the contrary contained in Section 2.06(a), (b) or (c), if a Bankruptcy Event of Default shall have occurred and be continuing, the Collateral Agent shall not be required to give any notice referred to in said Section in order to exercise any of its rights described in such Section, and the suspension of the rights of each of the Grantors under each such Section shall be automatic upon the occurrence of such Bankruptcy Event of Default.

Section 2.07. Collateral Agent Not a Partner or Limited Liability Company Member . Nothing contained in this Agreement shall be construed to make the Collateral Agent or any other Secured Party liable as a member of any limited liability company or as a partner of any partnership and neither the Collateral Agent nor any other Secured Party by virtue of this Agreement or otherwise (except as referred to in the following sentence) shall have any of the duties, obligations or liabilities of a member of any limited liability company or as a partner in any partnership. The parties hereto expressly agree that, unless the Collateral Agent shall become the absolute owner of Pledged Equity consisting of a limited liability company interest or a partnership interest pursuant hereto, this Agreement shall not be construed as creating a partnership or joint venture among the Collateral Agent, any other Secured Party, any Grantor and/or any other Person.

ARTICLE III

Security Interests in Personal Property

Section 3.01. Security Interest . (a)As security for the payment or performance, as the case may be, in full of the Secured Obligations, including each Guaranty, each Grantor hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest (the "Security Interest") in, all right, title or interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Article 9 Collateral"):

all Accounts;

all Chattel Paper;

all Documents;

all Equipment;

all General Intangibles and Permits;

all Instruments;

all Inventory;

all Intellectual Property Collateral;

all Investment Property;

all books and records pertaining to the Article 9 Collateral;

all Goods and Fixtures;

all Letter-of-Credit Rights;

all Commercial Tort Claims described on Schedule III from time to time;

the Cash Collateral Account (and all cash, securities and other investments deposited therein);

all Supporting Obligations;

all Security Entitlements in any or all of the foregoing; and

) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any on with respect to any of the foregoing;

provided (i) with respect to any Owned Trademarks, applications in the United States Patent and Trademark Office to register Owned Trademarks or service marks on the basis of any Grantor's "intent to use" such Owned Trademarks or service marks will not be deemed to be Collateral unless and until a "Statement of Use" or "Amendment to Allege Use" has been filed and accepted in the United States Patent and Trademark Office, whereupon such application shall be automatically subject to the security interest granted herein and deemed to be included in the Collateral and (ii) that notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in (A) motor vehicles or other assets subject to certificates of title the perfection of a security interest in which is excluded from the New York UCC in the relevant jurisdiction, (B) any Equity Interests other than Pledged Equity, (C) any Equipment that is subject to a purchase money lien or a capital lease permitted under the Credit Agreement to the extent the documents relating to such purchase money lien or capital lease validly prohibits such Equipment to be subject to the Security Interest created hereby, (D) any specifically identified asset with respect to which the Administrative Agent has confirmed in writing to the Borrower its determination that the costs or other consequences (including adverse tax consequences) of providing a security interest is excessive in view of the benefits to be obtained by the Lenders, (E) any General Intangible, Investment Property, Accounts, Intellectual Property Collateral, promissory notes, chattel paper, Permit or other such rights of a Grantor arising under any contract, lease, instrument, license, or other document if (but only to the extent that) the grant of a security interest therein would (x) constitute a violation of a valid and enforceable restriction in respect of, or result in the abandonment, invalidation or unenforceability of any right, title or interest of such Grantor in, such General Intangible, Investment Property, Accounts, Intellectual Property Collateral, promissory notes, chattel paper, Permit or other such rights in favor of a third party or under any law, regulation, permit, order, judgment or decree of any Governmental Authority and such contractual restriction is otherwise not restricted by the Credit Agreement, unless and until all required consents shall have been obtained (for the avoidance of doubt, the restrictions described herein are not negative pledges or similar undertakings in favor of a lender or other financial counterparty) or (y) expressly give any other party in respect of any such contract, lease, instrument, franchise, permit, license or other document relating to any such General Intangible, Investment Property, Intellectual Property Collateral, Accounts, promissory notes, chattel paper, Permit or other such rights of a Grantor or give any other party the right to terminate its obligations or such Grantor's rights under such contract, lease, instrument, franchise, permit, license or other document (whether expressly in such document or otherwise under applicable law) to the extent that such right is not restricted by the Credit Agreement, provided however, that the limitation set forth in clause (E)above shall not affect, limit, restrict or impair the grant by a Grantor of a security interest pursuant to this Agreement in any such Collateral to the extent that an otherwise applicable prohibition or restriction on such grant is rendered ineffective by any applicable law, including the New York UCC and provided further that the Proceeds from any such contract, lease, instrument or other document shall not be excluded from the definition of Article 9 Collateral or (G) Margin Stock unless the applicable requirements of Regulations T, U, and X of the Board of Governors of the Federal Reserve have been satisfied. Each Grantor shall, if requested to do so by the Administrative Agent, use commercially reasonable efforts to obtain any such required consent that is reasonably obtainable with respect to Collateral which the Administrative Agent reasonably determines to be material.

(b) Each Grantor hereby irrevocably authorizes the Collateral Agent for the benefit of the Secured Parties at any time and from time to time to file in any relevant jurisdiction any initial financing statements (including fixture filings) with respect to the Article 9 Collateral or any part thereof and amendments thereto that (i) indicate the Collateral as all assets of such Grantor or words of similar effect as being of an equal or lesser scope or with greater detail, and (ii) contain the information required by Article 9 of the Uniform Commercial Code or the analogous legislation of each applicable jurisdiction for the filing of any financing statement or amendment, including (A) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor and (B) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Article 9 Collateral relates. Each Grantor agrees to provide such information to the Collateral Agent promptly upon request.

(c) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(d) Each Grantor 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 Trademark Security Agreement, Copyright Security Agreement, and Patent Security Agreement or other documents as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Grantor hereunder, without the signature of such Grantor, and naming such Grantor, as debtor, and the Collateral Agent, as secured party.

Section 3.02. Representations and Warranties . Holdings and the Borrower jointly and severally represent and warrant, as to themselves and the other Grantors, to the Collateral Agent and the Secured Parties that:

(a) Subject to Liens permitted by Section 7.01 of the Credit Agreement, each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained.

(b) The Perfection Certificate has been duly prepared, completed, executed and delivered to the Collateral Agent and the information set forth therein, including the exact legal name of each Grantor, is correct and complete in all material aspects as of the Closing Date. The Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations prepared by the Collateral Agent based upon the information provided to the Collateral Agent in the Perfection Certificate for filing in each governmental, municipal or other office specified in Schedule 2 to the Perfection Certificate (or specified by notice from the applicable Grantor to the Collateral Agent after the Closing Date in the case of filings, recordings or registrations required by Section 6.11 of the Credit Agreement), are all the filings, recordings and registrations that are necessary to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any such jurisdiction, except as provided under applicable law with respect to the

filing of continuation statements. Each Grantor represents and warrants that fully executed agreements in the form of Exhibit II, Exhibit III and Exhibit IV hereof and containing a description of all Collateral consisting of Intellectual Property with respect to United States Patents and United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights have been delivered to the Collateral Agent for recording by the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable, and otherwise as may be required pursuant to the laws of any other necessary jurisdiction, to protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Collateral consisting of Patents, Trademarks and Copyrights in which a security interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary (other than such actions as are necessary to perfect the Security Interest with respect to any Collateral consisting of Patents, Trademarks and Copyrights (or registration or application for registration thereof) acquired or developed after the date hereof).

(c) The Security Interest constitutes (i) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations, (ii) subject to the filings described in Section 3.02(b), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code and (iii) a security interest that shall be perfected in all Collateral in which a security interest may be perfected upon the receipt and recording of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, within the three month period (commencing as of the date hereof) pursuant to 35 U.S.C. § 261 or 15 U.S.C. § 1060 or the one month period (commencing as of the date hereof) pursuant to 17 U.S.C. § 205 and otherwise as may be required pursuant to the laws of any other necessary jurisdiction. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, other than (i) any Lien that is expressly permitted pursuant to Section 7.01 of the Credit Agreement and has priority as a matter of law and (ii) Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement.

(d) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, except for Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement. None of the Grantors has filed or consented to the filing of (i) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral, (ii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Collateral with the United States Patent and Trademark Office or the United States Copyright Office, or (iii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement.

(e) All Commercial Tort Claims of each Grantor in existence on the date of this Agreement (or on the date upon which such Grantor becomes a party to this Agreement) are described on Schedule III hereto.

Section 3.03. Covenants . (a)The Borrower agrees to promptly notify the Collateral Agent in writing of any change (i) in the legal name of any Grantor, (ii) in the identity or type of organization or corporate structure of any Grantor, (iii) in the jurisdiction of organization of any Grantor, (iv) in the Location of any Grantor or (v) in the organizational identification number of any Grantor. In addition, if any Grantor does not have an organizational identification number on the Closing Date (or the date such Grantor becomes a party to this Agreement) and later obtains one, the Borrower shall promptly thereafter notify the Collateral Agent of such organizational identification number and shall take all actions reasonably satisfactory to the Collateral Agent to the extent necessary to maintain the security interests (and the priority thereof) of the Collateral Agent in the Collateral intended to be granted hereby fully perfected and in full force and effect.

(b) Each Grantor shall, at its own expense, take any and all commercially reasonable actions necessary to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Collateral Agent in the Article 9 Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 7.01 of the Credit Agreement; provided that, nothing in this Agreement shall prevent any Grantor from discontinuing the operation or maintenance of any of its assets or properties if such discontinuance is both (x) determined by such Grantor in good faith to be desirable in the conduct of its business and (y) is permitted by the Credit Agreement.

(c) Each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 6.01 of the Credit Agreement, the Borrower shall deliver to the Collateral Agent a certificate executed by the chief financial officer and the chief legal officer of the Borrower setting forth the information required pursuant to Schedules 1(a), 1(c), 1(e), 1(f) and 2(b) of the Perfection Certificate or confirming that there has been no change in such information since the date of such certificate or the date of the most recent certificate delivered pursuant to this Section 3.03(c).

(d) The Borrower agrees, on its own behalf and on behalf of each other Grantor, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith. If any amount payable under or in connection with any of the Article 9 Collateral that exceeds $5,000,000 shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be promptly pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

(e) At its option, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not permitted pursuant to Section 7.01 of the Credit Agreement, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement and within a reasonable period of time after the Collateral Agent has requested that it do so, and each Grantor jointly and severally agrees

to reimburse the Collateral Agent within 10 days after demand for any payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization. Nothing in this paragraph shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

(f) If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person the value of which exceeds $5,000,000 to secure payment and performance of an Account, such Grantor shall promptly assign such security interest to the Collateral Agent for the benefit of the applicable Secured Parties. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other Person granting the security interest.

(g) Each Grantor (rather than the Collateral Agent or any Secured Party) shall remain liable (as between itself and any relevant counterparty) to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless the Collateral Agent and the Secured Parties from and against any and all liability for such performance.

Section 3.04. Other Actions . In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Security Interest, each Grantor agrees, in each case at such Grantor's own expense, to take the following actions with respect to the following Article 9 Collateral:

(a) *Instruments*. If any Grantor shall at any time hold or acquire any Instruments constituting Collateral and evidencing an amount in excess of $5,000,000, such Grantor shall forthwith endorse, assign and deliver the same to the Collateral Agent for the benefit of the applicable Secured Parties, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.

(b) *Investment Property*. Except to the extent otherwise provided in Article II, if any Grantor shall at any time hold or acquire any certificated securities, such Grantor shall forthwith endorse, assign and deliver the same to the Collateral Agent for the benefit of the applicable Secured Parties, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request. If any securities now or hereafter acquired by any Grantor are uncertificated and are issued to such Grantor or its nominee directly by the issuer thereof, upon the Collateral Agent's request and following the occurrence of an Event of Default such Grantor shall promptly notify the Collateral Agent thereof and, at the Collateral Agent's reasonable request, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (i) cause the issuer to agree to comply with instructions from the Collateral Agent as to such securities, without further consent of any Grantor or such nominee, or (ii) arrange for the Collateral Agent to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property are held by any Grantor or its nominee through a securities intermediary or commodity intermediary, upon the Collateral Agent's request and following the occurrence of an Event of Default, such Grantor shall immediately notify the Collateral Agent thereof and at the Collateral Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent shall either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply with entitlement orders or other instructions from the Collateral Agent to such securities intermediary as to such security entitlements, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Collateral Agent to such commodity intermediary, in each case without further consent of any Grantor or such nominee, or (ii) in the case of financial assets or other Investment Property held through a securities intermediary, arrange for the Collateral Agent to become the entitlement holder with respect to such Investment Property, with the Grantor being permitted, only with the consent of the Collateral Agent, to exercise rights to withdraw or otherwise deal with such Investment Property. The Collateral Agent agrees with each of the Grantors that the Collateral Agent shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by any Grantor, unless an Event of Default has occurred and is continuing. The provisions of this paragraph shall not apply to any financial assets credited to a securities account for which the Collateral Agent is the securities intermediary.

(c) *Commercial Tort Claims.* If any Grantor shall at any time after the date of this Agreement acquire a Commercial Tort Claim in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) of $5,000,000 or more, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such Grantor and provide supplements to Schedule III describing the details thereof and shall grant to the Collateral Agent a security interest therein and in the proceeds thereof, all upon the terms of this Agreement.

(d) *Letter of Credit Rights*. If any Grantor is at any time a beneficiary under a letter of credit with a stated amount of $5,000,000 or more, such Grantor shall promptly notify the Collateral Agent thereof and, at the request of the Collateral Agent, such Grantor shall, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, use its reasonable best efforts to (i) 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 such 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 this Agreement after the occurrence and during the continuance of an Event of Default.

ARTICLE IV

Certain Provisions Concerning Intellectual Property Collateral

Section 4.01. Grant of License to Use Intellectual Property . Without limiting the provision of Section 3.01 hereof or any other rights of the Collateral Agent as the holder of a Security Interest in any Intellectual Property Collateral, for the purpose of enabling the Collateral Agent to exercise

rights and remedies under this Agreement at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor shall, upon request by the Collateral Agent, grant to the Collateral Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantors and exercisable only after the occurrence and during the continuation of an Event of Default) to use, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. The use of such license by the Collateral Agent may be exercised, at the option of the Collateral Agent, during the continuation of an Event of Default; provided that any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default.

Section 4.02. Protection of Collateral Agent's Security

(a) Except to the extent failure to act, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, with respect to registration or pending application of each item of its Intellectual Property Collateral for which such Grantor has standing to do so, each Grantor agrees to take, at its expense, all steps, including, without limitation, in the U.S. Patent and Trademark Office, the U.S. Copyright Office and any other governmental authority located in the United States, to (i) maintain the validity and enforceability of any registered Intellectual Property Collateral and maintain such Intellectual Property Collateral in full force and effect, and (ii) pursue the registration and maintenance of each Patent, Trademark, or Copyright registration or application, now or hereafter included in such Intellectual Property Collateral of such Grantor, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the U.S. Patent and Trademark Office, the U.S. Copyright Office or other governmental authorities, the filing of applications for renewal or extension, the filing of affidavits under Sections 8 and 15 of the U.S. Trademark Act, the filing of divisional, continuation, continuation-in-part, reissue and renewal applications or extensions, the payment of maintenance fees and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(b) Except where failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, each Grantor shall take all steps to preserve and protect each item of its Intellectual Property Collateral, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with any of the Trademarks, consistent with the quality of the products and services as of the date hereof, and taking all steps necessary to ensure that all licensed users of any of the Trademarks abide by the applicable license's terms with respect to the standards of quality.

(c) Except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Grantor shall do or permit any act or knowingly omit to do any act whereby any of its Intellectual Property Collateral may lapse, be terminated, or become invalid or unenforceable or placed in the public domain (or in case of a trade secret, lose its competitive value).

(d) Each Grantor agrees that, should it obtain an ownership or other interest in any Intellectual Property Collateral after the Closing Date ("After-Acquired Intellectual Property"), (i) the provisions of this Agreement shall automatically apply thereto, and (ii) any such After-Acquired Intellectual Property and, in the case of Trademarks, the goodwill symbolized thereby, shall automatically become part of the Intellectual Property Collateral subject to the terms and conditions of this Agreement with respect thereto.

(e) Nothing in this Agreement prevents any Grantor from discontinuing the use or maintenance of any of its Intellectual Property Collateral to the extent permitted by the Credit Agreement if such Grantor determines in its reasonable business judgment that such discontinuance is desirable in the conduct of its business.

Section 4.03. After-Acquired Property . Once every fiscal quarter of the Borrower, with respect to issued or registered Patents (or published applications therefore) or Trademarks (or applications therefor), and once every fiscal quarter, with respect to registered Copyrights, each Grantor shall sign and deliver to the Collateral Agent an appropriate Security Agreement Supplement and related grant of security interest with respect to all of its applicable Owned Intellectual Property as of the last day of such period, to the extent that such Intellectual Property is not covered by any previous Security Agreement Supplement and related grant of security interest so signed and delivered by it. In each case, it will promptly cooperate as reasonably necessary to enable the Collateral Agent to make any necessary or reasonably desirable recordations with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as appropriate.

ARTICLE V

Remedies

Section 5.01. Remedies Upon Default . Upon the occurrence and during the continuance of an Event of Default, it is agreed that the Collateral Agent shall have the right to exercise any and all rights afforded to a secured party with respect to the Secured Obligations, as applicable, under the Uniform Commercial Code or other applicable law, and also may (i) require each Grantor to, and each Grantor agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place and time to be designated by the Collateral Agent that is reasonably convenient to both parties; (ii) occupy any premises owned or, to the extent lawful and permitted, leased by any of the Grantors where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under law, without obligation to such Grantor in respect of such occupation; provided that the Collateral Agent shall provide the applicable Grantor with notice thereof prior to or promptly after such occupancy; (iii) exercise any and all rights and remedies of any of the Grantors under or in connection with the Collateral, or otherwise in respect of the Collateral; provided that the Collateral Agent shall provide the applicable Grantor with notice thereof prior to or promptly after such exercise; (iv) withdraw any and all cash or other Collateral from the Cash Collateral Account and to apply such cash and other Collateral to the payment of any and all Secured Obligations in the manner provided in Section 5.02 of this Agreement; (v) subject to the mandatory requirements of applicable law and the notice requirements described below, sell or otherwise dispose of all or any part of the

Collateral securing the Secured Obligations at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate; and (vi) with respect to any Intellectual Property Collateral, on demand, cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Intellectual Property Collateral by the applicable Grantors to the Collateral Agent, or license or sublicense, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any such Intellectual Property Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine, provided, however, that such terms shall include all terms and restrictions that customarily required to ensure the continuing validity and effectiveness of the Intellectual Property at issue, such as, without limitation, quality control and inure provisions with regard to Trademarks, patent designation provisions with regard to patents, and copyright notices and restrictions or decompilation and reverse engineering of copyrighted software. The Collateral Agent shall be authorized at any sale of securities (if it deems it advisable to do so) to restrict the prospective bidders or purchasers of such securities to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any sale of Collateral shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which such Grantor 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 give the applicable Grantors 10 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the New York UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full (in which case the applicable Grantors shall be entitled to the proceeds of any such sale pursuant to Section 5.02 hereof). As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the New York UCC or its equivalent in other jurisdictions.

Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor's true and lawful agent (and attorney-in-fact) during the continuance of an Event of Default and after notice to the Borrower of its intent to exercise such rights (except in the case of a Bankruptcy Event of Default, in which case no such notice shall be required), for the purpose of (i) making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies if insurance, (ii) making all determinations and decisions with respect thereto and (iii) obtaining or maintaining the policies of insurance required by Section 6.07 of the Credit Agreement or to pay any premium in whole or in part relating thereto. All sums disbursed by the Collateral Agent in connection with this paragraph, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, within 10 days of demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Section 5.02. Application of Proceeds . The Collateral Agent shall apply the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash, in accordance with the provisions of Section 8.04 of the Credit Agreement. The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof. It is understood and agreed that the Grantors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

ARTICLE VI

Indemnity, Subrogation and Subordination

Section 6.01. Indemnity . In addition to all such rights of indemnity and subrogation as the Grantors may have under applicable law (but subject to Section 6.03), each Guarantor Party (as defined in the Guaranty) agrees that, in the event any assets of any Grantor that is a Subsidiary

Party shall be sold pursuant to this Agreement or any other Collateral Document to satisfy in whole or in part an Obligation owing directly by such Guaranteed Party to any Secured Party (i.e., other than pursuant to its capacity as a Guarantor under the Guaranty), such Guaranteed Party shall indemnify such Grantor in an amount equal to the fair market value of the assets so sold.

Section 6.02. Contribution and Subrogation . At any time a payment by any Subsidiary Party in respect of the Secured Obligations is made under this Agreement or any other Collateral Document as a result of a sale of assets by such Subsidiary Party that shall not have been fully indemnified as provided in Section 6.01, the right of contribution of each Subsidiary Party against each other Subsidiary Party shall be determined as provided in the immediately succeeding sentence, with the right of contribution of each Subsidiary Party to be revised and restated as of each date on which a payment (a "Relevant Payment") is made on the Secured Obligations under this Agreement and not indemnified pursuant to Section 6.01. At any time that a Relevant Payment is made by a Subsidiary Party that results in the aggregate payments made by such Subsidiary Party in respect of the Secured Obligations to and including the date of the Relevant Payment exceeding such Subsidiary Party's Contribution Percentage (as defined below) of the aggregate payments made by all Subsidiary Parties in respect of the Secured Obligations to and including the date of the Relevant Payment (such excess, the "Aggregate Excess Amount"), each such Subsidiary Party shall have a right of contribution against each other Subsidiary Party who has made payments in respect of the Secured Obligations to and including the date of the Relevant Payment in an aggregate amount less than such other Subsidiary Party's Contribution Percentage of the aggregate payments made to and including the date of the Relevant Payment by all Subsidiary Parties in respect of the Secured Obligations (the aggregate amount of such deficit, the "Aggregate Deficit Amount") in an amount equal to (x) a fraction the numerator of which is the Aggregate Excess Amount of such Subsidiary Party and the denominator of which is the Aggregate Excess Amount of all Subsidiary Parties multiplied by (y) the Aggregate Deficit Amount of such other Subsidiary Party. A Subsidiary Party's right of contribution pursuant to the preceding sentences shall arise at the time of each computation, subject to adjustment to the time of each computation; provided that the contribution rights of such Subsidiary Party shall be subject to Section 6.03. As used in this Section 6.02: (i) each Subsidiary Party's "Contribution Percentage" shall mean the percentage obtained by dividing (x) the Adjusted Net Worth (as defined below) of such Subsidiary Party by (y) the aggregate Adjusted Net Worth of all Subsidiary Parties; (ii) the "Adjusted Net Worth" of each Subsidiary Party shall mean the greater of (x) the Net Worth (as defined below) of such Subsidiary Party and (y) zero; and (iii) the "Net Worth" of each Subsidiary Party shall mean the amount by which the fair saleable value of such Subsidiary Party's assets on the date of any Relevant Payment exceeds its existing debts and other liabilities (including contingent liabilities, but without giving effect to any Guaranteed Obligations arising under the Subsidiary Guaranty or any guaranteed obligations arising under any guaranty of any Junior Financing or any Permitted Refinancing thereof) on such date. Notwithstanding anything to the contrary contained above, any Subsidiary Party that is released from this Agreement pursuant to Section 7.13 hereof shall thereafter have no contribution obligations, or rights, pursuant to this Section 6.02, and at the time of any such release, if the released Subsidiary Party had an Aggregate Excess Amount or an Aggregate Deficit Amount, same shall be deemed reduced to $0, and the contribution rights and obligations of the remaining Subsidiary Parties shall be recalculated on the respective date of release (as otherwise provided above) based on the payments made hereunder by the remaining Subsidiary Parties. Each of the Subsidiary Parties recognizes and acknowledges that the rights to contribution arising hereunder shall constitute an asset in favor of the party entitled to such contribution. In this connection, each Subsidiary Party has the right to waive its contribution right against any other Subsidiary Party to the extent that after giving effect to such waiver such Subsidiary Party would remain solvent, in the determination of the Required Lenders.

Section 6.03. Subordination . Notwithstanding any provision of this Agreement to the contrary, all rights of the Grantors under Sections 6.01 and 6.02 and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the indefeasible payment in full in cash of the Secured Obligations; provided, that if any amount shall be paid to such Grantor on account of such subrogation rights at any time prior to the irrevocable payment in full in cash of all the Secured Obligations, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Collateral Agent to be credited and applied against the Secured Obligations, whether matured or unmatured, in accordance with Section 5.02 of this Agreement. No failure on the part of the Borrower or any Grantor to make the payments required by Sections 6.01 and 6.02 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Grantor with respect to its obligations hereunder, and each Grantor shall remain liable for the full amount of the obligations of such Grantor hereunder.

ARTICLE VII

Miscellaneous

Section 7.01. Notices . All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.02 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Party shall be given to it in care of the Borrower as provided in Section 10.02 of the Credit Agreement.

Section 7.02. Waivers; Amendment . (a)No failure or delay by the Collateral Agent, any L/C Issuer or any Lender in exercising any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right, remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Collateral Agent, the L/C Issuers and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 7.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Collateral Agent, any Lender or any L/C Issuer may have had notice or knowledge of such Default at the time. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.01 of the Credit Agreement.

Section 7.03. Collateral Agent's Fees and Expenses; Indemnification . (a)The parties hereto agree that the Collateral Agent shall be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.04 of the Credit Agreement.

(b) Without limitation of its indemnification obligations under the other Loan Documents, the Grantors jointly and severally agree to indemnify the Collateral Agent and the other Indemnitees (as defined in Section 10.05 of the Credit Agreement) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of, the execution, delivery, performance or enforcement of this Agreement or any claim, litigation, investigation or proceeding relating to any of the foregoing agreement or instrument contemplated hereby, or to the Collateral, whether or not 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 are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or of any Affiliate, director, officer, employee, counsel, agent, trustee, investment advisor or attorney-in-fact of such Indemnitee.

(c) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 7.03 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Secured Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 7.03 shall be payable within 10 days of written demand therefor.

Section 7.04. Successors and Assigns . Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

Section 7.05. Survival of Agreement . All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any Lender or on its behalf and notwithstanding that the Collateral Agent, any L/C Issuer or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding and unpaid or any Letter of Credit is outstanding (except if such Letter of Credit is cash collateralized or subject to a backstop letter of credit in each case in an amount and on terms reasonably satisfactory to the Administrative Agent and the L/C Issuer) and so long as the Commitments have not expired or terminated.

Section 7.06. Counterparts; Effectiveness; Several Agreement . This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective as to any Loan Party when a counterpart hereof executed on behalf of such Loan Party shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Loan Party and the Collateral Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Loan Party, the Collateral Agent and the other Secured Parties and their respective successors and assigns, except that no Loan Party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 7.07. Severability . Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.08. Right of Set-Off . In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower and each Loan Party 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) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates to or for the credit or the account of the respective Loan Parties against any and all obligations owing to such Lender and its Affiliates hereunder, now or hereafter existing, irrespective of whether or not such Lender or Affiliate shall have made demand under this Agreement and although such obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Collateral Agent after any such set off and application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 7.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have.

Section 7.09. Governing Law; Jurisdiction; Consent to Service of Process . (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the Loan Parties hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York City and of the United States District Court of the Southern District 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 Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Collateral Agent, any L/C Issuer or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Grantor or its properties in the courts of any jurisdiction.

(c) Each of the Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 7.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 7.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 7.10. WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 7.10 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 7.11. Headings . Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 7.12. Security Interest Absolute . All rights of the Collateral Agent hereunder, the Security Interest, the grant of a security interest in the Pledged Collateral and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, the Secured Hedge Agreements, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) 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 other Loan Document, the Secured Hedge Agreements or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement.

Section 7.13. Termination or Release . (a)This Agreement, the Security Interest and all other security interests granted hereby shall terminate when all the outstanding Secured Obligations (other than Secured Obligations in respect of Secured Hedge Agreements and Cash Management Obligations not yet due and payable (to the extent permitted by the terms thereof) and contingent indemnification obligations not yet accrued and payable) have been indefeasibly paid in full and the Lenders have no further commitment to lend under the Credit Agreement, the L/C Obligations have been reduced to zero (except if such Letter of Credit is fully cash collateralized or supported by a backstop letter of credit in each case in an amount and on terms reasonably satisfactory to the Administrative Agent and the L/C Issuer) and the L/C Issuers have no further obligations to issue Letters of Credit under the Credit Agreement.

(b) A Subsidiary Party shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Subsidiary Party shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Subsidiary Party ceases to be a Subsidiary of the Borrower; provided that the Required Lenders shall have consented to such transaction (to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise.

(c) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 10.01 of the Credit Agreement, the security interest in such Collateral shall be automatically released.

(d) In connection with any termination or release pursuant to paragraph (a), (b) or (c), the Collateral Agent shall promptly execute and deliver to any Grantor, at such Grantor's expense, all documents (including relevant certificates, securities and other instruments) that such Grantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 7.13 shall be without recourse to or warranty by the Collateral Agent.

(e) At any time that the respective Grantor desires that the Collateral Agent take any action described in the immediately preceding paragraph (d), it shall, upon request of the Collateral Agent, deliver to the Collateral Agent an officer's certificate certifying that the release of the respective Collateral is permitted pursuant to paragraph (a), (b) or (c). The Collateral Agent shall have no liability whatsoever to any Secured Party as the result of any release of Collateral by it as permitted (or which the Collateral Agent in good faith believes to be permitted) by this Section 7.13.

(f) Notwithstanding anything to the contrary set forth in this Agreement, each Cash Management Bank and each Hedge Bank by

the acceptance of the benefits under this Agreement hereby acknowledge and agree that (i) the obligations of the Borrower or any Subsidiary under any Secured Hedge Agreement and the Cash Management Obligations shall be secured pursuant to this Agreement only to the extent that, and for so long as, the other Secured Obligations are so secured and (ii) any release of Collateral effected in the manner permitted by this Agreement shall not require the consent of any Hedge Bank or Cash Management Bank.

Section 7.14 Additional Restricted Subsidiaries . Pursuant to Section 6.11 of the Credit Agreement, certain Restricted Subsidiaries of the Loan Parties that were not in existence or not Restricted Subsidiaries on the date of the Credit Agreement are required to enter in this Agreement as Subsidiary Parties upon becoming Restricted Subsidiaries. Upon execution and delivery by the Collateral Agent and a Restricted Subsidiary of a Security Agreement Supplement, such Restricted Subsidiary shall become a Subsidiary Party hereunder with the same force and effect as if originally named as a Subsidiary Party herein. The execution and delivery of any such instrument shall not require the consent of any other Loan Party hereunder. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Loan Party as a party to this Agreement.

Section 7.15 Collateral Agent Appointed Attorney-in-Fact . Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof at any time after and during the continuance of an Event of Default, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default and (unless a Bankruptcy Event of Default has occurred and is continuing) delivery of notice by the Collateral Agent to the Borrower of its intent to exercise such rights, with full power of substitution either in the Collateral Agent's name or in the name of such Grantor (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (d) to send verifications of Accounts to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (g) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent or the Cash Collateral Account and adjust, settle or compromise the amount of payment of any Account; and (h) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; provided that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct or that of any of their Affiliates, directors, officers, employees, counsel, agents or attorneys-in-fact.

Section 7.16 General Authority of the Collateral Agent . By acceptance of the benefits of this Agreement and any other Collateral Documents, each Secured Party (whether or not a signatory hereto) shall be deemed irrevocably (a) to consent to the appointment of the Collateral Agent as its agent hereunder and under such other Collateral Documents, (b) to confirm that the Collateral Agent shall have the authority to act as the exclusive agent of such Secured Party for the enforcement of any provisions of this Agreement and such other Collateral Documents against any Grantor, the exercise of remedies hereunder or thereunder and the giving or withholding of any consent or approval hereunder or thereunder relating to any Collateral or any Grantor's obligations with respect thereto, (c) to agree that it shall not take any action to enforce any provisions of this Agreement or any other Collateral Document against any Grantor, to exercise any remedy hereunder or thereunder or to give any consents or approvals hereunder or thereunder except as expressly provided in this Agreement or any other Collateral Document and (d) to agree to be bound by the terms of this Agreement and any other Collateral Documents.

Section 7.17 Mortgages . In the event that any of the Collateral hereunder is also subject to a valid and enforceable Lien under the terms of a Mortgage and the terms thereof are inconsistent with the terms of this Agreement, then with respect to such Collateral, the terms of such Mortgage shall control in the case of Fixtures and real estate leases, letting and licenses of, and contracts and agreements relating to the lease of, real property, and the terms of this Agreement shall control in the case of all other Collateral.

Section 7.18 Recourse; Limited Obligations . This Agreement is made with full recourse to each Grantor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Grantor contained herein, in the Loan Documents and the Secured Hedge Agreements and otherwise in writing in connection herewith or therewith. It is the desire and intent of each Grantor and the Secured Parties that this Agreement shall be enforced against each Grantor to the fullest extent permissible under the laws applied in each jurisdiction in which enforcement is sought. Notwithstanding anything to the contrary contained herein, and in furtherance of the foregoing, it is noted that the obligations of each Grantor that is a Subsidiary Party have been limited as expressly provided in the Subsidiary Guaranty and are limited hereunder as and to the same extent provided therein.

* * *

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

OSI RESTAURANT PARTNERS, LLC

By:

Name:

Title:

OSI HOLDCO, INC.

By:

Name:

Title:

EACH OF THE SUBSIDIARIES

LISTED ON SCHEDULE I HERETO

By:

Name:

Title:

DEUTSCHE BANK AG NEW YORK BRANCH, as Collateral Agent

By:

Name:

Title:

By:

Name:

Title:

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NEWYORK 5896489 v9 (2K)

SCHEDULE to
the Security Agreement

SUBSIDIARY PARTIES

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NEWYORK 5896489 v9 (2K)

Issuer	Number of Certificate	Registered Owner	Number and Class of Equity Interest	Percentage of Equity Interests

EQUITY INTERESTS

DEBT SECURITIES

Issuer	Principal Amount	Date of Note	Maturity Date

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SCHEDULE III to the
Security Agreement

COMMERCIAL TORT CLAIMS

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NEWYORK 5896489 v9 (2K)

SCHEDULE IV
to the
Security Agreement

U.S. COPYRIGHTS OWNED BY [NAME OR GRANTOR]

[Make a separate page of Schedule IV for each Grantor and state if no copyrights are owned. List in numerical order by Registration No.]

U.S. Copyright Registrations

Title	Reg. No.	Author

Title	Author	Class	Date Filed

Pending U.S. Copyright Applications for Registration

Unregistered Copyrights

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SCHEDULE V
to the
Security Agreement

DOMAIN NAMES OWNED BY [NAME OF GRANTOR]

[Make a separate page of Schedule IV for each Grantor and state if no Domain Names are owned.]

Internet Domain Names	Country	Registration No. (or other applicable identifier)

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NEWYORK 5896489 v9 (2K)

SCHEDULE VI
to the
Security Agreement

U.S. COPYRIGHTS LICENSES OWNED BY [NAME OR GRANTOR]

[Make a separate page of Schedule IV for each Grantor and state if no Copyrights Licenses are owned.]

PATENTS LICENSES OWNED BY [NAME OF GRANTOR]

[Make a separate page of Schedule IV for each Grantor and state if no Patents Licenses are owned.]

TRADEMARK LICENSES OWNED BY [NAME OF GRANTOR]

[Make a separate page of Schedule IV for each Grantor and state if no Trademark Licenses are owned.]

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SCHEDULE VII
to the
Security Agreement

PATENTS OWNED BY [NAME OF GRANTOR]

[Make a separate page of Schedule IV for each Grantor and state if no patents are owned. List in numerical order by Patent No./Patent Application No.]

U.S. Patent Registrations

Patent Numbers	Filing Date

Patent Numbers	Issue Date

U.S. Patent Applications

SCHEDULE VIII
to the
Security Agreement

TRADEMARK/TRADE NAMES OWNED BY [NAME OF GRANTOR]

[Make a separate page of Schedule IV for each Grantor and state if no trademarks/trade names are owned. List in numerical order by trademark registration/application no.]

U.S. Trademark Registrations

Mark	Reg. Date	Reg. No.

U.S. Trademark Applications

Mark	Filing Date	Application No.

Common Law Trademarks

EXHIBIT I to the
Security Agreement

SUPPLEMENT NO. __ dated as of [●], to the Security Agreement dated as of June 14, 2007, among OSI RESTAURANT PARTNERS, LLC (the "Borrower"), OSI HOLDCO, INC. ("Holdings"), the Subsidiaries of the Borrower identified therein and DEUTSCHE BANK AG NEW YORK BRANCH, as Collateral Agent for the Secured Parties (as defined below).

A Reference is made to (i) the Credit Agreement dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Holdings, each Lender (as defined in the Credit Agreement) from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, (ii) the Guaranty (as defined in the Credit Agreement), (iii) each Secured Hedge Agreement (as defined in the Credit Agreement) and (vi) the Cash Management Obligations (as defined in the Credit agreement).

B Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Security Agreement referred to therein.

C The Grantors have entered into the Security Agreement in order to induce (x) the Lenders to make Loans and the L/C Issuers to issue Letters of Credit, (y) the Hedge Banks to enter into and/or maintain Secured Hedge Agreements and (z) the Cash Management Bank to provide Cash Management Services. Section 7.14 of the Security Agreement provides that additional Restricted Subsidiaries of the Borrower may become Subsidiary Parties under the Security Agreement by execution and delivery of an instrument substantially in the form of this Supplement. The undersigned Restricted Subsidiary (the "New Subsidiary") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Subsidiary Party under the Security Agreement in order to induce the Lenders to make additional Loans and the L/C Issuers to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Subsidiary agree as follows:

Section 1. In accordance with Section 7.14 of the Security Agreement, the New Subsidiary by its signature below becomes a Subsidiary Party (and accordingly, becomes a Grantor) and Grantor under the Security Agreement with the same force and effect as if originally named therein as a Subsidiary Party and the New Subsidiary hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Subsidiary Party and Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct on and as of the date hereof. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Subsidiary's right, title and interest in and to the Collateral (as defined in the Security Agreement) of the New Subsidiary. Each reference to a "Grantor" in the Security Agreement shall be deemed to include the New Subsidiary. The Security Agreement is hereby incorporated herein by reference.

Section 2. The New Subsidiary represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Section 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received a counterpart of this Supplement that bears the signature of the New Subsidiary and the Collateral Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Supplement.

Section 4. The New Subsidiary hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the location of any and all Collateral of the New Subsidiary and (b) set forth under its signature hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

Section 5. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

Section 6. **THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

Section 7. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Security Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 8. All communications and notices hereunder shall be in writing and given as provided in Section 7.01 of the Security

Agreement.

Section 9. The New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

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IN WITNESS WHEREOF, the New Subsidiary and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first above written.

[NAME OF NEW SUBSIDIARY]

By:

Name:

Title:

Legal Name:

Jurisdiction of Formation:

Location of Chief Executive Office:

DEUTSCHE BANK AG NEW YORK BRANCH, as Collateral Agent

By:

Name:

Title:

By:

Name:

Title:

LOCATION OF COLLATERAL

Description	Location

EQUITY INTERESTS

Issuer	Number of Certificate	Registered Owner	Number and Class of Equity Interest	Percentage of Equity Interests

DEBT SECURITIES

Issuer	Principal Amount	Date of Note	Maturity Date

Exhibit II to
the Security Agreement

[FORM OF]

COPYRIGHT SECURITY AGREEMENT

COPYRIGHT SECURITY AGREEMENT, dated as of [_____ ___], 20[__], made by [_____], a [_____] (the "Grantor"), in favor of DEUTSCHE BANK AG NEW YORK BRANCH, as collateral agent (together with its successors in such capacity, the "Grantee") for the Secured Parties referred to in the Credit Agreement, dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the OSI Restaurant Partners, LLC, a Delaware limited liability company, OSI Holdco, Inc., a Delaware corporation, each Lender (as defined in the Credit Agreement) from time to time party thereto, the Grantee, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents.

WHEREAS, the Grantor is party to a Security Agreement, dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"), in favor of the Grantee pursuant to which the Grantor is required to execute and deliver this Copyright Security Agreement;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Lenders to extend credit under the Credit Agreement, the Grantor hereby agrees with the Grantee as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein and not defined have the meaning given to them in the Security Agreement, or if not defined therein, in the Credit Agreement.

SECTION 2. Grant of Security Interest in Copyrights. As security for the payment and performance in full of the Obligations, including the Guarantees, the Grantor hereby assigns and pledges to the Grantee, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Grantee, its successors and assigns, for the benefit of the Secured Parties, a continuing security interest (the " Security Interest") in, to, or under all right, title or interest in or to any and all of the Owned Copyrights, including those listed on Schedule I hereto, and all proceeds of the Owned Copyrights.

SECTION 3. Security Agreement. The Security Interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Grantee pursuant to the Security Agreement, and the Grantee and the Grantor hereby acknowledge and affirm that the rights and remedies of the Grantee with respect to the Security Interest in the Owned Copyrights made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.

SECTION 5. Recordation. The Grantor authorizes and requests that the United States Copyright Office record this Agreement.

SECTION 6. Governing Law. This Copyright Security Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[signature page follows]

IN WITNESS WHEREOF, the Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[_____],

as Grantor

By:_____

Name:

Title:

STATE OF)

) ss.

COUNTY OF)

On _____, 20[ ], before me _____, Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies) and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature_____

Notary Public

Accepted and Agreed:

DEUTSCHE BANK AG NEW YORK BRANCH,

as Grantee

By:_____

Name:

Title:

By:_____

Name:

Title:

SCHEDULE I

to

COPYRIGHT SECURITY AGREEMENT

COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS

UNITED STATES COPYRIGHTS:

U.S. Copyright Registrations

Title	Reg. No.	Author

Pending U.S. Copyright Applications for Registration

Title	Author	Date Filed

Exhibit III to
the Security Agreement

[FORM OF]

PATENT SECURITY AGREEMENT

PATENT SECURITY AGREEMENT, dated as of [_____ ___], 20[__], made by [_____], a [_____] (the "Grantor"), in favor of DEUTSCHE BANK AG NEW YORK BRANCH, as collateral agent (together with its successors in such capacity, the " Grantee") for the Secured Parties referred to in the Credit Agreement, dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the OSI Restaurant Partners, LLC, a Delaware limited liability company, OSI Holdco, Inc., a Delaware corporation, each Lender (as defined in the Credit Agreement) from time to time party thereto, the Grantee, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents.

WHEREAS, the Grantor is party to a Security Agreement, dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"), in favor of the Grantee pursuant to which the Grantor is required to execute and deliver this Patent Security Agreement;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Lenders to extend credit under the Credit Agreement, the Grantor hereby agrees with the Grantee as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein and not defined have the meaning given to them in the Security Agreement, or if not defined therein, in the Credit Agreement.

SECTION 2. Grant of Security Interest in Patents. As security for the payment and performance in full of the Obligations, including the Guarantees, the Grantor hereby assigns and pledges to the Grantee, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Grantee, its successors and assigns, for the benefit of the Secured Parties, a continuing security interest (the " Security Interest") in, to, or under all right, title or interest in or to any and all Owned Patents, including those listed on Schedule I hereto, and all proceeds and products of the Owned Patents and all causes of action arising prior to or after the date hereof for infringement or competition regarding the same of any of the Owned Patents.

SECTION 3. Security Agreement. The Security Interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Grantee pursuant to the Security Agreement, and the Grantee and the Grantor hereby acknowledge and affirm that the rights and remedies of the Grantee with respect to the Security Interest in the Owned Patents made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.

SECTION 5. Recordation. The Grantor authorizes and requests that the Commissioner of Patents and Trademarks record this Agreement.

SECTION 6. Governing Law. This Patent Security Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[signature page follows]

IN WITNESS WHEREOF, the Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[_____],

as Grantor

By:_____

Name:

Title:

STATE OF)

) ss.

COUNTY OF)

On _____, 20[ ], before me _____, Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies) and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature_____

Notary Public

Accepted and Agreed:

DEUTSCHE BANK AG NEW YORK BRANCH,

as Grantee

By:_____

Name:

Title:

By:_____

Name:

Title:

SCHEDULE I

to

PATENT SECURITY AGREEMENT

PATENT REGISTRATIONS AND PATENT APPLICATIONS

UNITED STATES TRADEMARKS:

U.S. Patent Registrations

Patent Numbers	Issue Date

U.S. Patent Applications

Patent Application No.	Filing Date

Exhibit IV to

the Security Agreement

[FORM OF]

TRADEMARK SECURITY AGREEMENT

TRADEMARK SECURITY AGREEMENT, dated as of [_____ ___], 20[__] made by [_____], a [_____] (the "Grantor"), in favor of DEUTSCHE BANK AG NEW YORK BRANCH, as collateral agent (together with its successors in such capacity, the " Grantee") for the Secured Parties referred to in the Credit Agreement, dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the OSI Restaurant Partners, LLC, a Delaware limited liability company, OSI Holdco, Inc., a Delaware corporation, each Lender (as defined in the Credit Agreement) from time to time party thereto, the Grantee, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents.

WHEREAS, the Grantor is party to a Security Agreement, dated as of June 14, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"), in favor of the Grantee pursuant to which the Grantor is required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Lenders to extend credit under the Credit Agreement, the Grantor hereby agrees with the Grantee as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein and not defined have the meaning given to them in the Security Agreement, or if not defined therein, in the Credit Agreement.

SECTION 2. Grant of Security Interest in Trademarks. As security for the payment and performance in full of the Obligations, including the Guarantees, the Grantor hereby assigns and pledges to the Grantee, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Grantee, its successors and assigns, for the benefit of the Secured Parties, a continuing security interest (the " Security Interest") in, to, or under all right, title or interest in or to any and all of the Owned Trademarks, including those listed on Schedule I hereto, and all proceeds of the Owned Trademarks, the goodwill of the businesses with which the Owned Trademarks are associated, and all causes of action arising prior to or after the date hereof for infringement of any the Owned Trademarks or unfair competition regarding the same.

SECTION 3. Security Agreement. The Security Interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Grantee pursuant to the Security Agreement, and the Grantee and the Grantor hereby acknowledge and affirm that the rights and remedies of the Grantee with respect to the Security Interest in the Owned Trademark made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.

SECTION 5. Recordation. The Grantor authorizes and requests that the Commissioner of Patents and Trademarks record this Agreement.

SECTION 6. Governing Law. This Trademark Security Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[signature page follows]

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IN WITNESS WHEREOF, the Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

_____],

as Grantor

By:_____

Name:

Title:

STATE OF)

) ss.

COUNTY OF)

On _____, 20[ ], before me _____, Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies) and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature_____

Notary Public

Accepted and Agreed:

DEUTSCHE BANK AG NEW YORK BRANCH,

as Grantee

By:_____

Name:

Title:

By:_____

Name:

Title:

SCHEDULE I

to

TRADEMARK SECURITY AGREEMENT

TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS

UNITED STATES TRADEMARKS:

U.S. Trademark Registrations

Mark	Reg. Date	Reg. No

U.S. Trademark Applications

Mark	Filing Date	Application No.

Exhibit V to
the Security Agreement

FORM OF PERFECTION CERTIFICATE

Reference is made to the Credit Agreement dated as of June 14, 2007 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among OSI Restaurant Partners, LLC (the "Borrower"), OSI Holdco, Inc., each Lender from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents. Capitalized terms used but not defined herein have the meanings assigned in the Credit Agreement or the Security Agreement or Guaranty referred to therein, as applicable.

The undersigned, the Chief Financial Officer and the Chief Legal Officer, respectively, of the Borrower, hereby certify to the Administrative Agent and each other Secured Party as follows:

1. Names. (a) The exact legal name of each Guarantor, as such name appears in its respective certificate of incorporation or formation, is as follows:

(b) Set forth below is each other legal name each Guarantor has had in the past five years, together with the date of the relevant change:

(c) Except as set forth in Schedule 1 hereto, to our knowledge, no Guarantor has changed its identity or corporate structure in any way within the past five years. Changes in identity or corporate structure would include mergers, consolidations and acquisitions, as well as any change in the form, nature or jurisdiction of organization. If any such change has occurred, include in Schedule 1 the information required by Sections 1 and 2 of this certificate as to each acquiree or constituent party to a merger or consolidation to the extent such information is available to the Borrower.

(d) To our knowledge, the following is a list of all other names (including trade names or similar appellations) used by each Guarantor or any of its divisions or other business units in connection with the conduct of its business or the ownership of its properties at any time during the past five years:

(e) Set forth below is the Organizational Identification Number, if any, issued by the jurisdiction of formation of each Guarantor that is a registered organization:

(f) Set forth below is the Federal Taxpayer Identification Number of each Guarantor:

2. Current Locations. (a) The chief executive office of each Guarantor is located at the address set forth opposite its name below:

Guarantor	Mailing Address	County	State

(b) The jurisdiction of formation of each Guarantor that is a registered organization is set forth opposite its name below:

Guarantor:	Jurisdiction:

(c) Set forth below opposite the name of each Guarantor are the names and addresses of all Persons other than such Guarantor that have possession of any material Collateral of such Guarantor:

Guarantor	Mailing Address	County	State

(d) Set forth below is a list of all real property held by each Guarantor, whether owned or leased, the name of the Guarantor that owns or leases such real property, and the fair market value of any such owned or leased real property, to the extent an appraisal exists with respect to any such owned or leased real property, or, in the absence of any such appraisal, the book value of any such owned real property or the current annual rent with respect to any such leased real property:

Address	Owned/Leased	Guarantor	Book, Market or Rental Value

(e) Set forth below opposite the name of each Guarantor are all the locations where such Guarantor maintains any material Collateral and all the places of business where such Guarantor conducts any material business that are not identified above:

Guarantor	Mailing Address	County	State

3. Unusual Transactions. All Accounts have been originated by the Guarantor and all Inventory has been acquired by the Guarantor in the ordinary course of business (other than Accounts acquired in connection with a business acquisition).

4. Schedule of Filings. Attached hereto as Schedule 4 is a schedule setting forth the proper Uniform Commercial Code filing office in the jurisdiction in

which each Guarantor is located and, to the extent any of the Collateral is comprised of fixtures, in the proper local jurisdiction, in each case as set forth with respect to such Guarantor in Section 2 hereof.

5. Stock Ownership and other Equity Interests. Attached hereto as Schedule 5 is a true and correct list of all the issued and outstanding Equity Interests of the Borrower and each Subsidiary and the record and beneficial owners of such Equity Interests. Also set forth on Schedule 5 is each Investment of Holdings, the Borrower or any Subsidiary that represents 50% or less of the Equity Interests of the Person in which such Investment was made.

6. Debt Instruments. Attached hereto as Schedule 6 is a true and correct list of all promissory notes and other evidence of Indebtedness held by Holdings, the Borrower and each other loan party having a principal amount in excess of $5,000,000 that are required to be pledged under the Security Agreement, including all intercompany notes between Loan Parties.

7. Mortgage Filings. Attached hereto as Schedule 7 is a schedule setting forth, with respect to each Mortgaged Property, (a) the exact name of the Person that owns such property as such name appears in its certificate of incorporation or other organizational document, (b) if different from the name identified pursuant to clause (a), the exact name of the current mortgagor/grantor of such property reflected in the records of the filing office for such property identified pursuant to the following clause and (c) the filing office in which a Mortgage with respect to such property must be filed or recorded in order for the Administrative Agent to obtain a perfected security interest therein.

8. Intellectual Property. (a) Attached hereto as Schedule 8(A) in proper form for filing with the United States Patent and Trademark Office is a schedule setting forth all of each Guarantor's: (i) Patents and Patent Applications, including the name of the registered owner, type, registration or application number and the expiration date (if already registered) of each Patent and Patent Application owned by any Guarantor; and (ii) Trademarks and Trademark Applications, including the name of the registered owner, the registration or application number and the expiration date (if already registered) of each Trademark and Trademark application owned by any Guarantor.

(b) Attached hereto as Schedule 8(B) in proper form for filing with the United States Copyright Office is a schedule setting forth all of each Guarantor's Copyrights and Copyright Applications, including the name of the registered owner, title, the registration number or application number and the expiration date (if already registered) of each Copyright or Copyright Application owned by any Guarantor.

IN WITNESS WHEREOF, the undersigned have duly executed this certificate on this [___] day of [_____], 2007.

OSI RESTAURANT PARTNERS, LLC

By _____
Name:
Title:

Exhibit H

[FORM OF]

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND

FINANCING STATEMENT

From

[NAME OF MORTGAGOR]

To

DEUTSCHE BANK AG NEW YORK BRANCH

Dated: [ ],20_

Premises:[City], [State]

County

This Mortgage was prepared by

and when recorded should be returned to:

Leila Rachlin, Esq.

White & Case LLP

1155 Avenue of the Americas

New York, New York 10036

(212) 819-8720

1111779-1714

NEWYORK 5896500 (2K)

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT dated as of [, 20 (this "Mortgage"), by [ ], a [ ], having an office at [ ] (the "Mortgagor"), to DEUTSCHE BANK AG NEW YORK BRANCH, having an office at 60 Wall Street, New York, New York 10005 (the 'Mortgagee") as Collateral Agent for the Secured Parties (as such terms are defined below).

WITNESSETH THAT:

Reference is made to (i) the Credit Agreement dated as of June 14, 2007 (as amended, restated, supplemented and/or otherwise modified from time to time, the " Credit Agreement"), among OSI Restaurant Partners, LLC, a Delaware limited liability company (the " Borrower") OSI Holdco, Inc. ("Holdings"), the lenders from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), the Mortgagee, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents; (ii) each Guaranty (as defined in the Credit Agreement); (iii) each Secured Hedge Agreement (as defined in the Credit Agreement); (iv) the Cash Management Services (as defined in the Credit Agreement) and (v) the Security Agreement dated as of even date hereof (as amended, supplemented or otherwise modified from time to time, the "Security Agreement") among Holdings, the Borrower, the subsidiaries of the Borrower identified therein and the Mortgagee. The Administrative Agent, the Collateral Agent, the Lenders, each L/C Issuer, the Hedge Banks, the Cash Management Banks, the Pre-Funded RC Deposit Bank, the Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to the Credit Agreement shall be collectively referred to herein as the "Secured Parties". Capitalized terms used but not defined herein have the meanings given to them in the Credit Agreement.

In the Credit Agreement, (i) the Lenders have agreed to make term loans (the " Term Loans"), working capital revolving loans (the "Working Capital RC Loans") and pre-funded revolving loans (the "Pre-Funded RC Loans") to the Borrower pursuant to, upon the terms of, and subject to the conditions specified in, the Credit Agreement, (ii) the Swingline Lender has agreed to make swingline loans (the "Swingline Loans", together with Term Loans, Working Capital RC Loans and Pre-Funded RC Loans, the " Loans") to the Borrower pursuant to, upon the terms of, and subject to the conditions specified in, the Credit Agreement, (iii) the L/C Issuers have issued or agreed to issue from time to time Letters of Credit for the account of the Borrower pursuant to, upon the terms of, and subject to the conditions specified in, the Credit Agreement,

(iv) the Hedge Banks have agreed to enter into and/or maintain one or more Secured Hedge Agreements with the Borrower and/or one or more of its Subsidiaries on the terms and conditions set forth therein and (v) the Cash Management Banks have agreed to provide and/or maintain Cash Management Services, on the terms and conditions agreed upon by the Borrower or the respective Restricted Subsidiary and the respective Cash Management Bank. Amounts paid in respect of Term Loans may not be reborrowed. Subject to the terms of the Credit Agreement, the Borrower may borrow, prepay and reborrow the Working Capital RC Loans and the Pre-Funded RC Loans and may issue Letters of Credit from time to time. The Credit

Agreement provides that the sum of the principal amount of the Loans and the Letters of Credit from time to time outstanding and secured hereby shall not exceed $1,330,000,000.

The Mortgagor [is a wholly owned Subsidiary of the Borrower] [is the Borrower] and will derive substantial benefits from the (i) the extensions of credit to the Borrower pursuant to the Credit Agreement, (ii) the entering into and/or maintaining by the Hedge Banks of Secured Hedge Agreements with the Borrower and/or one or more of its Restricted Subsidiaries and (iii) the providing and/or maintaining of Cash Management Services by the Cash Management Banks to the Borrower and/or one or more of its Restricted Subsidiaries. In order to induce the Lenders to extend credit to the Borrower and the Hedge Banks to enter into and maintain such Secured Hedge Agreements with the Borrower and/or one or more of its Subsidiaries and the Cash Management Banks to provide and/or maintain such Cash Management Services with the Borrower and/or one or more of its Subsidiaries, the Mortgagor has agreed to guarantee, among other things, the due and punctual payment and performance of all of the obligations of the Borrower under the Credit Agreement.

The obligations of the Lenders to make Loans, of the L/C Issuers to issue Letters of Credit, the Hedge Banks to enter into and/or maintain Secured Hedge Agreements, and the Cash Management Banks to provide and/or maintain Cash Management Services are conditioned upon, among other things, the execution and delivery by the Mortgagor of this Mortgage in the form hereof to secure the "Obligations" as defined in the Credit Agreement; it being acknowledged and agreed, as used in this Mortgage, the term " Secured Obligations' shall include each extension of credit under the Credit Agreement and the obligations of the Borrower and/or its Restricted Subsidiaries under the Secured Hedge Agreements and all Cash Management Obligations, in each case whether outstanding on the date of this Mortgage or extended from time to time after the date of this Mortgage.

Pursuant to the requirements of the Credit Agreement, the Mortgagor is granting this Mortgage to create a lien on and a security interest in the Mortgaged Property (as hereinafter defined) to secure the performance and payment by the Mortgagor of the Secured Obligations. The Credit Agreement may also require the granting by other Loan Parties of mortgages, deeds of trust and/or deeds to secure debt (the " Other Mortgages") which will create liens on and security interests in certain real and personal property other than the Mortgaged Property to secure the performance of the Secured Obligations.

Granting Clauses

NOW, THEREFORE, IN CONSIDERATION OF the foregoing and in order to secure the due and punctual payment and performance of the Secured Obligations for the benefit of the Secured Parties, the Mortgagor hereby grants, conveys, mortgages, assigns and pledges to the Mortgagee, all of the Mortgagor's right, title, and interest in and to, all the following described property (the "Mortgaged Propert y") whether now owned or held or hereafter acquired:

(1) the land more particularly described on Exhibit A hereto (the "Land"),

together with all rights appurtenant thereto, including the easements over certain other

adjoining land granted by any easement agreements, covenant or restrictive agreements

and all air rights, mineral rights, water rights, oil and gas rights and development rights, if

any, relating thereto, and also together with all of the other easements, rights, privileges, interests, hereditaments and appurtenances thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired (the "Premises");

(2) all buildings, improvements, structures, paving, parking areas, walkways and landscaping now or hereafter erected or located upon the Land, and all fixtures of every kind and type affixed to the Premises or attached to or forming part of any structures, buildings or improvements and replacements thereof now or hereafter erected or located upon the Land (the "Improvements");

(3) subject to the terms of the Security Agreement, all apparatus, movable appliances, building materials, equipment, fittings, furnishings, furniture, machinery and other articles of tangible personal property of every kind and nature, and replacements thereof, now or at any time hereafter placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Improvements or the Premises, including all of Mortgagor's books and records relating thereto and including all pumps, tanks, goods, machinery, tools, equipment, lifts (including fire sprinklers and alarm systems, fire prevention or control systems, cleaning rigs, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, loading, unloading, lighting, power, sanitation, waste removal, entertainment, communications, computers, recreational, window or structural, maintenance, truck or car repair and all other equipment of every kind), restaurant, bar and all other indoor or outdoor furniture (including tables, chairs, booths, serving stands, planters, desks, sofas, racks, shelves, lockers and cabinets), bar equipment, glasses, cutlery, uniforms, linens, memorabilia and other decorative items, furnishings, appliances, supplies, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, freezers, refrigerators, walk-in coolers, signs (indoor and outdoor), computer systems, cash registers and inventory control systems, and all other apparatus, equipment, furniture, furnishings, and articles used in connection with the use or operation of the Improvements or the Premises, it being understood that the enumeration of any specific articles of property shall in no way result in or be held to exclude any items of property not specifically mentioned (the property referred to in this subparagraph (3), the "Personal Property");

(4) subject to the terms of the Security Agreement, all general intangibles owned by the Mortgagor and relating to design, development, operation, management and use of the Premises or the Improvements, all certificates of occupancy, zoning variances, building, use or other permits, approvals, authorizations and consents obtained from and all materials prepared for filing or filed with any governmental agency in connection with the development, use, operation or management of the Premises and Improvements, all

construction, service, engineering, consulting, leasing, architectural and other similar contracts concerning the design, construction, management, operation, occupancy and/or use of the Premises and Improvements, all architectural drawings, plans, specifications, soil tests, feasibility studies, appraisals, environmental studies, engineering reports and similar materials relating to any portion of or all of the Premises and Improvements, and

all payment and performance bonds or warranties or guarantees relating to the Premises or the Improvements, all to the extent assignable (the "Permits, Plans and Warranties");

(5) all now or hereafter existing leases or licenses (under which the Mortgagor is landlord or licensor) and subleases (under which the Mortgagor is sublandlord), concession, management, mineral or other agreements of a similar kind that permit the use or occupancy of the Premises or the Improvements for any purpose in return for any payment, or the extraction or taking of any gas, oil, water or other minerals from the Premises in return for payment of any fee, rent or royalty (collectively, "Leases"), and all agreements or contracts for the sale or other disposition of all or any part of the Premises or the Improvements, now or hereafter entered into by the Mortgagor, together with all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable thereunder ("Rents");

(6) all real estate tax refunds and all proceeds of the conversion, voluntary or involuntary, of any of the Mortgaged Property into cash or liquidated claims ("Proceeds"), including Proceeds of insurance maintained by the Mortgagor and condemnation awards, any awards that may become due by reason of the taking by eminent domain or any transfer in lieu thereof of the whole or any part of the Premises or Improvements or any rights appurtenant thereto, and any awards for change of grade of streets, together with any and all moneys now or hereafter on deposit for the payment of real estate taxes, assessments or common area charges levied against the Mortgaged Property, unearned premiums on policies of fire and other insurance maintained by the Mortgagor covering any interest in the Mortgaged Property or required by the Credit Agreement; and

(7) all extensions, improvements, betterments, renewals, substitutes and replacements of and all additions and appurtenances to, the Land, the Premises, the Improvements, the Personal Property, the Permits, Plans and Warranties and the Leases, hereinafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor on the Land, the Premises or the Improvements, and all conversions of

the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, deed of trust, conveyance, assignment or other act by the Mortgagor, all of which shall become subject to the lien and security interest of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein.

provided that notwithstanding anything to the contrary in this Mortgage, this Mortgage shall not constitute a grant of a security interest in any General Intangible (as defined in the Security Agreement), Investment Property (as defined in the Security Agreement) or other such rights of the Mortgagor arising under any contract, lease, instrument, license or other document if and for so long as (but only to the extent that) the grant of a security interest therein would (x) constitute a violation of a valid and enforceable restriction in respect of such general intangible, investment property or other such rights in favor of a third party or under any law, regulation, permit, order or decree of any Governmental Authority, unless and until all required consents shall have been obtained (for the avoidance of doubt, the restrictions described herein are not negative pledges or

similar undertakings in favor of a lender or other financial counterparty) or (y) expressly give any other party in respect of any such contract, lease, instrument, license or other document, the right to terminate its obligations thereunder, provided however, that the limitation set forth above shall not affect, limit, restrict or impair the grant by the Mortgagor of a security interest pursuant to this Mortgage in any such Mortgaged Property to the extent that an otherwise applicable prohibition or restriction on such grant is rendered ineffective by any applicable law, including the UCC. The Mortgagor shall, if requested to do so by the Mortgagee, use commercially reasonable efforts to obtain any such required consent that is reasonably obtainable with respect to the Mortgaged Property which the Mortgagee reasonably determines to be material.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns, for the ratable benefit of the Secured Parties, forever, subject only to permitted encumbrances pursuant to Section 7.01 of the Credit Agreement (" Permitted Encumbrances") and to satisfaction and release as provided in Section 3.04 hereof.

ARTICLE I

Representations, Warranties and Covenants of the Mortgagor

The Mortgagor agrees, covenants, represents and/or warrants as follows:

Section 1.01. Title, Mortgage Lien. (a) The Mortgagor has good and marketable fee simple title to the Mortgaged Property, subject only to Permitted Encumbrances.

(b) This Mortgage and the Uniform Commercial Code Financing Statements described in Section 1.09 of this Mortgage, when duly recorded in the public records identified in the Perfection Certificate (as defined in the Security Agreement) will create a valid, perfected and enforceable first priority lien upon and security interest in all of the Mortgaged Property to the extent perfection can be obtained by filing uniform commercial code financing statements.

(c) The Mortgagor will forever warrant and defend its title to the Mortgaged Property, the rights of the Mortgagee therein under this Mortgage and the validity and priority of the lien of this Mortgage thereon against the claims of all persons and parties except those having rights under Permitted Encumbrances to the extent of those rights.

Section 1.02. Credit Agreement. This Mortgage is given pursuant to the Credit Agreement. The Mortgagor expressly covenants and agrees to pay when due, and to timely perform, and to cause the other Loan Parties to pay when due, and to timely perform, the Secured Obligations in accordance with the terms of the Credit Documents, each Secured Hedge Agreement and any agreement evidencing any Cash Management Obligations (collectively, the " Secured Credit Documents" and individually, a "Secured Credit Document").

Section 1.03. Maintenance of Mortgaged Property. The Mortgagor will maintain the Improvements and the Personal Property in the manner required by the Credit Agreement.

Section 1.04. Insurance. If any portion of Improvements constituting part of the Mortgaged Property is located in an area identified as a special flood hazard area by Federal Emergency Management Agency or other applicable agency, Mortgagor will purchase flood insurance in an amount satisfactory to the Mortgagee, but in no event less than the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended.

Section 1.05. Casualty Condemnation/Eminent Domain. The Mortgagor shall give the Mortgagee prompt written notice of any casualty or other damage to the Mortgaged Property or any proceeding for the taking of the Mortgaged Property or any portion thereof or interest therein under power of eminent domain or by condemnation or any similar proceeding in accordance with, and to the extent required by, the Credit Agreement. Any Net Cash Proceeds received by or on behalf of the Mortgagor in respect of any such casualty, damage or taking shall be applied or reinvested in accordance with the Credit Agreement.

Section 1.06. Assignment of Leases and Rents. (a) The Mortgagor hereby irrevocably and absolutely grants, transfers and assigns all of its right, title and interest in all Leases, together with any and all extensions and renewals thereof for purposes of securing and discharging the performance by the Mortgagor of the Secured Obligations. The Mortgagor has not assigned or executed any assignment of, and will not assign or execute any assignment of, any Leases or the Rents payable thereunder to anyone other than the Mortgagee.

(b) All Leases shall be subordinate to the lien of this Mortgage. The Mortgagor will not enter into, modify or amend any Lease if such Lease, as entered into, modified or amended, will not be subordinate to the lien of this Mortgage.

(c) Subject to Section 1.07(d), the Mortgagor has assigned and transferred to the Mortgagee all of the Mortgagor's right, title and interest in and to the Rents now or hereafter arising from each Lease heretofore or hereafter made or agreed to by the Mortgagor, it being intended that this assignment establish, subject to Section 1.07(d), an absolute transfer and assignment of all Rents and all Leases to the Mortgagee and not merely to grant a security interest therein. Subject to Section 1.07(d), the Mortgagee may in the Mortgagor's name and stead (with or without first taking possession of any of the Mortgaged Property personally or by receiver as provided herein) operate the Mortgaged Property and rent, lease or let all or any portion of any of the Mortgaged Property to any party or parties at such rental and upon such terms as the Mortgagee shall, in its sole discretion, determine, and may collect and have the benefit of all of said Rents arising from or accruing at any time thereafter or that may thereafter

become due under any Lease.

(d) So long as an Event of Default shall not have occurred and be continuing, the Mortgagee will not exercise any of its rights under Section 1.07(c), and the Mortgagor shall receive and collect the Rents accruing under any Lease; but after the happening and during the continuance of any Event of Default, the Mortgagee may, at its option, receive and collect all Rents and enter upon the Premises and Improvements through its officers, agents, employees or attorneys for such purpose and for the operation and maintenance thereof. Notwithstanding the preceding sentence, the Mortgagor's right to receive and collect the rents accruing under any Lease shall automatically be reinstated once the Event of Default is no longer continuing. The Mortgagor hereby irrevocably authorizes and directs each tenant, if any, and each successor, if any, to the interest of any tenant under any Lease, respectively, to rely upon any notice of a claimed Event of Default sent by the Mortgagee to any such tenant or any of such tenant's successors in interest, and thereafter to pay Rents to the Mortgagee without any obligation or right to inquire as to whether an Event of Default actually exists and even if some notice to the contrary is received from the Mortgagor, who shall have no right or claim against any such tenant or successor in interest for any such Rents so paid to the Mortgagee. Each tenant or any of such tenant's successors in interest from whom the Mortgagee or any officer, agent, attorney or employee of the Mortgagee shall have collected any Rents, shall be authorized to pay Rents to the Mortgagor only after such tenant or any of their successors in interest shall have received written notice from the Mortgagee that the Event of Default is no longer continuing, unless and until a further notice of an Event of Default is given by the Mortgagee to such tenant or any of its successors in interest.

(e) The Mortgagee will not become a mortgagee in possession so long as it does not enter and take actual possession of the Mortgaged Property. In addition, the Mortgagee shall not be responsible or liable for performing any of the obligations of the landlord under any Lease, for any waste by any tenant, or others, for any dangerous or defective conditions of any of the Mortgaged Property, for negligence in the management, upkeep, repair or control of any of the Mortgaged Property or any other act or omission by any other person.

(f) The Mortgagor shall furnish to the Mortgagee, within thirty days after a request by the Mortgagee to do so, a written statement containing the names of all tenants, subtenants and concessionaires of the Premises or Improvements, the terms of any Lease, the space occupied and the rentals and/or other amounts payable thereunder.

Section 1.07. Security Agreement. This Mortgage is both a mortgage of real property and a grant of a security interest in personal property, and shall constitute and serve as a "Security Agreement" within the meaning of the uniform commercial code as adopted in the state wherein the Premises are located ("UCC"). The Mortgagor has hereby granted unto the Mortgagee a security interest in and to all the Mortgaged Property described in this Mortgage that is not real property, and simultaneously with the recording of this Mortgage, the Mortgagor has filed or will file UCC financing statements, and will file continuation statements prior to the

lapse thereof, at the appropriate offices in the jurisdiction of formation of the Mortgagor to perfect the security interest granted by this Mortgage in all the Mortgaged Property that is not real property to the extent perfection can be obtained by the filing of UCC financing statements. The Mortgagor hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, and to file the same in the appropriate offices (to the extent it may lawfully do so), and to perform each and every act and thing reasonably requisite and necessary to be done to perfect the security interest contemplated by the preceding sentence. The Mortgagee shall have all rights with respect to the part of the Mortgaged Property that is the subject of a security interest afforded by the UCC in addition to, but not in limitation of, the other rights afforded the Mortgagee hereunder and under the Guarantee and Security Agreement.

Section 1.08. Filing and Recording. Mortgagor will cause this Mortgage, the UCC financing statements referred to in Section 1.07, any other security instrument creating a security interest in or evidencing the lien hereof upon the Mortgaged Property and each UCC continuation statement and instrument of further assurance to be filed, registered or recorded and, if necessary, refiled, rerecorded and reregistered, in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to perfect the lien hereof upon, and the security interest of the Mortgagee in, the Mortgaged Property until this Mortgage is terminated and released in full in accordance with Section 3.04 hereof. The Mortgagor will pay all filing, registration and recording fees, all Federal, state, county and municipal recording, documentary or intangible taxes and other taxes, duties, imposts, assessments and charges, and all reasonable expenses incidental to or arising out of or in connection with the execution, delivery and recording of this Mortgage, UCC continuation statements any mortgage supplemental hereto, any security instrument with respect to the Personal Property, Permits, Plans and Warranties and Proceeds or any instrument of further assurance.

Section 1.09. Further Assurances. Upon request by the Mortgagee, the Mortgagor will, at the cost of the Mortgagor and without expense to the Mortgagee, do, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or

for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, and on demand, the Mortgagor will also execute and deliver and hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, to file to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments reasonably requested by the Mortgagee to evidence more effectively the lien hereof upon and security interest in and to the Mortgaged Property and to perform each and every act and thing reasonably requested to be done to accomplish the same.

Section 1.10. Additions to Mortgaged Property. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor upon the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by the Mortgagor and specifically described in the grant of the Mortgaged Property above, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

Section 1.11. No Claims Against Mortgagee. Nothing contained in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving the Mortgagor 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 Mortgagee in respect thereof.

Section 1.12. Fixture Filing. (a) Certain portions of the Mortgaged Property are or will become "fixtures" (as that term is defined in the UCC) on the Land or the Improvements, and this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said UCC upon such portions of the Mortgaged Property that are or become fixtures.

(b) The real property to which the fixtures relate is described in Exhibit A attached

hereto. The record owner of the real property described in Exhibit A attached hereto is the Mortgagor. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Mortgagor set forth in the first paragraph of this Mortgage, and the name of the secured party for purposes of this financing statement is the name of the Mortgagee set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagor/debtor is the address of the Mortgagor set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagee/secured party from which information concerning the security interest hereunder may be obtained is the address of the Mortgagee set forth in the first paragraph of this Mortgage. Mortgagor's organizational identification number is [1.1

Section 1.13. Transfers. Except as otherwise permitted by the Credit Agreement, no part of the Mortgaged Property can, or any legal or beneficial interest in the Mortgaged Property shall, be sold, assigned, conveyed, leased, transferred or otherwise disposed of (whether voluntarily or involuntarily, directly or indirectly, by sale of stock or any interest in the Mortgagor, or by operation of law or otherwise).

ARTICLE II

Defaults and Remedies

Section 2.01. Events of Default. Any Event of Default under the Credit Agreement (as such term is defined therein) shall constitute an Event of Default under this Mortgage.

Section 2.02. Demand for PaymentIf an Event of Default shall occur and be continuing, then the Mortgagor will pay to the Mortgagee all amounts due and payable by the Mortgagor hereunder and under the Credit Agreement, and the other Secured Credit Documents and such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable attorneys' fees, disbursements and expenses incurred by the Mortgagee, and the Mortgagee shall be entitled and empowered to institute an action or proceedings at law or in equity for the collection of the sums so due and unpaid, to prosecute any such action or proceedings to judgment or final decree, to enforce any such judgment or final decree against the Mortgagor and to collect, in any manner provided by law, all moneys adjudged or decreed to be payable.

1 Mortgagor's organizational i.d. number must be inserted.

Section 2.03. Rights To Take Possession, Operate and Apply Revenues. (a) If an Event of Default shall occur and be continuing, the Mortgagor shall, upon demand of the Mortgagee, forthwith surrender to the Mortgagee actual possession of the Mortgaged Property and, if and to the extent not prohibited by applicable law, the Mortgagee itself, or by such officers or agents as it may appoint, may then enter and take possession of all the Mortgaged

Property without the appointment of a receiver or an application therefor, exclude the Mortgagor and its agents and employees wholly therefrom, and have access to the books, papers and accounts of the Mortgagor.

(b) If the Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by the Mortgagee, the Mortgagee may to the extent not prohibited by applicable law, obtain a judgment or decree conferring upon the Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to the Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents. The Mortgagor will pay to the Mortgagee, upon demand, all reasonable expenses of obtaining such judgment or decree, including reasonable compensation to the Mortgagee's attorneys and agents; and all such expenses and compensation shall, until paid, be secured by this Mortgage.

(c) Upon every such entry or taking of possession, the Mortgagee may, to the extent not prohibited by applicable law, hold, store, use, operate, manage and control the Mortgaged Property, conduct the business thereof and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon, (ii) purchase or otherwise acquire additional fixtures, personalty and other property, (iii) insure or keep the Mortgaged Property insured, (iv) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as the Mortgagor could in its own name or otherwise with respect to the same or (v) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as may from time to time be directed or determined by Mortgagee to be in its best interest and the Mortgagor hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, to perform any of the foregoing acts. The Mortgagee may collect and receive all the Rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (i) all expenses of taking, holding, managing and operating the Mortgaged Property (including reasonable compensation for the services of all persons employed for such purposes), (ii) the costs of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (iii) the costs of insurance, (iv) such taxes, assessments and other similar charges as the Mortgagee may at its option pay, (v) other proper charges upon the Mortgaged Property or any part thereof and (vi) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, the Mortgagee shall apply the remainder of the moneys and proceeds so received pursuant to Section 2.08.

(d) Whenever, before any sale of the Mortgaged Property under Section 2.06, all Secured Obligations that are then due shall have been paid and all Events of Default fully cured, the Mortgagee will surrender possession of the Mortgaged Property back to the Mortgagor, its successors or assigns without recourse and without representation and warranty. The same right of taking possession shall, however, arise again if any subsequent Event of Default shall occur and be continuing.

Section 2.04. Right To Cure Mortgagor's Failure to Perform. Should the Mortgagor fail in the payment, performance or observance of any term, covenant or condition required by this Mortgage or the Credit Agreement (with respect to the Mortgaged Property), the Mortgagee may with notice to the Mortgagor pay, perform or observe the same, and all payments made or costs or expenses incurred by the Mortgagee in connection therewith shall be secured hereby and shall be, within ten days of written demand, repaid by the Mortgagor to the Mortgagee and if not so repaid shall accrue interest at the Default Rate. The Mortgagee shall be the judge using reasonable discretion of the necessity for any such actions and of the amounts to be paid. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or the Improvements or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without having any obligation to so perform or observe and without thereby becoming liable to the Mortgagor, to any person in possession holding under the Mortgagor or to any other person.

Section 2.05. Right to a Receiver. If an Event of Default shall occur and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of right and without notice to the Mortgagor to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the Rents. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Mortgaged Property is located. The Mortgagor shall pay to the Mortgagee within ten days of written demand all reasonable expenses, including receiver's fees, reasonable attorney's fees and disbursements, costs and agent's compensation incurred pursuant to the provisions of this Section 2.05; and all such expenses shall be secured by this Mortgage and shall be within ten days of written demand repaid by the Mortgagor to the Mortgagee and if not so repaid shall accrue interest at the Default Rate.

Section 2.06. Foreclosure and Sale. (a) If an Event of Default shall occur and be continuing, the Mortgagee may, upon ten Business Days written notice to the Mortgagor, elect to sell the Mortgaged Property or any part of the Mortgaged Property by exercise of the power of foreclosure or of sale granted to the Mortgagee by applicable law or this Mortgage. In such case, the Mortgagee may commence a civil action to foreclose this Mortgage, or it may proceed and sell the Mortgaged Property to satisfy any Secured Obligation. The Mortgagee or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property, may sell all or such parts of the Mortgaged Property as may be chosen by the Mortgagee at the time and place of sale fixed by it in a notice of sale, either as a whole or in separate lots, parcels or items as the Mortgagee shall deem expedient, and in such order as it may determine, at public auction to the highest

bidder. The Mortgagee or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property may postpone any foreclosure or other sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale. Without further notice, the Mortgagee or an officer appointed to sell the Mortgaged Property may make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale. Any person, including the Mortgagor or the Mortgagee or any designee or affiliate thereof, may purchase at such sale.

(b) The Mortgaged Property may be sold subject to unpaid taxes not yet due or payable and Permitted Encumbrances, and, after deducting all costs, fees and expenses of the Mortgagee (including costs of evidence of title in connection with the sale), the Mortgagee or an officer that makes any sale shall apply the proceeds of sale in the manner set forth in Section 2.08.

(c) Any foreclosure or other sale of less than the whole of the Mortgaged Property or any defective or irregular sale made hereunder shall not exhaust the power of foreclosure or of sale provided for herein; and subsequent sales may be made hereunder until the Secured Obligations have been satisfied, or the entirety of the Mortgaged Property has been sold.

(d) If an Event of Default shall occur and be continuing, the Mortgagee may instead of, or in addition to, exercising the rights described in Section 2.06(a) above and either with or without entry or taking possession as herein permitted, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to specifically enforce payment of some or all of the Secured Obligations, or the performance of any term, covenant, condition or agreement of this Mortgage or any other Secured Credit Document or any other right or (ii) to pursue any other remedy available to the Mortgagee, all as the Mortgagee shall determine most effectual for such purposes.

Section 2.07. Other Remedies.(a)In case an Event of Default shall occur and be continuing, the Mortgagee may also exercise, to the extent not prohibited by law, any or all of the remedies available to a secured party under the UCC.

(b) In connection with a sale of the Mortgaged Property or any Personal Property and the application of the proceeds of sale as provided in Section 2.08, to the extent permitted by applicable law the Mortgagee shall be entitled to enforce payment of and to receive up to the principal amount of the Secured Obligations, plus all other charges, payments and costs due under this Mortgage, and to recover a deficiency judgment for any portion of the aggregate principal amount of the Secured Obligations remaining unpaid, with interest.

Section 2.08. Application of Sale Proceeds and Rents. After any foreclosure sale of all or any of the Mortgaged Property, the Mortgagee shall receive and apply the proceeds of the sale together with any Rents that may have been collected and any other sums that then may be held by the Mortgagee under this Mortgage in accordance with Section 8.04 of the Credit Agreement. The Mortgagee shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with the Security Agreement. Upon any sale of the Mortgaged Property by the Mortgagee (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Mortgagee or of the officer making the sale

shall be a sufficient discharge to the purchaser or purchasers of the Mortgaged Property so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Mortgagee or such officer or be answerable in any way for the misapplication thereof.

Section 2.09. The Mortgagor as Tenant Holding Over. If the Mortgagor remains in possession of any of the Mortgaged Property after any foreclosure sale by the Mortgagee, at the Mortgagee's election the Mortgagor shall be deemed a tenant holding over and shall forthwith surrender possession to the purchaser or purchasers at such sale or be summarily dispossessed or evicted according to provisions of law applicable to tenants holding over.

Section 2.10. Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. The Mortgagor waives, to the extent not prohibited by law, (i) the benefit of all laws now existing or that hereafter may be enacted (x) providing for any appraisement or valuation of any portion of the Mortgaged Property and/or (y) in any way extending the time for the enforcement or the collection of amounts due under any of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting said debt or any other amounts due the Mortgagee, (ii) any right to at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, stay, statute of limitations, extension or redemption, or sale of the Mortgaged Property as separate tracts, units or estates or as a single parcel in the event of foreclosure or notice of deficiency and (iii) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of or each of the Secured Obligations and marshaling in the event of foreclosure of this Mortgage.

Section 2.11. Discontinuance of Proceedings. In case the Mortgagee shall proceed to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall be discontinued or abandoned for any reason, or shall be determined adversely to the Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

Section 2.12. Suits To Protect the Mortgaged Propert y. The Mortgagee shall have power

(a) to institute and maintain suits and proceedings to prevent any impairment of the Mortgaged Property by any acts that may be unlawful or in violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of or compliance with such enactment, rule or order would impair the security or be prejudicial to the interest of the Mortgagee hereunder.

Section 2.13. Filing Proofs of Claim. In case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Mortgagor, the Mortgagee shall, to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such proceedings for the Secured Obligations secured by this Mortgage at

the date of the institution of such proceedings and for any interest accrued, late charges and additional interest or other amounts due or that may become due and payable hereunder after such date.

Section 2.14. Possession by Mortgagee. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, any of its property or the Mortgaged Property, the Mortgagee shall be entitled, to the extent not prohibited by law, to remain in possession and control of all parts of the Mortgaged Property now or hereafter granted under this Mortgage to the Mortgagee in accordance with the terms hereof and applicable law.

Section 2.15. Waiver.(a) No delay or failure by the Mortgagee, any L/C Issuer, any Lender, any Hedge Bank or any Cash Management Bank to exercise any right, power, remedy or privilege accruing upon any breach or Event of Default shall exhaust or impair any such right, power, remedy or privilege or be construed to be a waiver of any such breach or Event of Default or acquiescence therein; and every right, power, remedy and privilege given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee. No consent or waiver by the Mortgagee to or of any breach or Event of Default by the Mortgagor in the performance of the Secured Obligations shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or of any other Secured Obligations by the Mortgagor hereunder. No failure on the part of the Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall constitute a waiver by the Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any future Event of Default by the Mortgagor.

(b) Even if the Mortgagee (i) grants some forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security for the payment of any sums secured hereby, (iii) waives or does not exercise some right granted herein or under the Secured Credit Documents, (iv) releases a part of the Mortgaged Property from this Mortgage, (v) agrees to change some of the terms, covenants, conditions or agreements of any of the Secured Credit Documents, (vi) consents to the filing of a map, plat or replat affecting the Premises, (vii) consents to the granting of an easement or other right affecting the Premises or (viii) makes or consents to an agreement subordinating the Mortgagee's lien on the Mortgaged Property hereunder; no such act or omission shall preclude the Mortgagee from exercising any other right, power or privilege herein granted or intended to be granted in the event of any breach or Event of Default then made or of any subsequent default; nor, except as otherwise expressly provided in an instrument executed by the Mortgagee, shall this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or part of the Mortgaged Property, the Mortgagee is hereby authorized and empowered to deal with any vendee or transferee with reference to the Mortgaged Property secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

Section 2.16. WAIVER OF JURY TRIAL. THE MORTGAGOR AND THE MORTGAGEE EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING

TO THIS MORTGAGE, ANY OTHER SECURED CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE MORTGAGOR AND THE MORTGAGEE (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONSIN THIS SECTION 2.16.

Section 2.17. Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, and each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 2.18. Collateral Agent's Fees and Expenses; Indemnification .

(a) The Mortgagor agrees that the Mortgagee shall be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.04 of the Credit Agreement.

(b) Without limitation of its indemnification obligations under the other Secured Credit Documents, the Mortgagor agrees to indemnify the Mortgagee and the other Indemnitees (as defined in Section 10.05 of the Credit Agreement) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of, the execution, delivery, performance or enforcement of this Mortgage or any claim, litigation, investigation or proceeding relating to any of the foregoing agreement or instrument contemplated hereby, or to the Mortgaged Property, whether or not 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 are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or of any Affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee.

(c) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 2.18 shall remain operative and in full force and effect regardless of the termination of this Mortgage or any other Secured Credit Document, the consummation of the transactions

contemplated hereby, the repayment of any of the Secured Obligations, the invalidity or unenforceability of any term or provision of this Mortgage or any other Secured Credit Document, or any investigation made by or on behalf of the Mortgagee or any other Secured Party. All amounts due under this Section 2.18 shall be payable within ten days of written demand therefore.

ARTICLE III

Miscellaneous

Section 3.01. Partial Invalidity. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such validity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 3.02. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.02 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Party shall be given to it in care of the Borrower as provided in Section 10.02 of the Credit Agreement.

Section 3.03. Successors and Assigns. All of the grants, covenants, terms, provisions and conditions herein shall run with the Premises and the Improvements and shall apply to, bind and inure to, the benefit of the permitted successors and assigns of the Mortgagor and the successors and assigns of the Mortgagee.

Section 3.04. Satisfaction and Cancelation. (a) The conveyance to the Mortgagee of the Mortgaged Property as security created and consummated by this Mortgage shall be null and void when all the Credit Agreement Obligations have been indefeasibly paid in full in accordance with the terms of the Loan Documents and the Lenders have no further commitment to lend under the Credit Agreement, the L/C Obligations have been reduced to zero and the L/C Issuers have no further obligations to issue Letters of Credit under the Credit Agreement.

(b) Upon a sale or financing by the Mortgagor of all or any portion of the Mortgaged Property that is permitted by the Credit Agreement, the lien of this Mortgage shall be automatically released from the applicable portion of the Mortgaged Property.

(c) In connection with any termination or release pursuant to paragraph (a), the Mortgage shall be marked "satisfied" by the Mortgagee, and this Mortgage shall be canceled of record at the request and at the expense of the Mortgagor. The Mortgagee shall execute any documents (without recourse, representation or warranty) reasonably requested by the Mortgagor to accomplish the foregoing or to accomplish any release contemplated by this Section 3.04 and the Mortgagor will pay all reasonable costs and expenses, including reasonable attorneys' fees, disbursements and other charges, incurred by the Mortgagee in connection with the preparation and execution of such documents.

(d) At any time the Mortgagor desires the Mortgaged Property or any portion thereof be released as provided in this Section 3.04, the Mortgagor shall, upon request by the Mortgagee, deliver to the Mortgagee an officer's certificate certifying the release of the Mortgaged Property (or the portion thereof, as applicable) is permitted pursuant to the Credit Agreement. The

Mortgagee shall have no liability whatsoever to any Secured Party as the result of any release of the Mortgaged Property or any portion thereof by it as permitted (or which the Mortgagee in good faith believes to be permitted) by this Section 3.04 and the Credit Agreement.

(e) Notwithstanding anything to the contrary set forth in this Mortgage, each Cash Management Bank and each Hedge Bank by the acceptance of benefits under this Mortgage hereby acknowledge and agree that (i) the obligations of the Borrower or any Subsidiary under any Secured Hedge Agreement and the Cash Management Obligations shall be secured pursuant to this Mortgage only to the extent that, and for so long as, the other Secured Obligations are so secured and (ii) any release of all or any portion of the Mortgaged Property effected in the manner permitted by this Mortgage shall not require the consent of any Hedge Bank or Cash Management Bank.

Section 3.05. Definitions. As used in this Mortgage, the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (a) "including" shall mean "including but not limited to"; (b) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (c) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage or deed of trust"; (d) "obligation" shall mean "obligation, duty, covenant and/or condition"; and (e) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein". Any act that the Mortgagee is permitted to perform hereunder may be performed at any time and from time to time by the Mortgagee or any person or entity designated by the Mortgagee. Any act that is prohibited to the Mortgagor hereunder is also prohibited to all lessees of any of the Mortgaged Property. Each appointment of the Mortgagee as attorney-in-fact for the Mortgagor under the Mortgage is irrevocable, with power of substitution and coupled with an interest. Subject to the applicable provisions hereof, the Mortgagee has the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction, in its sole discretion, whenever such consent, approval, acceptance or satisfaction is required hereunder.

Section 3.06. Multisite Real Estate Transaction. The Mortgagor acknowledges that this Mortgage may be one of a number of Other Mortgages and Collateral Documents that secure the Secured Obligations. The Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of the Mortgagee, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Mortgagee of any security for or guarantees of any of the Secured Obligations hereby secured, or by any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any Secured Obligation or indebtedness hereby secured or any collateral security therefor including the Other Mortgages and other Collateral Documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Secured Obligations secured or of any of the collateral security therefor, including the Other Mortgages and other Collateral Documents or of any guarantee thereof, and the Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy

available to it under any or all of the Other Mortgages and other Collateral Documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of the Mortgagee's rights and remedies under any or all of the Other Mortgages and other Collateral Documents shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Mortgages and other Collateral Documents or any of the Mortgagee's rights and remedies thereunder. The Mortgagor specifically consents and agrees that the Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages and other Collateral Documents separately or concurrently and in any order that it may deem appropriate and waives any rights of subrogation.

Section 3.07. No Oral Modification. This Mortgage may not be changed or terminated orally. Any agreement made by the Mortgagor and the Mortgagee after the date of this Mortgage relating to this Mortgage shall be superior to the rights of the holder of any intervening or subordinate Mortgage, lien or encumbrance.

Section 3.08. Jurisdiction; Consent to Service of Process. (a) The Mortgagor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York City and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Mortgage or any other Secured Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. The Mortgagor 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 Mortgage or any other Secured Credit Document shall affect any right that the Mortgagee, any L/C Issuer, any Lender, any Hedge Bank or any Cash Management Bank may otherwise have to bring any action or proceeding relating to this Mortgage or any other Secured Credit Document against the Mortgagor in the courts of any jurisdiction, including but not limited to the courts of the State in which the Mortgaged Property is located.

(b) The Mortgagor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Mortgage or any other Secured Credit Document in any court referred to in paragraph (a) of this Section 3.08. The Mortgagor hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense

of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) The Mortgagor irrevocably consents to service of process in the manner provided for notices in Section 3.02 of this Mortgage. Nothing in this Mortgage or any other Secured Credit Document will affect the right of any Secured Party to serve process in any other manner permitted by law.

Section 3.09. Recourse. This Mortgage is made with full recourse to the Mortgagor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of the Mortgagor contained herein, in the Loan Documents and the Secured Hedge Agreements and otherwise in writing in connection herewith or therewith.

Section 3.10. Reduction of Secured Amount. In the event that the maximum principal amount secured by this Mortgage is less than the aggregate of the Secured Obligations, then the amount secured hereby shall be reduced only by the last and final sums that the Mortgagor or any other Loan Party repays with respect to the Secured Obligations and shall not be reduced by any intervening repayments of the Secured Obligations. So long as the balance of the Secured Obligations exceeds the amount secured hereby, any payments of the Secured Obligations shall not be deemed to be applied against, or to reduce, the portion of the Secured Obligations secured by this Mortgage.

Section 3.11. Future Advances. This Mortgage is given to secure the Secured Obligations under, or in respect of, the Secured Credit Documents and shall secure not only obligations with respect to presently existing indebtedness under the foregoing documents and agreements but also any and all other indebtedness which may hereafter be owing to the Secured Parties under the Secured Credit Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Credit Agreement or the other Secured Credit Documents, whether such advances are obligatory or to be made at the option of the Secured Parties, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The Lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. This Mortgage is intended to and shall be valid and have priority over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby, and Permitted Encumbrances related thereto. Although this Mortgage is given to secure all future advances made by the Mortgagee and/or the other Secured Parties to or for the benefit of the Borrower, the Mortgagor and/or the Mortgaged Property, whether obligatory or optional, the Mortgagor and the Mortgagee hereby acknowledge and agree that the Mortgagee and the other Secured Parties are obligated by the terms of the Secured Credit Documents to make certain future advances, including advances of a revolving nature, subject to the fulfillment of the relevant conditions set forth in the Secured Credit

Documents.

ARTICLE IV

Particular Provisions

This Mortgage is subject to the following provisions relating to the particular laws of the state wherein the Premises are located:

Section 4.01. Applicable Law; Certain Particular Provisions . This Mortgage shall be governed by and construed in accordance with the internal law of the state where the Mortgaged Property is located, except that the Mortgagor expressly acknowledges that by their terms, the Credit Agreement and other Secured Credit Documents (aside from those Other Mortgages to be recorded outside New York) shall be governed by the internal law of the State of New York, without regard to principles of conflict of law. The Mortgagor and the Mortgagee agree to submit to jurisdiction and the laying of venue for any suit on this Mortgage in the state where the Mortgaged Property is located. The terms and provisions set forth in Appendix A attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any conflict between the terms and provisions contained in the body of this Mortgage and the terms and provisions set forth in Appendix A, the terms and provisions set forth in this Article IV shall govern and control.

Section 4.02. General Authority of the Mortgagee . By acceptance of the benefits of this Mortgage, each Secured Party (whether or not a signatory hereto) shall be deemed irrevocably (a) to consent to the appointment of the Mortgagee as its agent hereunder, (b) to confirm that the Mortgagee shall have the authority to act as the exclusive agent of such Secured Party for the enforcement of any provisions of this Mortgage against Mortgagor, the exercise of remedies hereunder or thereunder and the giving or withholding of any consent or approval hereunder or thereunder relating to any Mortgaged Property or Mortgagor's obligations with respect thereto, (c) to agree that it shall not take any action to enforce any provisions of this Mortgage against the Mortgagor, to exercise any remedy hereunder or thereunder or to give any consents or approvals hereunder or thereunder except as expressly provided in this Mortgage and (d) to agree to be bound by the terms of this Mortgage.

[add local law provisions]

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered to the Mortgagee by the Mortgagor and is effective as of the date first above written.

[NAME OF MORTGAGOR], a [ ]

corporation,

By:

Name:

Title:

[ADD LOCAL FORM OF ACKNOWLEDGMENT]

EXHIBIT A

to Mortgage

Description of the Land

APPENDIX A

to Mortgage

Local Law Provisions

Based upon and subject to the foregoing and subject to the additional qualifications set forth below, we are of the opinion that:

1, Holdings (a) is a corporation validly existing and in good standing under the laws of the State of Delaware and (b) has the corporate power and authority to conduct the business in which it is engaged and to execute, deliver and perform its obligations under each of the Credit Documents to which it is a party. Each of the Delaware Corporate Subsidiary Guarantors (a) is a corporation validly existing and in good standing under the laws of the jurisdiction of its organization and (b) has the corporate power and authority to conduct the business in which it is engaged and to execute, deliver and perform its obligations under each of the Credit Documents to which it is a party. The Company and each of the Delaware LLC Subsidiary Guarantors (a) is a limited liability company legally existing and in good standing under the laws of the State of Delaware and (b) has the power and authority wider its limited liability company agreement and the Delaware Limited Liability Company Act to conduct the business in which it is engaged and to execute, deliver and perform its obligations under each of the Credit Documents to which it is a party.

2. The execution, delivery and performance of each of the Credit Documents to which each of the Company and the Covered Guarantors is a party have been duly authorized by all requisite corporate action under the Delaware General Corporation Law or limited liability company action under the Delaware Limited Liability Company Act, as the case may be, on the part of the Company or such Covered Guarantor. -Hach of the Company and the Covered Guarantors has duly executed and delivered each of the Credit Documents to which it is a party.

3. Each of the Credit Documents to which each of the Loan Parties is a party constitutes the valid and binding obligation of each such person as is party thereto and is enforceable against each such person in accordance with its terms.

4. The execution and delivery by each of the Company and the Covered Guarantors of the Credit Documents to which such person is party and the performance by such person of its obligations thereunder will not violate the certificate of incorporation, certificate of formation, by-laws, or limited liability company agreement, as applicable, of such person. The execution and delivery by each of the Loan Parties of the Credit Documents to which such person is party and the performance by such person of its obligations thereunder (a) will not violate any Covered Laws and (b) will not result in a breach or violation of, or constitute a default or result in the creation of a Lien under, any of the agreements listed on Schedule III hereto.

5. Except as may be required in order to perfect the Liens contemplated by the Collateral Documents, under the Covered Laws, no consent, approval, license or exemption by, or order or authorization of, or filing, recording or registration with, any governmental authority is required to be obtained by the Loan Parties in connection with the execution and delivery of the Credit Documents to which each such person is party or the performance by each such person of its obligations thereunder.

6. We are not representing any of the Loan Parties in any pending litigation in which it is a named defendant that challenges the validity or enforceability of, or seeks to enjoin the performance of, the Credit Documents.

7. None of the Loan Parties is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

8. Neither the making of the loans under the Credit Agreement nor the application of the proceeds thereof on the date hereof as provided in the Credit Agreement will violate Regulations T, U or X of the Board of Governors of the Federal Reserve System as in effect on the date hereof.

9. Each of the Security Agreement and the Capital Expenditures Account Security Agreement creates a security interest in favor of the Collateral Agent for the benefit of the Secured Parties in the Collateral described therein to the extent that a security interest is such Collateral (the "Article 9 Collateral") can be created under Article 9 of the New York Uniform Commercial Code ("New York Article 9").

10. Upon the proper filing of the financing statements attached as Schedule IV

(collectively, the "Delaware Financing Statements") in the office of the Secretary of State of the State of Delaware (the "Delaware Filing Office"), the security interest in the Article 9 Collateral granted by Holdings, the Company, the Delaware Corporate Subsidiary Guarantors and the Delaware LLC Subsidiary Guarantors under the Security Agreement will be perfected to the extent a security interest in such Article 9 Collateral can be perfected under Delaware Article 9 by the filing of a financing statement in the Delaware Filing Office.

11. Upon the delivery and assuming continuous possession in the State of New York to the Collateral Agent of the certificates representing the Pledged Equity listed on Schedule V (the "Certificated Pledged Equity") and the related stock powers pursuant to the Security Agreement and assuming that neither the Collateral Agent nor any of the Secured Parties have "notice of an adverse claim" (within the meaning of Section 8-105 of the New York Uniform Commercial Code) with respect to such Certificated Pledged Equity at the time such Certificated Pledged Equity is delivered to the Collateral Agent, the respective security interests in such Certificated Pledged Equity created in favor of the Collateral Agent for the benefit of the Secured Parties under the Security Agreement will constitute perfected security interests in such Certificated Pledged Equity, free of any "adverse claim" (as defined in the New York Uniform Commercial Code).

12. Assuming (i) the due execution and delivery of the Capital Expenditures Account Security Agreement by the Collateral Agent and the Account Custodian (as defined in the Capital Expenditures Account Security Agreement), (ii) that the Account Custodian is a "bank" and that Account 59171 maintained by the Company at the Account Custodian's office as set forth in Section 2.01 of the Capital Expenditures Account Security Agreement (the " Capital Expenditures Account") subject to the Capital Expenditures Account Security Agreement is a "deposit account" (as those terms are defined in the New York Uniform Commercial Code) and (iii) other than the Capital Expenditures Account Security Agreement, that there is no other agreement or understanding which governs the rights and obligations of the parties to the Capital Expenditures Account Security Agreement with respect to the Capital Expenditures Account, the security interest in such Capital Expenditures Account in favor of the Collateral Agent for the benefit of the Secured Parties under the Capital Expenditures Account Security Agreement constitutes a perfected security interest.

EXHIBIT J

[FORM OF]

REQUEST FOR RELEASE OF CAPITAL EXPENDITURE FUNDS

To: Deutsche Bank AG New York Branch,

as Administrative Agent

60 Wall Street

MS NYC60-0208

New York, NY 1005

Attention: Scottye Lindsey

With a copy to:

Deutsche Bank AG New York Branch,

as Account Custodian

60 Wall Street

MS NYC60-2710

New York, NY 1005

Attention: Manager Escrow Team

[Date]

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated as of June 14, 2007 (as amended, supplemented, restated and/or otherwise modified from time to time, the " Credit Agreement"), among OSI Restaurant Partners, LLC, OSI Holdco, Inc., the lenders from time to time party thereto (the "Lenders"), Deutsche Bank AG New York Branch, as Administrative Agent (in such capacity, the "Administrative Agent"), Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The undersigned Borrower hereby gives you notice pursuant to Section 4.03(d) of the Credit Agreement that it requests the Administrative Agent to release funds on deposit in the Capital Expenditures Account to the Borrower, and in that connection sets forth below the terms on which such Request for Release of Capital

Expenditure Funds is to be made:

(A) Amount to be

Released

(B) Date of Release

(which is a Business Day)

(C) The Funds requested to
be Released shall be used
on the Date of such Release

for[1]

The above request has been made to the Administrative Agent by telephone at [(_) ___-_____].

The undersigned Borrower hereby certifies that all of the funds requested to be released pursuant to this Request for Release of Capital Expenditure Funds will be used on the date hereof solely to fund Capital Expenditures permitted pursuant to the terms of the Credit Agreement or for other uses as, and to the extent, expressly permitted pursuant to the terms of the Credit Agreement.

The undersigned Borrower hereby represents and warrants to the Administrative Agent and the Lenders that, on the date of this Request for Release of Capital Expenditure Funds and on the date of the related release of funds from the Capital Expenditures Account, the conditions to such release specified in paragraphs (a), (b) and (c) of Section 4.03 of the Credit Agreement have been satisfied.

OSI RESTAURANT PARTNERS, LLC

By:

Name:

Title:

1 Insert intended use of Funds, as (and to the extent) permitted by the Credit Agreement.

EXHIBIT K

[FORM OF] INTERCOMPANY NOTE

New York, New York
June[ ], 2007

FOR VALUE RECEIVED, each of the undersigned, to the extent a borrower from time to time from any other entity listed on the signature page hereto (each, in such capacity, a "Payor"), hereby promises to pay on demand to the order of such other entity listed below (each, in such capacity, a "Payee"), in lawful money of the United States of America in immediately available funds, at such location in the United States of America as a Payee shall from time to time designate, the unpaid principal amount of all loans and advances made by such Payee to such Payor. Each Payor promises also to pay interest on the unpaid principal amount of all such loans and advances in like money at said location from the date of such loans and advances until paid at such rate per annum as shall be agreed upon from time to time by such Payor and such Payee.

This note ("Note") is the Intercompany Note referred to in the Credit Agreement, dated as of June 14, 2007 (the "Credit Agreement"), among OSI Restaurant Partners, LLC, OSI Holdco, Inc., the lenders from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Deutsche Bank AG New York Branch, as Administrative Agent (in such capacity, the "Administrative Agent"), Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents. Unless otherwise specified, capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement. Each Payee hereby acknowledges and agrees that the Administrative Agent and the Collateral Agent may exercise all rights provided in the Credit Agreement and the Collateral Documents with respect to this Note.

Anything in this Note to the contrary notwithstanding, the indebtedness evidenced by this Note owed by any Payor that is (i) a Guarantor to any Payee (other than a Loan Party) or (ii) the Borrower to any Payee, shall, in each case, be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Obligations, including, without limitation, where applicable, under such Payor's guarantee of the Guaranteed Obligations under (and as defined) in the Guaranty (such Obligations and other indebtedness and obligations in connection with any renewal, refunding, restructuring or refinancing thereof, including interest thereon accruing after the commencement of any proceedings referred to in clause (i) below at the rate provided for in the respective documentation for such Obligations, whether or not such interest is an allowed claim in such proceeding, being hereinafter collectively referred to as " Senior Indebtedness"):

(i) In the event of any insolvency or bankruptcy proceedings, and any

receivership, liquidation, reorganization or other similar proceedings in connection

therewith, relative to any Payor or to its creditors, as such, or to its property, and in the

event of any proceedings for voluntary liquidation, dissolution or other winding up of

such Payor, whether or not involving insolvency or bankruptcy, then (x) the holders of

Senior Indebtedness shall be paid in full in cash in respect of all amounts constituting

Senior Indebtedness before any Payee is entitled to receive (whether directly or

indirectly), or make any demands for, any payment or distribution of any kind or

character on account of this Note (whether in cash, property, securities or otherwise) and

(y) until the holders of Senior Indebtedness are paid in full in cash in respect of all amounts constituting Senior Indebtedness, any payment or distribution of any kind or character to which such Payee would otherwise be entitled shall be made to the holders of Senior Indebtedness.

(ii) In the event that any Event of Default then exists or would result

therefrom, no payment by any Payor, or demand by any Payee, shall be made on account

of any amount owing in respect of the Note (including, without limitation, any payment pursuant to Section 7.13(a) of the Credit Agreement).

(iii) If any payment or distribution of any kind or character (whether in cash,

securities or other property) in respect of this Note shall (despite these subordination

provisions) be received by any Payee in violation of clause (i) or (ii) above before all Senior Indebtedness shall have been paid in full in cash, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness (or their representatives), ratably according to the respective aggregate amounts remaining unpaid thereon, to the extent necessary to pay all Senior Indebtedness of the relevant Payor in full in cash.

To the fullest extent permitted by law, no present or future holder of Senior

Indebtedness shall be prejudiced in its right to enforce the subordination of this Note by any act

or failure to act on the part of any Payor or by any act or failure to act on the part of such holder

or any trustee or agent for such holder. Each Payee and each Payor hereby agrees that the

subordination of this Note is for the benefit of the Collateral Agent and the other Secured Parties,

the Collateral Agent and the other Secured Parties are obligees under this Note to the same extent

as if their names were written herein as such and the Administrative Agent and/or the Collateral

Agent may, on behalf of itself and the other Secured Parties, proceed to enforce the

subordination provisions herein.

If a Payee does not file a proper claim or proof of debt in the form required in any proceeding or other action referred to in clause (i) of the second preceding paragraph prior to 30 days before the expiration of the time to file such claim or claims, then any of the holders of the Senior Indebtedness (or their representative) is hereby authorized to file an appropriate claim for and on behalf of such Payee.

Subject to the prior payment in full in cash of all Senior Indebtedness, each Payee

shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the respective Payor applicable to the Senior Indebtedness until all amounts owing on the Note shall be paid in full, and for the purpose of such subrogation no payments or distributions to the holders of the Senior Indebtedness by or on behalf of a Payor or by or on behalf of the holder of the Note which otherwise would have been made to the holder of the Note shall, as between such Payor, its creditors other than the holders of Senior Indebtedness,

and the holder of the Note, be deemed to be payment by such Payor to or on account of the Senior Indebtedness,

The holders of the Senior Indebtedness may, without in any way affecting the obligations of any Payee with respect thereto, at any time or from time to time and in their absolute discretion, change the manner, place or terms of payment of, change or extend the time of payment of, or renew or alter, any Senior Indebtedness, or amend, modify or supplement any agreement or instrument governing or evidencing such Senior Indebtedness or any other document referred to therein, or exercise or refrain from exercising any other of their rights under the Senior Indebtedness including, without limitation, the waiver of default thereunder and the release of any collateral securing such Senior Indebtedness, all without notice to or assent from any Payee.

If any Payee shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in any of the assets or properties of any Payor, that lien, estate, right or other interest shall be subordinate in right of payment to the Senior Indebtedness and the lien of the Senior Indebtedness as provided herein, and each Payee hereby waives any and all rights it may acquire by subrogation or otherwise to any lien of the Senior Indebtedness or any portion thereof until such time as all Senior Indebtedness has been indefeasibly repaid in full in cash.

If, at any time, all or part of any payment with respect to Senior Indebtedness theretofore made (whether by any other Loan Party or any other Person or enforcement of any right of setoff or otherwise) is rescinded or must otherwise be returned by the holders of Senior Indebtedness for any reason whatsoever (including, without limitation, the insolvency,

bankruptcy or reorganization of any other Loan Party or such other Persons), the subordination provisions set forth herein shall continue to be effective or be reinstated, as the case may be, all as though such payment had not been made.

The indebtedness evidenced by this Note owed by any Payor that is neither a Guarantor nor the Borrower shall not be subordinated to, and shall rank *pari passu* in right of payment with, any other obligation of such Payor.

Nothing contained in the subordination provisions set forth above is intended to or will impair, as between each Payor and each Payee, the obligations of such Payor, which are absolute and unconditional, to pay to such Payee the principal of and interest on this Note as and when due and payable in accordance with its terms, or is intended to or will affect the relative rights of such Payee and other creditors of such Payor other than the holders of Senior Indebtedness.

Each Payee is hereby authorized (but not required) to record all loans and advances made by it to any Payor (all of which shall be evidenced by this Note), and all repayments or prepayments thereof, in its books and records, such books and records constituting *prima facie* evidence of the accuracy of the information contained therein.

Each Payor hereby waives presentment, demand, protest or notice of any kind in connection with this Note. All payments under this Note shall be made without offset, counterclaim or deduction of any kind.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

[Name of each Loan Party],

as Payee

By:

Name:

Title:

[Name of each Loan Party]

as Payor

By:

Name:

Title:

Exhibit L

[FORM OF]

CAPITAL EXPENDITURES ACCOUNT SECURITY AGREEMENT

dated as of
June 14, 2007
among
OSI RESTAURANT PARTNERS, LLC,
as Grantor

DEUTSCHE BANK TRUST COMPANY AMERICAS,

as Account Custodian

and

DEUTSCHE BANK AG NEW YORK BRANCH,

as Collateral Agent

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CAPITAL EXPENDITURES ACCOUNT SECURITY AGREEMENT dated as of June 14, 2007, among OSI RESTAURANT PARTNERS, LLC (the "Grantor"), DEUTSCHE BANK TRUST COMPANY AMERICAS, in its individual capacity, as account custodian (in such capacity, the "Account Custodian") and DEUTSCHE BANK AG NEW YORK BRANCH, as Collateral Agent for the Secured Parties (as defined below).

Reference is made to (i) the Credit Agreement dated as of June 14, 2007 (as amended, restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among the Grantor, OSI Holdco, Inc., ("Holdings"), each Lender (as defined in the Credit Agreement) from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent, Pre-Funded RC Deposit Bank, Swing Line Lender and an L/C Issuer, Bank of America, N.A., as Syndication Agent, and General Electric Capital Corporation, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, LaSalle Bank National Association, Wachovia Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents, as Documentation Agent, (ii) the Borrower Guaranty (as defined in the Credit Agreement), (iii) each Secured Hedge Agreement (as defined in the Credit Agreement) and (iv) the Cash Management Obligations (as defined in the Credit Agreement).

The Lenders have agreed to extend credit to the Grantor subject to the terms and conditions set forth in the Credit Agreement, the Hedge Banks have agreed to enter into and/or maintain one or more Secured Hedge Agreements on the terms and conditions set forth therein and the Cash Management Banks have agreed to provide and/or maintain Cash Management Services on the terms and conditions agreed upon by the Grantor or the respective Restricted Subsidiary and the respective Cash Management Bank. The obligations of the Lenders to extend such credit, the obligation of the Hedge Banks to enter into and/or maintain such Secured Hedge Agreements and the obligation of the Cash Management Bank to provide and/or maintain Cash Management Services are, in each case, conditioned upon, among other things, the execution and delivery of this Agreement by the Grantor. The Grantor will derive substantial benefits from (i) the extensions of credit to the Grantor pursuant to the Credit Agreement, (ii) the entering into and/or maintaining by the Hedge Banks of Secured Hedge Agreements with the Grantor and/or one or more of its Restricted Subsidiaries and (iii) the providing and/or maintaining of Cash Management Services by the Cash Management Banks to the Grantor and/or one or more of its Restricted Subsidiaries, and is willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit, the Hedge Banks to enter into and maintain such Secured Hedge Agreements and the Cash Management Banks to provide and/or maintain such Cash Management Services. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Credit Agreement. Capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Credit Agreement. All terms defined in the New York UCC (as defined herein) and not defined in this Agreement have the meanings specified therein; the term "instrument" shall have the meaning specified in Article 9 of the New York UCC.

Section 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Account Proceeds" shall mean any and all assets of whatever type or kind deposited in (or credited to) the Account, whether now owned or hereafter acquired, including all moneys, checks, drafts, instruments, securities or interests therein of any type or nature deposited in (or credited to) the Account and all investments and all certificates and other instruments from time to time representing or evidencing the same, and all interest, distributions, cash and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing and all Proceeds of any or all of the foregoing.

"Account" has the meaning assigned to such term in Section 2.01.

"Account Custodian" has the meaning assigned to such term in the preliminary statement of this Agreement.

"Agreement" means this Capital Expenditures Account Security Agreement.

"Business Day" means any day other than a Saturday or Sunday or a day on which commercial bank institutions in New York City, New York are authorized or required by law, regulation or executive order to be closed.

"Collateral" means and includes the Account and all Account Proceeds.

"Collateral Agent" has the meaning assigned to such term in the preliminary statement of this Agreement.

"Credit Agreement" has the meaning assigned to such term in the preliminary statement of this Agreement.

"Grantor" has the meaning assigned to such term in the preliminary statement of this Agreement.

"New York UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"Secured Obligations" means the "Obligations" as defined in the Credit Agreement; it being acknowledged and agreed that the term "Secured Obligations" as used herein shall include each extension of credit under the Credit Agreement and all obligations of the Grantor under the Secured Hedge Agreements and all Cash Management Obligations, in each case, whether outstanding on the date of this Agreement or extended from time to time after the date of this Agreement.

"Secured Parties" means, collectively, the Administrative Agent, the Collateral Agent, the Pre-Funded R/C Deposit Bank, the Lenders, each L/C Issuer, the Hedge Banks, the Cash Management Banks, the Supplemental Administrative Agent and each co-agent or subagent appointed by the Administrative Agent from time to time pursuant to Section 9.01(c) or Section (d) of the Credit Agreement.

"Security Interest" has the meaning assigned to such term in Section 3.01(a).

ARTICLE II

Establishment Of Account, Etc.

Section 2.01. Establishment of Account. (a) On the date hereof, the Account Custodian has established in the name of the Grantor and, subject to the terms and conditions set forth herein, for the benefit of the Collateral Agent (on behalf of the Secured Parties), Account 59171 (the "Account"), for purposes of this Agreement and the Credit Agreement, which Account is maintained at the Account Custodian's office located at 60 Wall Street, 27th Floor, New York, New York 10005. The Account is the Capital Expenditures Account referred to in the Credit Agreement. The Account shall be maintained by the Account Custodian, and shall be under the sole dominion and control of the Collateral Agent. The Collateral Agent shall have the sole right to make and authorize withdrawals from the Account and to exercise all rights with respect to the Account Proceeds from time to time therein pursuant to, and in accordance with the terms of, this Agreement. All Account Proceeds delivered to or held by the Account Custodian for the benefit of the Collateral Agent pursuant hereto shall be held in the Account in accordance with the provisions hereof.

(b) The Collateral Agent hereby appoints Deutsche Bank Trust Company Americas to act as its custodian with respect to any Account Proceeds at any time deposited, held or maintained in or credited to the Account and to take such actions as the Collateral Agent may direct. Deutsche Bank Trust Company Americas hereby accepts such appointment and agrees to act as Account Custodian upon the express terms and conditions contained herein.

(c) The Account Custodian shall hold all Account Proceeds in the Account pursuant to this Agreement and shall take all such actions with respect to the Account and all Account Proceeds as instructed in writing by the Collateral Agent in accordance with this Agreement. The Account Custodian hereby agrees to comply, strictly and promptly, with any and all instructions directing disposition of funds, Entitlement Orders, directions and notifications communicated from time to time to the Account Custodian and originated by the Collateral Agent, directing the transfer or redemption of, or the exercise of any rights with respect to, the Account or any of the Account Proceeds, or otherwise relating to the Account or any of the Account Proceeds, without further consent by any other Person (including the Grantor), and not to comply with any instructions directing disposition of funds, Entitlement Orders, directions or notifications originated by any Person (including the Grantor) other than the Collateral Agent or a court of competent jurisdiction. It is understood and agreed that the

Account Custodian's duty to comply with instructions and orders originated from the Collateral Agent is absolute, and the Account Custodian shall be under no duty or obligation nor shall have the authority to inquire or determine whether or not such instructions or orders have been made in accordance with this Agreement, nor seek confirmation thereof from the Grantor or any other Person.

Section 2.02. Deposits to the Account; Withdrawals from the Account .

(a)(i) On the date hereof and substantially simultaneously with the consummation of the Equity Contribution, the Grantor shall have delivered to the Account Custodian, for deposit directly into

the Account, $100,000,000 in cash. Upon the deposit of such cash as provided above, such cash shall constitute Collateral subject to the terms of this Agreement. The Account Custodian shall have no duty to solicit the cash deposit or the Collateral.

(ii) From time to time after the date hereof and in accordance with the terms

of the Credit Agreement, the Grantor shall notify and deliver additional cash to the Account Custodian for deposit directly into the Account.

(b) Withdrawals from the Account shall be permitted only to the extent

provided for in Articles IV and V hereof.

(c) Settlement of transactions and other activities with respect to the Account

shall occur only on Business Days. Whenever any release or disbursement is to be made pursuant hereto on a day which is not a Business Day, such release or disbursement shall be made on the following Business Day, whether or not expressly provided therefor herein without additional interest on the amount to be paid.

Section 2.03. Investment of Funds Deposited in the Account . The

Account Custodian will from time to time invest funds on deposit in the Account in Cash

Equivalents selected by the Collateral Agent at the written direction of the Grantor (although if

an Event of Default exists and is continuing, such decision shall be made solely by the Collateral

Agent). All investments made pursuant to this Section 2.03 (and any instruments evidencing

same), and all Proceeds thereof, shall be held in the Account as part of the Account Proceeds.

All such investments shall be made in the name of the Account Custodian and shall be subject to

the security interest of the Collateral Agent (on behalf of the Secured Parties) hereunder. Under

no circumstances shall the Account Custodian or the Collateral Agent be liable or accountable to

the Grantor, any Secured Party or any other Person for any decrease in the value of the Account

or for any loss, expense or other liability resulting from the investment of the funds deposited

therein. The Account Custodian shall have no responsibility to determine whether such

investments directed by the Collateral Agent constitute Cash Equivalents.

The Account Custodian shall have no obligation to invest or reinvest the cash

deposit if deposited with the Account Custodian after 11:00 a.m. New York time on such day of

deposit. Instructions received after 11:00 a.m. New York time will be treated as if received on

the following business day. The Account Custodian shall have no responsibility for any

investment losses resulting from the investment, reinvestment or liquidation of the cash deposit.

Any interest or other income received on such investment and reinvestment of the cash deposit

shall become part of the Account and any losses incurred on such investment and reinvestment of the cash deposit shall be debited against the Account. If a selection is not made and a written direction not given to the Account Custodian, the cash deposit shall remain uninvested with no liability for interest therein. It is agreed and understood that the entity serving as Account Custodian may earn fees associated with the investments outlined above in accordance with the terms of such investments. Notwithstanding the foregoing, the Account Custodian shall have the power to sell or liquidate the foregoing investments whenever the Account Custodian shall be required to release all or any portion of the cash deposit pursuant to Article V hereof. In no event shall the Account Custodian be deemed an investment manager or adviser in respect of any selection of investments hereunder. It is understood and agreed that the Account Custodian or its

affiliates are permitted subject to mutual agreement with the Grantor to receive additional compensation that could be deemed to be in the Account Custodian's economic self-interest for (1) serving as investment adviser, administrator, shareholder servicing agent, custodian or subcustodian with respect to certain of the investments, (2) using affiliates to effect transactions in certain investments and (3) effecting transactions in investments.

Section 2.04. Investment of Funds Deposited in the Account . The Account Custodian represents and warrants for the benefit of the Collateral Agent that (a) the Account is a deposit account for purposes of the New York UCC, and (b) the Account Custodian is a bank for purposes of the New York UCC and the Grantor is the Account Custodian's customer with respect of the Account.

ARTICLE III

Security Interests

Section 3.01. Grant of Security Interest, etc. The Grantor does hereby assign and transfer unto the Collateral Agent (including its successors and assigns) for the benefit of the Secured Parties, and does hereby pledge and grant to the Collateral Agent (including its successors and assigns) for the benefit of the Secured Parties, in each case as security for the payment or performance, as the case may be, in full of the Secured Obligations, including the Borrower Guaranty, a continuing security interest (the "Security Interest") in any and all of the right, title and interest of the Grantor in, to and under the Account and the Account Proceeds, or in which or to which the Grantor has any rights. The Grantor hereby irrevocably orders, directs and instructs the Account Custodian, and the Account Custodian hereby agrees, to comply, strictly and promptly, with any and all instructions, orders, directions and notifications communicated from time to time to the Account Custodian and originated by the Collateral Agent, directing the transfer or redemption of, or the exercise of any rights with respect to, any or all of the Collateral, or otherwise relating to any of the Collateral, without further consent by the Grantor or any other Person, and not to comply with any instructions, orders, directions or notifications originated by any Person other than the Collateral Agent or a court of competent jurisdiction.

Section 3.02. Further Assurances . The Grantor agrees that it will, at any time and from time to time, at its expense, promptly execute and deliver all further agreements, instruments and other documents and take all further action that the Collateral Agent may reasonably request in order to perfect and protect the first priority security interest purported to be created hereby or otherwise to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder (including, without limitation, any filings of financing or continuation statements under the New York UCC and any action as may be reasonably requested from time

to time by the Collateral Agent so that "control" (as defined in Section 8-106 of the New York UCC on the date hereof) of the Account and the Account Proceeds is maintained).

Section 3.03. Appointment as Attorney-In-Fact. The Grantor hereby irrevocably appoints the Collateral Agent its attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time upon the

occurrence and during the continuation of an Event of Default in the Collateral Agent's sole discretion to execute any instrument and to take any other action which the Collateral Agent may deem reasonably necessary or advisable to accomplish the purposes of this Agreement or to facilitate the assignment or other transfer by the Collateral Agent of any or all of its rights hereunder, including, without limitation, (i) to receive, endorse and collect all instruments made payable to the Grantor and representing any interest payment or other distribution in respect of the Collateral and to give full discharge for the same, and (ii) to execute and deliver any and all instruments and other documents that the Collateral Agent may reasonably request in connection with the exercise by the Collateral Agent of any or all of its rights hereunder.

ARTICLE IV

Remedies

Section 4.01. Exercise of Remedies Upon Event of Default. (a) Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may (i) exercise in respect of all or any portion of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it under applicable law, all of the rights and remedies of a secured party on default under the New York UCC, (ii) without notice except as specified below, direct the Account Custodian to sell or liquidate any or all of the non-cash Collateral in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Account Custodian's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent in its sole discretion may deem commercially reasonable, (iii) direct the Account Custodian to withdraw any Collateral from the Account and transfer the same to the Collateral Agent, and (iv) apply the same to the Obligations. The Grantor agrees that, to the extent notice of sale shall be required by law, at least 10 days' written notice to the Grantor of the time and place of any public sale or the time after which any private sale or other disposition is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time (by announcement, in the case of any public sale, at the time and

place fixed therefore), and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All moneys collected by the Collateral Agent upon any sale or other disposition of the Collateral, together with all other moneys on deposit in the Account or otherwise received by the Collateral Agent hereunder which constitute Collateral, shall be applied in accordance with the terms of Section 4.02 hereof.

Section 4.02. Application of Proceeds. The Collateral Agent shall apply the Account Proceeds and/or the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash, in accordance with Section 8.04 of the Credit Agreement. The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a

sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof. It is understood and agreed that the Grantor shall remain liable to the extent of any deficiency between the amount of the Account Proceeds and/or the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

ARTICLE V

Release And Termination

Section 5.01. Release of Funds Deposited in Account.

(a) So long as no Default or Event of Default has occurred and is continuing (except to the extent provided for in Section 8.05(a)(y) of the Credit Agreement), and subject to the fulfillment of the conditions precedent referred to in Section 5.02(a) hereof, the Collateral Agent will authorize the Account Custodian to release from the Account, and to deliver to the Grantor upon request, in each case, in accordance with Section 5.02(a) hereof, funds from the Account to the extent otherwise permitted herein and in the Credit Agreement. Nothing in this Agreement shall obligate the Account Custodian or the Collateral Agent to release any funds, Account Proceeds or Collateral in excess of the amount held in the Account from time to time. Such funds shall only be available to the Grantor in amounts set forth in the Request for Release of Capital Expenditure Funds and as otherwise provided herein.

(b) For greater certainty, from and after the occurrence and during the continuance of any Default or Event of Default, the Grantor shall not be entitled to receive any amounts then held or thereafter deposited in the Account (although funds may be released to the Administrative Agent at the request of the Grantor as, and to the extent, provided in Section 8.05 (a)(y) of the Credit Agreement). From and after the occurrence and during the continuance of any Event of Default, any amounts then held or thereafter deposited in the Account, may be applied in accordance with Section 4.01 hereof.

Section 5.02. Conditions Precedent to Release, etc.

(a) The Collateral Agent shall not be obligated to authorize the release of any funds to the Grantor from the Account under Section 5.01 hereof unless:

(i) the conditions to the release of such funds set forth in Section 4.02 of the Credit Agreement have been satisfied; and

(ii) the Account Custodian and the Collateral Agent shall have received a Request for Release of Capital Expenditure Funds from the Grantor prior to 12:00 noon. (New York time) on the date of the proposed release (which date shall be a Business Day);

(b) The Account Custodian and the Collateral Agent shall be entitled to rely upon each Request for Release of Capital Expenditure Funds believed by it to be genuine. Neither the Collateral Agent nor the Account Custodian shall have or incur any liability to any Secured Party as a result of its good faith authorization of the release of funds from the Account

in accordance with the Request for Release of Capital Expenditure Funds as contemplated by this Article V.

Section 5.03. Termination; Certificate of Release.

(a) (i) This Agreement, the Security Interest and all other security interests granted hereby shall terminate with respect to all Secured Obligations when all outstanding Secured Obligations (other than Secured Obligations in respect of Secured Hedge Agreements or Cash Management Obligations not yet due and payable (to the extent permitted by the terms thereof) and contingent indemnification obligations not yet accrued and payable) have been indefeasibly paid in full and the Lenders have no further commitment to lend under the Credit Agreement, the L/C Obligations have been reduced to zero (except if such Letter of Credit is fully cash collateralized or supported by a backstop letter of credit in each case in an amount and on terms reasonably satisfactory to the Administrative Agent and the L/C Issuer) and the L/C Issuers have no further obligations to issue Letters of Credit under the Credit Agreement.

(b) In connection with any termination pursuant to preceding paragraph (a), the Collateral Agent shall promptly execute and deliver to the Grantor, at the Grantor's expense, all documents that the Grantor shall reasonably request to evidence such termination. Any execution and delivery of documents pursuant to this Section 5.03 shall be without recourse to or warranty by the Collateral Agent and the Account Custodian.

(c) At any time that the Grantor desires that the Collateral Agent take any action described in the immediately preceding paragraph (b), it shall, upon request of the Collateral Agent, deliver to the Collateral Agent an officer's certificate certifying that the release of the respective Account Proceeds or Collateral is permitted pursuant to paragraph (a) or (b). Neither the Collateral Agent nor the Account Custodian shall have any liability whatsoever to any Secured Party as the result of any release of Account Proceeds or Collateral by it as permitted (or which the Collateral Agent in good faith believes to be permitted) by this Section 5.03.

(d) Notwithstanding anything to the contrary set forth in this Agreement, each Cash Management Bank and each Hedge Bank by the acceptance of the benefits under this Agreement hereby acknowledge and agree that (i) the obligations of the Borrower under any Secured Hedge Agreement and the Cash Management Obligations shall be secured pursuant to this Agreement only to the extent that, and for so long as, the other Secured Obligations are so secured and (ii) any release of Collateral effected in the manner permitted by this Agreement shall not require the consent of any Hedge Bank or Cash Management Bank.

ARTICLE VI

Representations And Warranties

The Grantor represents and warrants that: (a) this Agreement has been duly authorized, executed and delivered by the Grantor and constitutes a legal, valid and binding

obligation of the Grantor enforceable in accordance with its terms, except as the enforceability hereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting creditors' rights generally and

subject to the limitations imposed by general equitable principals (regardless of whether such enforceability is considered in a proceeding at law or in equity); and (b) the pledges, assignments and grants of security interests in the Account pursuant to this Agreement creates, and upon the deposit in the Account of any other Collateral pursuant to this Agreement will create, valid and perfected first priority security interests in all of the Grantor's right, title and interest (if any) in and to the Account and the Collateral so deposited, as the case may be, and the Proceeds thereof, subject to no other lien or encumbrance or to any other agreement purporting to grant any third party a lien or encumbrance on property or assets of the Grantor which would include the Collateral. The Grantor covenants and agrees that it will defend the Collateral Agent's and Account Custodian's right, title and interest in and to the Account and the Account Proceeds (or the Collateral Agent's and Account Custodian's right, title and security interest in and to the Collateral and the proceeds thereof) against the claims and demands of all Persons whomsoever.

ARTICLE VII

Responsibilities of the Account Custodian

Section 7.01. Responsibilities of the Account Custodian:
(a) (i)

Notwithstanding any provision contained herein or in any other document or instrument to the contrary, neither the Account Custodian nor any of its directors, officers, agents, employees, affiliates or representatives shall be liable for (i) following the instruction of the Collateral Agent or complying with orders or other directives originated by the Collateral Agent or (ii) any action taken or not taken by it (or them) under or in connection with this Agreement, except for the Account Custodian's (or their) own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The Collateral Agent and the Grantor (in each case, for itself or any Person and/or entity claiming through it) hereby releases, warrants, discharges, exculpates and covenants not to sue the Account Custodian for any action taken or omitted to be taken under this Agreement, except to the extent caused by the Account Custodian's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In no event shall the Account Custodian be liable for indirect, special or consequential damages of any kind whatsoever

(including lost profits and lost business opportunity) even if it is advised of the possibility of such damages and regardless of the form of action in which any such damages may be claimed. Without limiting the foregoing, and notwithstanding any provision to the contrary elsewhere, the Account Custodian and its directors, officers, agents, employees, affiliates and representatives:

(A) shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement;

(B) may in any instance where the Account Custodian determines that it lacks or is uncertain as to its authority to take or refrain from taking certain action, or as to the requirements of this Agreement under any circumstance before it, delay or refrain from taking action unless and until it has received instructions from the Collateral Agent or advice from legal counsel (or other appropriate advisor), as the case may be;

(C) so long as it and they shall have acted (or refrained from acting) in good faith, shall not be liable for any error of judgment in any action taken, suffered or omitted by, or for any act done or step taken, suffered or omitted by, or for any mistake of fact or law, unless such action constitutes gross negligence or willful misconduct on its (or their) part (as determined by a court of competent jurisdiction in a final and non-

appealable decision);

(D) may consult with legal counsel selected by it (or other experts for the Collateral Agent or the Grantor), and shall not be liable for any action taken or not taken by it or them in good faith in accordance with the advice of such experts;

(E) will not incur any liability by acting or not acting in reliance upon any notice, consent, certificate, statement or other instrument or writing believed in good faith by it (or them) to be genuine and signed or sent by the proper party or parties;

(F) will not incur liability for any notice, consent, certificate, statement, wire instruction, telecopy, or other writing which is delayed, canceled or charged without the knowledge of the Account Custodian;

(G) shall not be deemed to have or be charged with notice or knowledge of any fact or matter unless a written notice thereof has been received by the Account Custodian at the address and to the Person designated in (or as subsequently designated pursuant to) this Agreement;

(H) shall not be obligated or required by any provision of this Agreement to expend or risk the Account Custodian's own funds, or to take any action (including but not limited to the institution or defense of legal proceedings) which in its or their judgment may cause it or them to incur or suffer any expense or liability; provided, however, if the Account Custodian elects to take any such action it shall be entitled to security or indemnity by the Grantor for the payment of the costs, expenses (including but not limited to reasonable attorneys' fees) and liabilities which may be incurred therein or thereby, reasonably satisfactory to the Account Custodian; and

(I) shall not be liable for any delay or failure to act as may be required hereunder when such delay or failure is due to any act of God, interruption or other circumstances beyond its control.

(ii) The Account Custodian has no interest in the Account Proceeds (or any Collateral which may be deemed to exist) deposited hereunder but is serving as Account Custodian only and has only possession thereof.

(iii) The Account Custodian makes no representation as to the validity, value, genuineness or collectibility of any security or other document or instrument held by or delivered to it.

(b) Resignation. (i) The Account Custodian may at any time resign and be discharged by giving written notice thereof to the Grantor and the Collateral Agent. Before such resignation shall become effective, the Collateral Agent shall appoint (with the consent of the Grantor, except upon the occurrence and during the continuation of an Event of Default under Section 8.01(f) or 8.01(g) of the Credit Agreement, not to be unreasonably withheld or delayed) a successor Account Custodian by written instrument, one copy of which instrument shall be delivered to each of the resigning Account Custodian, the Grantor and the successor Account Custodian. If no successor Account Custodian shall have been so appointed and have accepted appointment within thirty (30) days after the giving of the notice of resignation, the resigning Account Custodian may petition any court of competent jurisdiction for the appointment of a successor Account Custodian. Each such successor Account Custodian shall be knowledgeable and experienced in the performance of the duties and obligations required of the Account Custodian under this Agreement and shall have a minimum of $250,000,000 in capital and surplus.

(ii) Any resignation of the Account Custodian and appointment of a successor Account Custodian pursuant to any of the provisions of this Section 7.01(b) shall not become effective until acceptance of appointment by the successor Account Custodian as provided in Section 7.01(c) below.

(c) Successor Account Custodian. (i) Any successor Account Custodian appointed as provided above shall execute, acknowledge and deliver to the Grantor, the Collateral Agent and its predecessor Account Custodian an instrument accepting such appointment under this Agreement, and thereupon the resignation of the predecessor Account Custodian shall become effective and such successor Account Custodian without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor under this Agreement, and with like effect as if originally named as Account Custodian. The predecessor Account Custodian shall deliver or cause to be delivered to the successor Account Custodian or its designee any Account Proceeds (and any Collateral) in its possession and any related agreements, documents and statements held by it, and the Grantor, the

Collateral Agent and the predecessor Account Custodian shall execute and deliver such instruments and do such other things as may reasonably be required for fully and certainly vesting and confirming in the successor Account Custodian all such rights, powers, duties and obligations.

(ii) No successor Account Custodian shall accept appointment as provided in this Section 7.01(c) unless at the time of such acceptance such successor Account Custodian is eligible under the provisions of Section 7.01(b)(i) above.

(d) Merger or Consolidation of Account Custodian. Without the execution or filing of any paper or any further act on the part of any of the parties hereto, any corporation or banking association into which the Account Custodian may be merged or converted or with which it may be consolidated, or any corporation or banking association resulting from any

merger, conversion or consolidation to which the Account Custodian shall be a party, or any corporation or banking association succeeding to substantially all of the corporate trust business of the Account Custodian shall be the successor of the Account Custodian hereunder, if and only if such corporation or banking association shall be eligible under the provisions of Section 7.01 (b)(i) above.

The Account Custodian shall be bound only by the terms of this Agreement and shall not be bound by or incur liability with respect to the Credit Agreement or any other agreement or understanding between the Grantor and the Collateral Agent to which the Account Custodian is not a party. The Account Custodian shall not have any duties hereunder except those specifically set forth herein.

ARTICLE VIII

Indemnity

Section 8.01. Indemnity. (a)The parties hereto agree that the Collateral Agent shall be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.04 of the Credit Agreement.

(b) Without limitation of its indemnification obligations under the other Loan Documents, the Grantor agrees to indemnify the Collateral Agent, the Account Custodian and the other Indemnitees (as defined in Section 10.05 of the Credit Agreement but, for purposes hereof, also shall include the Account Custodian) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of, the execution, delivery, performance or enforcement of this Agreement or any claim, litigation, investigation or proceeding relating to any of the foregoing agreement or instrument contemplated hereby, or to the Account Proceeds or Collateral, whether or not 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 are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or of any Affiliate, director, officer, employee, counsel, agent, trustee, investment advisor or attorney-in-fact of such Indemnitee.

(c) Any such amounts payable as provided hereunder shall be additional

Secured Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 8.01 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Secured Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 8.01 shall be payable within 10 days of written demand therefor.

(d) Without limiting the application of the foregoing provisions of this Section 8.01 (a), the Grantor agrees, to pay or reimburse the Account Custodian within 10 Business Days

of its written demand therefor, for any and all fees and out of pocket costs and expenses of whatever kind or nature incurred in connection with the establishment, maintenance and operation of the Account and the creation, preservation or protection of the Account Proceeds and the Collateral Agent's interest in the Account Proceeds, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens upon or in respect of the Account, the Account Proceeds or any Collateral and all other fees, costs and expenses in connection with protecting or maintaining the Account, the Account Proceeds and the Collateral Agent's interest therein and protecting, maintaining or preserving the Account Proceeds and the Collateral and the Collateral Agent's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Account, the Account Proceeds and the Collateral.

The provisions of this Article VIII shall survive the termination of this Agreement or the earlier resignation or removal of the Account Custodian.

ARTICLE IX

Miscellaneous

Section 9.01. Notices. All communications and notices hereunder shall

(except as otherwise expressly permitted herein) be in writing and given as provided in

Section 10.02 of the Credit Agreement; provided that all communications and notices hereunder shall be address as follows: (a) if to the Account Custodian, to Deutsche Bank Trust Company Americas, 60 Wall Street, 27th Floor, MS: NYC60-2710, New York, New York 10005,

Attention: Manager, Escrow Team, Facsimile: (732) 578-4593, (b) if to the Collateral Agent, to Deutsche Bank AG New York Branch, 60 Wall Street, MS NYC60-0208, New York, NY 10005, Attention: Scottye Lindsey, Facsimile: (212) 797 5692 and (c) if to the Grantor, to OSI

Restaurant Partners, LLC, 2202 N. West Shore Boulevard, 5th Floor, Tampa, FL 33607,

Attention: Joe Kadow, Facsimile: (813) 281-2114.

Section 9.02. Waivers; Amendment. (a) No failure or delay by the

Collateral Agent, the Account Custodian, any L/C Issuer, any Lender, any Hedge Bank or any Cash Management Bank in exercising any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege or any abandonment or discontinuance of steps to enforce such a right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Collateral Agent, the Account Custodian, the L/C Issuers, the Lenders, the Hedge Banks and the Cash Management Banks hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by

the Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a

waiver of any Default, regardless of whether the Collateral Agent, the Account Custodian, any Lender or any L/C Issuer may have had notice or knowledge of such Default at the time. No notice or demand on the Grantor in any case shall entitle the Grantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent, the Account Custodian and the Grantor, subject to any consent required in accordance with Section 10.01 of the Credit Agreement.

Section 9.03. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Grantor, the Collateral Agent or the Account Custodian that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

Section 9.04. Survival of Agreement. All covenants, agreements, representations and warranties made by the Grantor in the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any Lender or on its behalf and notwithstanding that the Collateral Agent, the Account Custodian, any L/C Issuer or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated.

Section 9.05. Counterparts; Effectiveness, Several Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective as to the Grantor when a counterpart hereof executed on behalf of the Grantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent and the Account Custodian, and thereafter shall be binding upon the Grantor, the Collateral Agent and the Account Custodian and their respective permitted successors and assigns, and shall inure to the benefit of the Grantor, the Collateral Agent, the Account Custodian and the other Secured Parties and their respective successors and assigns, except that the Grantor shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement.

Section 9.06. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to

the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.07. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York. Regardless of any provisions in any other agreement, for the purposes of the New York UCC, New York is the Account Custodian's jurisdiction and the Account shall be governed by the laws of the State of New York.

(b) The Grantor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York City and of the United States District Court of the Southern District 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 Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Collateral Agent, the Account Custodian, any L/C Issuer, any Lender, any Hedge Bank or any Cash Management Bank may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Grantor or its properties in the courts of any jurisdiction.

(c) The Grantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 9.07. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.08. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO WHETHER NOW EXISTING OR HEREAFTER ARISING,

AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9.08 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 9.09. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 9.10. Security Interest Absolute. All rights of the Collateral Agent and the Account Custodian hereunder, the Security Interest, the grant of a security interest in the Collateral and all obligations of the Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, the Secured Hedge Agreements, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) 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 other Loan Document, the Secured Hedge Agreements or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Grantor in respect of the Secured Obligations or this Agreement.

Section 9.11. General Authority of the Collateral Agent. By acceptance of the benefits of this Agreement and any other Collateral Documents, each Secured Party (whether or not a signatory hereto) shall be deemed irrevocably (a) to consent to the appointment of the Collateral Agent as its agent hereunder and under such other Collateral Documents, (b) to confirm that the Collateral Agent shall have the authority to act as the exclusive agent of such Secured Party for the enforcement of any provisions of this Agreement and such other Collateral Documents against the Grantor, the exercise of remedies hereunder or

thereunder and the giving or withholding of any consent or approval hereunder or thereunder relating to any Collateral or the Grantor's obligations with respect thereto, (c) to agree that it shall not take any action to enforce any provisions of this Agreement or any other Collateral Document against the Grantor, to exercise any remedy hereunder or thereunder or to give any consents or approvals hereunder or thereunder except as expressly provided in this Agreement or any other Collateral Document and (d) to agree to be bound by the terms of this Agreement and any other Collateral Documents.

Section 9.12. Recourse. This Agreement is made with full recourse to the Grantor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of the Grantor contained herein, in the Loan Documents and the Secured Hedge Agreements and otherwise in writing in connection herewith or therewith. It is the desire

and intent of the Grantor and the Secured Parties that this Agreement shall be enforced against the Grantor to the fullest extent permissible under the laws applied in each jurisdiction in which enforcement is sought.

Section 9.13. USA Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act the Account Custodian, 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 with Deutsche Bank Trust Company Americas. The parties to this Agreement agree that they will provide the Account Custodian with such information as it may request in order for the Account Custodian to satisfy the requirements of the USA Patriot Act.

Section 9.14. Instructions. For purposes of sending and receiving instructions or directions hereunder, all such instructions or directions shall be, and the Account Custodian may conclusively rely upon such instructions or directions, delivered, and executed by representatives of the Grantor and/or the Collateral Agent designated on Schedule I attached hereto and made a part hereof (each such representative, an "Authorized Person") which such designation shall include specimen signatures of such representatives, as such Schedule I may be updated from time to time.

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

OSI RESTAURANT PARTNERS, LLC

By:

Name:

Title:

DEUTSCHE BANK AG NEW YORK

BRANCH, as Collateral Agent

By:

Name:

Title:

By:

Name:

Title:

DEUTSCHE BANK TRUST COMPANY

AMERICAS, as Account Custodian

By:

Name:

Title:

By:

Name:

Title:

SCHEDULE I to

the Capital Expenditures Account Security Agreement

Authorized Representatives of the Grantor

Name	Title	Specimen Signature

Authorized Representatives of the Agent

Name	Title	Specimen Signature

Schedule 1.01B

Certain Security Interests and Guarantees

1. Security Agreement, dated as of the Closing Date, among OSI Restaurant Partners, LLC, OSI HoldCo, Inc., the subsidiaries of OSI Restaurant Partners, LLC identified therein, and Deutsche Bank AG New York Branch, as collateral agent.

2. Guarantee Agreement, dated as of the Closing Date, among OSI Restaurant Partners, LLC, OSI HoldCo, Inc., the subsidiaries of OSI Restaurant Partners, LLC identified therein, and Deutsche Bank AG New York Branch, as administrative agent.

3. Capital Expenditures Account Security Agreement, dated as of the Closing Date, among OSI Restaurant Partners, LLC, Deutsche Bank AG New York Branch, as Custodian, and Deutsche Bank AG New York Branch, as Collateral Agent.

4. Unit *Kun*-Pledge Agreement, dated as of the Closing Date, by and among Outback Steakhouse International, L.P., Outback Steakhouse Korea Ltd., the banks and financial institutions listed therein, and Deutsche Bank AG New York Branch.

5. Trademark Security Agreement, dated as of the Closing Date, by Carrabba's Italian Grill, Inc., as grantor, in favor of Deutsche Bank AG New York Branch, as collateral agent.

6. Trademark Security Agreement, dated as of the Closing Date, by Outback Catering, Inc., as grantor, in favor of Deutsche Bank AG New York Branch, as collateral agent.

7. Trademark Security Agreement, dated as of the Closing Date, by OS Asset, Inc., as grantor, in favor of Deutsche Bank AG New York Branch, as collateral agent.

8. Trademark Security Agreement, dated as of the Closing Date, by Outback Steakhouse of Florida, Inc., as grantor, in favor of Deutsche Bank AG New York Branch, as collateral agent.

9. Copyright Security Agreement, dated as of the Closing Date, by Outback Steakhouse of Florida, Inc., as grantor, in favor of Deutsche Bank AG New York Branch, as collateral agent.

Schedule 1.01E
Existing Letters of Credit

No.	L/C Issuer	Issuance Date	Expiry Date	Beneficiary	Amount
LC870-116646	Wachovia Bank, National Association	January 3, 2000	January 1, 2008 (automatic one year extension unless otherwise terminated)	The Travelers Indemnity Company	$23,040,000
SM206305W	Wachovia Bank, National Association	December 22, 2003	January 1, 2008 (automatic one year extension unless otherwise terminated)	The Travelers Indemnity Company	$2,000,000

Schedule 1.01G
Excluded Subsidiary

1. Outback Billings, Inc.

    - Outback Billings, Inc. will remain on Schedule 1.01G so long as it engages in no material business activities, has no material assets other than the liquor license to be transferred in good faith by the Borrower, and, subsequent to the transfer of such liquor license, the Borrower shall in good faith be diligently pursuing the process of dissolving such subsidiary.

2. OS Investments, Inc.

    - It is the good faith intention of the Borrower to dissolve OS Investments, Inc. and as of the Closing Date all necessary filings and payments have been made to the Department of Revenue of the State of California to dissolve this entity.

Schedule 1.01H
Foreign Subsidiary

Entity Name	Jurisdiction
Bloomin Canada Inc.	Canada
Bloomin Hong Kong Ltd.	Hong Kong
Bloomin' Korea Holding Co.	Korea
Bloomin' Puerto Rico, L.P.	Cayman Islands
Outback Philippines Development Holdings Corp.	Philippines
Outback Steakhouse International Investments Co.	Cayman Islands
Outback Steakhouse Japan KK	Japan
Outback Steakhouse Korea Ltd.	Korea
PGS Consultario e Servicos, Ltd.	Brazil
OS Kanto Limited	Japan

Schedule 1.01I
Certain Restaurant LPs

Bonefish/Carolinas, Limited Partnership
Bonefish/Gulf Coast, Limited Partnership
Bonefish/Southern, Limited Partnership
Bonefish/Virginia, Limited Partnership
Bonefish/Columbus-I, Limited Partnership
Bonefish/Southern Virginia, Limited Partnership
Bonefish/Desert Ridge, Limited Partnership
Carrabba's/Crestview Hills, Limited Partnership
Carrabba's/Bobby Pasta, Limited Partnership
Outback/Hampton, Limited Partnership
Selmon's/Florida-I, Limited Partnership

Schedule 2.01

Commitments

Lender	Pre-Funded Term Loan Commitment	RC Commitment	RC Commitment	Working Capital
Deutsche Bank AG New York Branch	$1,310,000,000		$100,000,000	$7,500,000
Bank of America, N.A.	---	---		$7,500,000
SunTrust Bank	---	---		$12,000,000
Wells Fargo Bank, N.A.	---	---		$12,000,000
Rabobank Nederland, New York Branch	---	---		$12,500,000
General Electric Capital Corporation	---	---		$12,000,000
LaSalle Bank, N.A. (ABN Amro)	---	---		$12,000,000
Credit Industriel et Commercial	---	---		$10,000,000
Fifth Third Bank	---	---		$11,500,000
Keystone Nazareth Bank & Trust Co.	---	---		$5,000,000
1st Farm Credit Services, PCA	---	---		$4,500,000
Wachovia Bank, N.A.	---	---		$12,000,000
North Fork Bank	---	---		$5,000,000
United Overseas Bank Limited, New York Agency	---	---		$8,000,000
Sovereign Bank	---	---		$8,000,000
Carolina First Bank	---	---		$8,000,000
Natixis	---	---		$2,500,000
Total	$1,310,000,000		$100,000,000	$150,000,000

Schedule 5.01
Existence, Qualification and Power

None.

Schedule 5.06
Litigation

In April 2007, the Borrower was served with a putative class action complaint captioned *Gerald D. Wells, Jr. et al. v. OSI Restaurant Partners, Inc*., Case No. 07-1431, that was filed in the United States District Court for the District of Pennsylvania alleging violations of the Fair and Accurate Credit Transactions Act, or FACTA. In addition, the Borrower had previously been provided with a copy of a putative class action complaint captioned *Saunders v. Roy's Family of Restaurants, Inc.*, Case No. SACV07-164 CJC (ANx), that was filed in the United States District Court for the Central District of California also alleging violations of FACTA, but have not yet been formally served in the suit. FACTA restricts, among other things, the credit and debit card data that may be included on the electronically printed receipts provided to retail customers at the point of sale. The suits allege that the defendants violated a provision of FACTA by including more information on the electronically printed credit and debit card receipts provided to customers than is permitted under FACTA. Both complaints seek monetary damages, including statutory damages, punitive damages, attorneys' fees and injunctive relief. These lawsuits are among a number of lawsuits with similar allegations that have been filed recently against large retailers and foodservice operators, among others, as a result of the implementation of FACTA, which became fully effective as of December 4, 2006.

The Borrower is currently examining information relating to the allegations in these complaints and is evaluating developing judicial interpretations of the statute. While the Borrower intends to vigorously defend against these actions, both of these cases are in the preliminary stages of litigation, and as a result, the ultimate outcome of these cases and their potential financial impact on us are not determinable at this time. However, based on facts, events and circumstances known to the Borrower as of the Closing Date, the Borrower does not believe that it is likely that any such monetary damages, including statutory damages, punitive damages, attorneys' fees and injunctive relief, arising out of the foregoing, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. This Schedule 5.06 does not limit the representations and warranties set forth in Section 5.06 with respect to any facts, events or circumstances arising after the Closing Date or any changes in facts, events or circumstances from those known to the Borrower as of the Closing Date.

Schedule 5.12
Subsidiaries and Other Equity Investments

A. Pledged Subsidiaries with Equity Interests

1.	Issuer	Jurisdiction	Number of Certificate	Registered Owner(s)	Number and Class (if applicable) of Equity Interests Pledged	% of Equity Interests Held, Directly or Indirectly, by the Borrower or a Guarantor[1]	% of Total Issued Interests Pledged[2]
1)	A La Carte Event Pavilion, Ltd.	FL	N/A	• Outback Catering, Inc. • Outback Catering Designated Partner, LLC	N/A	100%	100%
2)	Annapolis Outback, Inc.	MD	4	Outback Steakhouse of Florida, Inc.	4000 shares of common stock, no par value	99.925%	99.925%
3)	Bel Air Outback, Inc.	MD	5	Outback Steakhouse of Florida, Inc.	90 shares of common stock, no par value	90%	90%
4)	Billabong Beverage Company, Inc.	TX	1	Outback Steakhouse of Florida, Inc.	1000 shares of common stock, $0.01 par value	100%	100%
5)	Bloomin Canada, Inc.	Canada	C-3	Outback Steakhouse International, L.P.	65 shares of common stock, no par value	100%	65%
6)	Bonefish Grill, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%
7)	Boomerang Air, Inc.	FL	3	Outback Steakhouse of Florida, Inc.	100 shares of common stock, $0.01 par value	100%	100%
8)	Carrabba's Designated Partner, LLC	DE	N/A	Carrabba's Italian Grill, Inc.	N/A	100%	100%
9)	Carrabba's Italian Grill of Howard County, Inc.	MD	1	Carrabba's Italian Grill, Inc.	90 shares of Class A Common, no par value	90%	90%
10)	Carrabba's Italian Grill, Inc.	FL	2	OSI Restaurant Partners, LLC	1,000,000 shares of common stock, $0.01 par value	100%	100%
11)	Carrabba's Kansas Designated Partner, LLC	DE	N/A	Carrabba's Kansas, Inc.	N/A	100%	100%
12)	Carrabba's Kansas, Inc.	KS	1	Carrabba's Italian Grill, Inc.	100 shares of common stock, $0.01 par value	100%	100%
13)	Carrabba's Midwest Designated Partner, LLC	DE	N/A	Carrabba's Midwest, Inc.	N/A	100%	100%
14)	Carrabba's Midwest, Inc.	KS	1	Carrabba's Italian Grill, Inc.	100 shares of common stock, no par value	100%	100%
15)	Carrabba's of Baton Rouge, LLC	FL	N/A	Carrabba's/Gulf Coast-I, Limited Partnership	N/A	100%	100%
16)	Carrabba's of Bowie, LLC	MD	N/A	Carrabba's/DC-I, Limited Partnership	N/A	100%	100%
17)	Carrabba's of Germantown, Inc.	MD	1	Carrabba's Italian Grill, Inc.	810 shares of common stock, $1.00 par value	90%	90%

18)	Carrabba's of Ocean City, Inc.	MD	3	Carrabba's/DC-I, Limited Partnership	98 shares of common stock, no par value	98%	98%
19)	Carrabba's of Waldorf, Inc.	MD	1	Carrabba's Italian Grill, Inc.	600 shares of common stock, no par value	60%	60%
20)	Carrabba's Shreveport, LLC	FL	N/A	Carrabba's/Dallas-I, Limited Partnership	N/A	100%	100%
21)	Carrabba's/Arizona-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
22)	Carrabba's/Birchwood, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
23) f	Carrabba's/Bobby Pasta, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
24)	Carrabba's/Crestview Hills, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
25)	Carrabba's/Broken Arrow, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
26)	Carrabba's/Canton, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
27)	Carrabba's/Carolina-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
28)	Carrabba's/Central Florida-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
29)	Carrabba's/Chicago, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
30)	Carrabba's/Colorado-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%

31)	Carrabba's/Dallas-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
32)	Carrabba's/DC-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
33)	Carrabba's/First Coast, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
34)	Carrabba's/Georgia-I, Limited Partnership	GA	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
35)	Carrabba's/Great Lakes-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
36)	Carrabba's/Gulf Coast-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
37)	Carrabba's/Heartland-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
38)	Carrabba's/Kansas Two-I, Limited Partnership	KS	N/A	• Carrabba's Kansas, Inc. • Carrabba's Kansas Designated Partner, LLC	N/A	100%	100%
39)	Carrabba's/Kansas-I, Limited Partnership	KS	N/A	• Carrabba's Kansas, Inc. • Carrabba's Kansas Designated Partner, LLC	N/A	100%	100%
40)	Carrabba's/Mid Atlantic-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%

41)	Carrabba's/Mid East, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
42)	Carrabba's/Midwest-I, Limited Partnership	KS	N/A	• Carrabba's Midwest, Inc. • Carrabba's Midwest Designated Partner, LLC	N/A	100%	100%
43)	Carrabba's/New England, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
44)	Carrabba's/Ohio, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
45)	Carrabba's/Outback, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
46)	Carrabba's/Pensacola, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
47)	Carrabba's/Second Coast, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
48)	Carrabba's/South Florida-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
49)	Carrabba's/South Texas-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
50)	Carrabba's/Sun Coast, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%

51)	Carrabba's/Texas, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
52)	Carrabba's/Tri State-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
53)	Carrabba's/Tropical Coast, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
54)	Carrabba's/Virginia, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
55)	Carrabba's/West Florida-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
56)	Carrabba's/Z Team Two-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
57)	Carrabba's/Z Team-I, Limited Partnership	FL	N/A	• Carrabba's Italian Grill, Inc. • Carrabba's Designated Partner, LLC	N/A	100%	100%
58)	Cheeseburger Designated Partner, LLC	DE	N/A	Cheeseburger in Paradise, LLC	N/A	100%	100%
59)	Cheeseburger in Paradise of Kansas, Inc.	KS	1	Cheeseburger in Paradise, LLC	100 shares of common stock, $0.01 par value	100%	100%
60)	Cheeseburger in Paradise of St. Mary's, LLC	MD	N/A	Cheeseburger-Maryland, Limited Partnership	N/A	99%	99%
61)	Cheeseburger in Paradise, LLC	DE	N/A	OS Tropical, Inc.	N/A	100%	100%
62)	Cheeseburger Kansas Designated Partner, LLC	DE	N/A	Cheeseburger in Paradise of Kansas, Inc.	N/A	100%	100%
63)	Cheeseburger-Buckeye, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%

64)	Cheeseburger-Downer's Grove, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
65)	Cheeseburger-Illinois, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
66)	Cheeseburger-Kansas, Limited Partnership	FL	N/A	• Cheeseburger in Paradise of Kansas, Inc. • Cheeseburger Kansas Designated Partner, LLC	N/A	100%	100%
67)	Cheeseburger-Maryland, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
68)	Cheeseburger-Michigan, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
69)	Cheeseburger-Nebraska, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
70)	Cheeseburger-Northern New Jersey, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
71)	Cheeseburger-Northern Virginia, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
72)	Cheeseburger-Ohio, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
73)	Cheeseburger-South Carolina, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner,	N/A	100%	100%

					LLC			
74)		Cheeseburger-South Eastern Pennsylvania, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
75)		Cheeseburger-South Florida, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
76)		Cheeseburger-Southern NY, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
77)		Cheeseburger-West Nyack, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
78)		Cheeseburger-Wisconsin, Limited Partnership	FL	N/A	• Cheeseburger in Paradise, LLC • Cheeseburger Designated Partner, LLC	N/A	100%	100%
	79)	CIGI Alabama Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	80)	CIGI Arizona Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	81)	CIGI Arkansas Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
82)		CIGI Beverages of Texas, Inc.	TX	3	CIGI Holdings, Inc.	1000 shares of common stock, $0.01 par value	100%	100%
	83)	CIGI Colorado Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	84)	CIGI Connecticut Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	85)	CIGI Florida Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	86)	CIGI Georgia Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
87)		CIGI Holdings, Inc.	TX	1	Carrabba's Italian Grill, Inc.	1000 shares of common stock, $0.01 par value	100%	100%
	88)	CIGI Idaho Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	89)	CIGI Illinois Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	90)	CIGI Indiana Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	91)	CIGI Kansas Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	92)	CIGI Kentucky Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
	93)	CIGI Louisiana Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*

94)	CIGI Maryland Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
95)	CIGI Massachusetts Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
96)	CIGI Michigan Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
97)	CIGI Missouri Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
98)	CIGI Nebraska Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
99)	CIGI Nevada Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
100)	CIGI New Hampshire Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
101)	CIGI New Jersey Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
102)	CIGI New Mexico Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
103)	CIGI New York Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
104)	CIGI North Carolina Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
105)	CIGI Ohio Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
106)	CIGI Oklahoma Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
107)	CIGI Pennsylvania Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
108)	CIGI Rhode Island Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
109)	CIGI South Carolina Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
110)	CIGI Tennessee Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
111)	CIGI Texas Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
112)	CIGI Utah Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
113)	CIGI Virginia Services, Limited Partnership	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
114)	CIGI Wisconsin Services, LTD	FL	N/A	Carrabba's Italian Grill, Inc.	N/A	*	*
115)	CIP Delaware Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
116)	CIP Florida Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
117)	CIP Georgia Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
118)	CIP Illinois Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
119)	CIP Indiana Services, Limited Partnership	FL	N/A	OS Tropical, Inc.	N/A	*	*
120)	CIP Kansas Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
121)	CIP Maryland Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
122)	CIP Michigan Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
123)	CIP Nebraska Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*
124)	CIP New Jersey Services, Limited Partnership	FL	N/A	OS Tropical, Inc.	N/A	*	*
125)	CIP New York			OS Tropical, Inc.		*	*

	Services, Limited Partnership	FL	N/A		N/A			
126)	CIP North Carolina Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*	
127)	CIP Ohio Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*	
128)	CIP Oklahoma Services, Limited Partnership	FL	N/A	OS Tropical, Inc.	N/A	*	*	
129)	CIP Pennsylvania Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*	
130)	CIP South Carolina Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*	
131)	CIP Virginia Services, Limited Partnership	FL	N/A	OS Tropical, Inc.	N/A	*	*	
132)	CIP Wisconsin Services, LTD	FL	N/A	OS Tropical, Inc.	N/A	*	*	
133)	Frederick Outback, Inc.	MD	1	Outback Steakhouse of Florida, Inc.	1000 shares of common stock, $1.00 par value	100%	100%	
134)	Hagerstown Outback, Inc.	MD	3	Outback Steakhouse of Florida, Inc.	4000 shares of common stock, no par value	99%	99%	
135)	Heartland Outback, Inc.	KS	1	Outback Steakhouse of Florida, Inc.	1000 shares of common stock, no par value	100%	100%	
136)	Heartland Outback-I, Limited Partnership	KS	N/A	• Heartland Outback, Inc. • Outback Kansas Designated Partner, LLC	N/A	100%	100%	
137)	Heartland Outback-II, Limited Partnership	KS	N/A	• Heartland Outback, Inc. • Outback Kansas Designated Partner, LLC	N/A	100%	100%	
138)	OCC Florida (a la Catering) Services, LTD	FL	N/A	Outback Catering, Inc.	N/A	*	*	
139)	OCC Pennsylvania Services, LTD	FL	N/A	Outback Catering, Inc.	N/A	*	*	
140)	Ocean City Outback, Inc.	MD	8	Outback Steakhouse of Florida, Inc.	99 shares of common stock, no par	97%	97%	
141)	OS Asset, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%	
142)	OS Capital, Inc.	DE	3	OSI Restaurant Partners, LLC	1,000 shares of common stock, $0.01 par value	100%	100%	
143)	OS Cathay, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%	
144)	OS Developers, LLC	FL	N/A	OS Realty, Inc.	N/A	100%	100%	
145)	OS Management, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%	
146)	OS Mortgage Holdings, Inc.	DE	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%	
147)	OS Pacific, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%	
148)	OS Prime, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%	

149)	OS Realty, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%
150)	OS Restaurant Services, Inc.	DE	2	Outback Steakhouse of Florida, Inc.	100 shares of common stock, $0.01 par value	100%	100%
151)	OS Southern, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%
152)	OS Speedway, LLC	FL	N/A	Outback Catering, Inc.	N/A	100%	100%
153)	OS Tropical, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%
154)	OS USSF, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%
	155) OSF Alabama Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	156) OSF Arizona Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	157) OSF Arkansas Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	158) OSF Colorado Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	159) OSF Connecticut Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	160) OSF Delaware Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	161) OSF Florida Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	162) OSF Georgia Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	163) OSF Illinois Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	164) OSF Indiana Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	165) OSF Iowa Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	166) OSF Kansas Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	167) OSF Kentucky Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	168) OSF Louisiana Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	169) OSF Maine Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	170) OSF Maryland Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	171) OSF Massachusetts Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	172) OSF Michigan Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	173) OSF Minnesota Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	174) OSF Missouri Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	175) OSF Montana Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	176) OSF Nebraska Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	177) OSF Nevada Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	178) OSF New Hampshire Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
	179) OSF New Jersey			Outback Steakhouse of		*	*

	Services, Limited Partnership	FL	N/A	Florida, Inc.	N/A		
180)	OSF New Mexico Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
181)	OSF New York Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
182)	OSF North Carolina Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
183)	OSF North Dakota Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
184)	OSF Ohio Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
185)	OSF Oklahoma Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
186)	OSF Pennsylvania Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
187)	OSF Rhode Island Services Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
188)	OSF South Carolina Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
189)	OSF South Dakota Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
190)	OSF Tennessee Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
191)	OSF Texas Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
192)	OSF Utah Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
193)	OSF Vermont Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
194)	OSF Virginia Services, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
195)	OSF West Virginia Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
196)	OSF Wisconsin Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
197)	OSF Wyoming Services, LTD	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
198)	OSF/CIGI of Evesham Partnership	FL	N/A	• Carrabba's/Mid Atlantic-I, Limited Partnership • Outback/Mid Atlantic-I, Limited Partnership	N/A	100%	100%
199)	OSI Co-Issuer, Inc.	DE	1	OSI Restaurant Partners, LLC	1000 shares of common stock, $0.01 par value	100%	100%
200)	OSI International, Inc.	FL	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%
201)	OSI Restaurant Partners, LLC	DE	1	OSI HoldCo, Inc.	100 units	100%	100%
202)	OSIN Hawaii Services, LTD	FL	N/A	Outback Steakhouse International, L.P.	N/A	*	*
203)	OSSIVT, LLC	VT	N/A	Outback/Empire-I, Limited Partnership	N/A	98%	98%
204)	Outback & Carrabba's of New Mexico, Inc.	NM	2	OSI Restaurant Partners, LLC	100 shares of common stock, $0.01 par value	100%	100%
205)	Outback Alabama, Inc.	AL	1	Outback/Alabama-I, Limited Partnership	10 shares of common stock, $0.01 par value	100%	100%
206)	Outback Beverages of			Outback Steakhouse of	10,000 shares	100%	100%

	North Texas, Inc.	TX	5	Florida, Inc.	of common stock, no par value		
207)	Outback Beverages of West Texas, L.L.C.	TX	N/A	Outback Steakhouse of Florida, Inc.	N/A	100%	100%
208)	Outback Catering Company, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
209)	Outback Catering Company-II, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
210)	Outback Catering Designated Partner, LLC	DE	N/A	Outback Catering, Inc.	N/A	100%	100%
211)	Outback Catering of Pittsburgh, Ltd.	FL	N/A	• Outback Catering, Inc. • Outback Catering Designated Partner, LLC	N/A	100%	100%
212)	Outback Catering, Inc.	FL	1	Outback Steakhouse of Florida, Inc.	100 shares of common stock, no par value	100%	100%
213)	Outback Designated Partner, LLC	DE	N/A	Outback Steakhouse of Florida, Inc.	N/A	100%	100%
214)	Outback International Designated Partner, LLC	DE	N/A	Outback Steakhouse International, L.P.	N/A	100%	100%
215)	Outback Kansas Designated Partner, LLC	DE	N/A	Heartland Outback, Inc.	N/A	100%	100%
216)	Outback of Calvert County, Inc.	MD	1	Outback/Stone-II, Limited Partnership	4000 common shares, no par value	94%	94%
217)	Outback of Waldorf, Inc.	MD	1	Outback Steakhouse of Florida, Inc.	1000 shares of common stock, no par value	100%	100%
218)	Outback Sports, LLC	DE	N/A	OSI Restaurant Partners, LLC	N/A	100%	100%
219)	Outback Steakhouse International Investments Co.	Cayman Islands	002	Outback Steakhouse International, L.P.	65 shares of ordinary stock, no par value	100%	65%
220)	Outback Steakhouse International, Inc.	FL	4	OSI Restaurant Partners, LLC	1,000 shares of common stock, $0.01 par value	100%	100%
221)	Outback Steakhouse International, L.P.	GA	N/A	• OSI International, Inc. • Outback Steakhouse International, Inc.	N/A	100%	100%
222)	Outback Steakhouse Japan KK	Japan	N/A	Outback Steakhouse International, L.P.	N/A	80%	65%
223)	Outback Steakhouse Korea Ltd.	Korea	N/A	Outback Steakhouse International, L.P.	249,951 units	100%	65%
224)	Outback Steakhouse of Canton, Inc.	MD	3	Outback Steakhouse of Florida, Inc.	4000 shares of common stock, no par value	99.95%	99.95%
225)	Outback Steakhouse of			• Outback		100%	100%

	Central Florida, Ltd.	FL	N/A	Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A		
226)	Outback Steakhouse of Central Florida-II, Ltd.	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
227)	Outback Steakhouse of Dallas-I, Ltd.	TX	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
228)	Outback Steakhouse of Dallas-II, Ltd.	TX	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
229)	Outback Steakhouse of Florida, Inc.	FL	3	OSI Restaurant Partners, LLC	935,000 shares of common stock, $0.01 par value	100%	100%
230)	Outback Steakhouse of Houston-I, Ltd.	TX	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
231)	Outback Steakhouse of Houston-II, Ltd.	TX	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
232)	Outback Steakhouse of Howard County, Inc.	MD	1	Outback Steakhouse of Florida, Inc.	90 shares Class A Common Stock, no par value	90%	90%
233)	Outback Steakhouse of Indianapolis, Ltd.	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
234)	Outback Steakhouse of Kentucky, Ltd.	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%

235)	Outback Steakhouse of North Georgia-I, L.P.	GA	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
236)	Outback Steakhouse of North Georgia-II, L.P.	GA	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
237)	Outback Steakhouse of South Carolina, Inc.	SC	1	Outback Steakhouse of Florida, Inc.	10 shares of common stock, no par value	100%	100%
238)	Outback Steakhouse of South Florida, Ltd.	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
239)	Outback Steakhouse of South Georgia-I, L.P.	GA	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
240)	Outback Steakhouse of South Georgia-II, L.P.	GA	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
241)	Outback Steakhouse of St. Mary's County, Inc.	MD	4	Outback Steakhouse of Florida, Inc.	83 shares of common stock, no par value	83%	83%
242)	Outback Steakhouse of Washington, D.C., Ltd.	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
243)	Outback Steakhouse West Virginia, Inc.	WV	1	Outback Steakhouse of Florida, Inc.	100 shares of common stock, $1.00 par value	100%	100%
244)	Outback Steakhouse-NYC, Ltd.	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
245)	Outback/Alabama-I, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc.	N/A	100%	100%

		FL	N/A	• Outback Designated Partner, LLC	N/A		
246)	Outback/Alabama-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
247)	Outback/Bayou-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
248)	Outback/Bayou-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
249)	Outback/Billings, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
250)	Outback/Bluegrass-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
251)	Outback/Bluegrass-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
252)	Outback/Buckeye-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
253)	Outback/Buckeye-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
254)	Outback/Carrabba's Partnership			• Outback/Mid Atlantic-I, Limited		100%	100%

				Partnership			
		FL	N/A	• Carrabba's/Mid Atlantic-I, Limited Partnership	N/A		
255)	Outback/Central Mass, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
256)	Outback/Charlotte-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
257)	Outback/Chicago-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
258)	Outback/Cleveland-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
259)	Outback/Cleveland-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
260)	Outback/DC, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
261)	Outback/Denver-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
262)	Outback/Detroit-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		

263)	Outback/East Michigan, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
264)	Outback/Empire-I, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
265)	Outback/Hampton, Limited Partnership	FL	N/A	Outback Steakhouse of Florida, Inc.	N/A	*	*
266)	Outback/Hawaii-I, Limited Partnership	FL	N/A	• Outback Steakhouse International, L.P. • Outback International Designated Partner, LLC	N/A	100%	100%
267)	Outback/Heartland-I, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
268)	Outback/Heartland-II, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
269)	Outback/Indianapolis-II, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
270)	Outback/Islamorada Restaurant, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	*	*
271)	Outback/Maryland-I, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	*	*
272)	Outback/Memphis, Limited Partnership			• Outback Steakhouse of Florida, Inc.		*	*

		FL	N/A	• Outback Designated Partner, LLC	N/A		
273)	Outback/Metropolis-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
274)	Outback/Mid Atlantic-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
275)	Outback/Midwest-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
276)	Outback/Missouri-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
277)	Outback/Missouri-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
278)	Outback/Nevada-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
279)	Outback/Nevada-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
280)	Outback/New England-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
281)	Outback/New England-			• Outback		100%	100%

	II, Limited Partnership			Steakhouse of Florida, Inc.			
		FL	N/A	• Outback Designated Partner, LLC	N/A		
282)	Outback/New York, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
283)	Outback/North Florida-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
284)	Outback/North Florida-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
285)	Outback/Phoenix-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
286)	Outback/Phoenix-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
287)	Outback/Shenandoah-I, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
288)	Outback/Shenandoah-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		
289)	Outback/South Florida-II, Limited Partnership			• Outback Steakhouse of Florida, Inc.		100%	100%
		FL	N/A	• Outback Designated Partner, LLC	N/A		

290)	Outback/Southfield, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	*	*
291)	Outback/Southwest Georgia, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
292)	Outback/SRI Joint Venture	MD	N/A	Outback Steakhouse of Washington, D.C., Ltd.	N/A	50%	50%
293)	Outback/Stone-II, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
294)	Outback/Utah-I, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
295)	Outback/Virginia, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
296)	Outback/West Florida-I, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
297)	Outback/West Florida-II, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
298)	Outback/West Penn, Limited Partnership	FL	N/A	• Outback Steakhouse of Florida, Inc. • Outback Designated Partner, LLC	N/A	100%	100%
299)	Outback-Carrabba's of Hunt Valley, Inc.	MD	1	Outback Steakhouse of Florida, Inc.	49 shares of common stock,	49%	49%

					no par value		
	Outback-Carrabba's of Hunt Valley, Inc.	MD	2	Carrabba's Italian Grill, Inc.	49 shares of common stock, no par value	49%	49%
300)	Owings Mills Incorporated	MD	3	Outback/Stone-II, Limited Partnership	49 shares of common stock, no par value	49.5%	49.5%
301)	Perry Hall Outback, Inc.	MD	1	Outback Steakhouse of Florida, Inc.	4,950 shares of common stock, no par value	99%	99%
302)	Private Restaurant Master Lessee, LLC	DE	N/A	OSI Restaurant Partners, LLC	N/A	100%	100%

B. Unpledged Subsidiaries

	Name of Entity	Jurisdiction	Percentage Owned[3]
1.	Aramark/Outback Restaurant Services Joint Venture	PA	50%
2.	BC California Services, Limited Partnership	FL	*
3.	BFG Alabama Services, LTD	FL	*
4.	BFG Arizona Services, Limited Partnership	FL	*
5.	BFG Arkansas Services, LTD	FL	*
6.	BFG Colorado Services, LTD	FL	*
7.	BFG Connecticut Services, Limited Partnership	FL	*
8.	BFG Florida Services, LTD	FL	*
9.	BFG Georgia Services, LTD	FL	*
10.	BFG Illinois Services, LTD	FL	*
11.	BFG Indiana Services, Limited Partnership	FL	*
12.	BFG Iowa Services, Limited Partnership	FL	*
13.	BFG Kansas Services, LTD	FL	*
14.	BFG Kentucky Services, LTD	FL	*
15.	BFG Louisiana Services, LTD	FL	*
16.	BFG Maryland Services, LTD	FL	*
17.	BFG Michigan Services, LTD	FL	*
18.	BFG Mississippi Services, Limited Partnership	FL	*
19.	BFG Missouri Services, Limited Partnership	FL	*
20.	BFG Nebraska Services, LTD	FL	*
21.	BFG Nevada Services, Limited Partnership	FL	*
22.	BFG New Jersey Services, Limited Partnership	FL	*
23.	BFG New York Services, Limited Partnership	FL	*
24.	BFG North Carolina Services, LTD	FL	*
25.	BFG Ohio Services, LTD	FL	*
26.	BFG Oklahoma Services, Limited Partnership	FL	*
27.	BFG Pennsylvania Services, LTD	FL	*
28.	BFG South Carolina Services, LTD	FL	*
29.	BFG Tennessee Services, LTD	FL	*
30.	BFG Virginia Services, Limited Partnership	FL	*
31.	BFG Wisconsin Services, LTD	FL	*
32.	Bloom No. 1 Limited	Hong Kong	100% (by Bloomin Hong Kong Ltd.)
33.	Bloom No. 2 Limited	Hong Kong	100% (by Bloomin Hong Kong Ltd.)
34.	Bloomin Hong Kong Ltd.	Hong Kong	99.999%
35.	Bloomin Puerto Rico, LP	Cayman Islands	100%
36.	Bloomin' Korea Holding Co.	Korea	100%
37.	Blue Coral Designated Partner, LLC	Delaware	100% (by Blue Coral Seafood and Spirits, LLC)
38.	Blue Coral Seafood and Spirits, LLC	FL	75%
39.	Blue Coral/La Jolla, Limited Partnership	FL	*
40.	Blue Coral/Southwest, Limited Partnership	FL	*
41.	Bonefish Designated Partner, LLC	DE	100%
42.	Bonefish Grill of Florida Designated Partner, LLC	DE	100% (by Bonefish Grill of Florida, LLC)
43.	Bonefish Grill of Florida, LLC	FL	75%
44.	Bonefish Kansas Designated Partner, LLC	DE	100%

45.	Bonefish Kansas, Inc.	KS		100%
46.	Bonefish/Ashville, Limited Partnership	FL		*
47.	Bonefish/Carolinas, Limited Partnership	FL		*
48.	Bonefish/Central Florida-I, Limited Partnership	FL		*
49.	Bonefish/Centreville, Limited Partnership	FL		*
50.	Bonefish/Colorado, Limited Partnership	FL		100%
51.	Bonefish/Columbus-I, Limited Partnership	FL		*
52.	Bonefish/Crescent Springs, Limited Partnership	FL		*
53.	Bonefish/Desert Ridge, Limited Partnership	FL		*
54.	Bonefish/East Central Florida, Limited Partnership	FL		*
55.	Bonefish/Fredericksburg, Limited Partnership	FL		*
56.	Bonefish/Greensboro, Limited Partnership	FL		*
57.	Bonefish/Gulf Coast, Limited Partnership	FL		*
58.	Bonefish/Hyde Park, Limited Partnership	FL		*
59.	Bonefish/Jersey-Long Island, Limited Partnership	FL		100%
60.	Bonefish/Kansas-I, Limited Partnership	KS		100%
61.	Bonefish/Michigan, Limited Partnership	FL		100%
62.	Bonefish/Mid-Atlantic, Limited Partnership	FL		100%
63.	Bonefish/Midwest-II, Limited Partnership	FL		100%
64.	Bonefish/Newport News, Limited Partnership	FL		*
65.	Bonefish/North Florida-I, Limited Partnership	FL		*
66.	Bonefish/Northeast, Limited Partnership	FL		100%
67.	Bonefish/Plains, Limited Partnership	FL		100%
68.	Bonefish/Richmond, Limited Partnership	FL		*
69.	Bonefish/South Florida-I, Limited Partnership	FL		*
70.	Bonefish/Southern Virginia, Limited Partnership	FL		*
71.	Bonefish/Southern, Limited Partnership	FL		*
72.	Bonefish/Tallahassee, Limited Partnership	FL		*
73.	Bonefish/Trio-I, Limited Partnership	FL		*
74.	Bonefish/Virginia, Limited Partnership	FL		*
75.	Bonefish/West Florida-I, Limited Partnership	FL		*
76.	Carrabba's/Birmingham 280, Limited Partnership	FL		*
77.	Carrabba's/Cool Springs, Limited Partnership	FL		*
78.	Carrabba's/Deerfield Township, Limited Partnership	FL		*
79.	Carrabba's/Green Hills, Limited Partnership	FL		*
80.	Carrabba's/Lexington, Limited Partnership	FL		*
81.	Carrabba's/Louisville, Limited Partnership	FL		*
82.	Carrabba's/Metro, Limited Partnership	FL		*
83.	Carrabba's/Miami Beach, Limited Partnership		FL	*
84.	Carrabba's/Michigan, Limited Partnership	FL		*
85.	Carrabba's/Mid America, Limited Partnership	FL		*
86.	Carrabba's/Montgomery, Limited Partnership		FL	*
87.	Carrabba's/Rocky Top, Limited Partnership		FL	*
88.	Fleming's/Boston, Limited Partnership	FL		100%
89.	Fleming's/Calione, Limited Partnership	FL		*
90.	Fleming's/Calitwo, Limited Partnership	FL		*
91.	Fleming's/Fresno, Limited Partnership	FL		*
92.	Fleming's/Great Lakes-I, Limited Partnership	FL		*
93.	Fleming's/Nashville, Limited Partnership	FL		100%
94.	Fleming's/Northeast-I, Limited Partnership	FL		*
95.	Fleming's/Northwest-I, Limited Partnership	FL		*
96.	Fleming's/Pasadena, Limited Partnership	FL		*
97.	Fleming's/Prime Ranch-I, Limited Partnership	FL		*
98.	Fleming's/Rancho Cucamongo-I, Limited Partnership	FL		*
99.	Fleming's/San Diego, Limited Partnership	FL		*
100.	Fleming's/Southeast-I, Limited Partnership	FL		*
101.	Fleming's/Southmidwest-I, Limited Partnership	FL		*
102.	Fleming's/Walnut Creek, Limited Partnership	FL		*
103.	Fleming's/Westcoast-I, Limited Partnership	FL		*
104.	Fleming's/Woodland Hills-I, Limited Partnership	FL		*
105.	FPS Alabama Services, LTD	FL		*
106.	FPS Arizona Services, Limited Partnership	FL		*
107.	FPS California Services, Limited Partnership	FL		*
108.	FPS Colorado Services, LTD	FL		*

109.	FPS Florida Services, LTD	FL	*
110.	FPS Georgia Services, LTD	FL	*
111.	FPS Illinois Services, LTD	FL	*
112.	FPS Indiana Services, Limited Partnership	FL	*
113.	FPS Iowa Services, Limited Partnership	FL	*
114.	FPS Louisiana Services, LTD	FL	*
115.	FPS Maryland Services, LTD	FL	*
116.	FPS Massachusetts Services, LTD	FL	*
117.	FPS Michigan Services, LTD	FL	*
118.	FPS Missouri Services, Limited Partnership	FL	*
119.	FPS Nebraska Services, LTD	FL	*
120.	FPS Nevada Services, Limited Partnership	FL	*
121.	FPS New Jersey Services, Limited Partnership	FL	*
122.	FPS North Carolina Services, LTD	FL	*
123.	FPS Ohio Services, LTD	FL	*
124.	FPS Oklahoma Services, LTD	FL	*
125.	FPS Pennsylvania Services, LTD	FL	*
126.	FPS Rhode Island Services, Limited Partnership	FL	*
127.	FPS Tennessee Services, LTD	FL	*
128.	FPS Texas Services, LTD	FL	*
129.	FPS Utah Services, LTD	FL	*
130.	FPS Virginia Services, Limited Partnership	FL	*
131.	FPS Wisconsin Services, LTD	FL	*
132.	LRS Florida Services, LTD	FL	*
133.	OS Kanto Limited	Japan	100%
134.	OS Prime-I, Limited Partnership	FL	100%
135.	OS/USSF-I, Limited Partnership	FL	*
136.	OSIN Puerto Rico Services Ltd	FL	*
137.	Outback Philippines Development Holdings Corp.	Philippines	100%
138.	Outback Puerto Rico Designated Partner, LLC	DE	100%
139.	Outback/Fleming's Designated Partner, LLC	DE	100% (owned by Outback/Fleming's, LLC)
140.	Outback/Fleming's, LLC	DE	90%
141.	Pacific Designated Partner, LLC	DE	100%
142.	PACIFIC Texas Services, LTD	FL	*
143.	Prime Designated Partner, LLC	DE	100%
144.	Roy's/Buckhead, Limited Partnership	FL	*
145.	Roy's/Calione, Limited Partnership	FL	*
146.	Roy's/Calithree, Limited Partnership	FL	*
147.	Roy's/Calitwo, Limited Partnership	FL	*
148.	Roy's/Chicago, Limited Partnership	FL	100%
149.	Roy's/Desert Ridge, Limited Partnership	FL	*
150.	Roy's/East Atlantic-I, Limited Partnership	FL	*
151.	Roy's/Newport Beach, Limited Partnership	FL	100%
152.	Roy's/Outback Designated Partner, LLC	DE	100% (by Roy's/Outback Joint Venture)
153.	Roy's/Outback Joint Venture	FL	50%
154.	Roy's/Pasadena-I, Limited Partnership	FL	*
155.	Roy's/Scottsdale, Limited Partnership	FL	100%
156.	Roy's/South Florida-I, Limited Partnership	FL	100%
157.	Roy's/Southmidwest-I, Limited Partnership	FL	*
158.	Roy's/West Florida-I, Limited Partnership	FL	*
159.	Roy's/Westcoast-I, Limited Partnership	FL	*
160.	Roy's/Woodland Hills, Limited Partnership	FL	*
161.	Roys Arizona Services, Limited Partnership	FL	*
162.	Roys California Services, Limited Partnership	FL	*
163.	Roys Florida Services, LTD	FL	*
164.	Roys Georgia Services, LTD	FL	*
165.	Roys Illinois Services, LTD	FL	*
166.	Roys Maryland Services, LTD	FL	*
167.	Roys Nevada Services, Limited Partnership	FL	*
168.	Roys Pennsylvania Services, LTD	FL	*
169.	Selmons/Florida-I, Limited Partnership	FL	*

170.	Southern Designated Partner, LLC	DE	100%

C. Other Equity Interests

	Name of Entity	Jurisdiction	Percentage Owned[4]
1.	PGS Consultario e Servicos, Ltd.	Brazil	50%

[1] An asterisk denotes a non-wholly owned Restaurant LP or Employee Participation Subsidiary.

[2] An asterisk denotes a non-wholly owned Restaurant LP or Employee Participation Subsidiary.

[3] An asterisk denotes a non-wholly owned Restaurant LP or Employee Participation Subsidiary.

[4] A non-controlled 50/50 joint venture.

Schedule 7.01(b)
Existing Liens

Debtor	State	Jurisdiction	UCC	Original File Date – No.	Secured Party	Related Filings	Collateral Description
Outback Steakhouse of Florida, Inc.	FL	FL	1	2/28/2002	Wells Fargo Financial	200200485170	Cappuccino Machine
Outback Steakhouse of Florida, Inc.	FL	FL	1	3/13/2003	Wells Fargo Financial Leasing, Inc.	200303479297	2 6330 Kyocera Mita Systems
Outback Steakhouse of Florida, Inc.	FL	FL	1	6/6/2003	Ervin Leasing Company	200304144663	Equipment: Nobles 2000 Heavy Duty Buffer
Bonefish Grill, Inc.	FL	FL	1	11/20/2003	Wells Fargo Financial Leasing, Inc.	200305499694	1 Camera Lease System

Schedule 7.02(f)
Existing Investments

1. See Schedule 5.12.

2. The guarantee of an uncollateralized line of credit that permits borrowing up to a maximum of $35.0 million by T-Bird Nevada, LLC, the borrower, pursuant to the Second Amended and Restated Unconditional Guaranty Agreement, dated as of December 31, 2004, by Outback Steakhouse, Inc. to and for the benefit of Bank of America, N.A.

3. The guarantee of a line of credit that permits borrowing up to a maximum of $24.5 million pursuant to Credit and Guaranty Agreement, dated as of October 31, 2000, between RY-8, Inc., the borrower, the Guarantors (as defined therein) and Wachovia Bank, N.A., as amended.

4. The guarantee of an aggregate maximum of $68.0 million in bonds issued by Kentucky Speedway, LLC, pursuant to the Amended and Restated Limited Guarantee, dated as of June 30, 2006, by and among The Huntington National Bank; Fifth Third Bank; PNC Bank, National Association; The Huntington National Bank, Trustee; OSI Restaurant Partners, Inc.; Richard L. Duchossois; Jerry L. Carroll; Richard T. Farmer; John R. Lindahl; John R. Lindahl, Trustee of the Blue Water Trust and Larry T. Thrailkill, Trustee of the Deepwater Trust.

5. Agreement, dated as of February 28, 2005 and amended August 2006, between Aussie Chung Ltd., Hana Bank Kang Nam Corporate Branch, Joon Suh Cho, and Myung Hui Chang.

6. Agreement, dated as of February 6, 2006, between Aussie Chung Ltd., Hana Bank Kang Nam Corporate Branch, Sang Soo Chung, Sean Taesup Kim, Myung Hui Chang and Kyung Min Lim.

7. Loans to each Restaurant LP by such Restaurant LP's general partner pursuant to such Restaurant LP's limited partnership agreement entered into in the ordinary course of business consistent with past practice in existence on the Closing Date.

Schedule 7.03(b)
Existing Indebtedness

1. A principal amount of $4.925 million of indebtedness in connection with the sale-leaseback transaction as evidenced by (A) the Contract for Sale and Purchase, dated June 24, 2005, between OS Realty, Inc., as seller, and The Anz Company, the buyer, and (B)(i) the Lease, effective as of August 22, 2005, between BV Development El Paso, L.L.C. and Outback/Detroit-I, Limited Partnership, (ii) the Lease, effective as of August 22, 2005, between BV Development Superstition KK, L.L.C. and Cheeseburger-South Eastern Pennsylvania, Limited Partnership, (iii) the Lease, effective as of August 22, 2005, between BV Development Superstition RR, L.L.C. and Cheeseburger-South Eastern Pennsylvania, Limited Partnership, and (iv) the Lease, effective as of August 31, 2005, between BV Development Gilbert, LLC and Cheeseburger-Buckeye, Limited Partnership.

2. The guarantee of an uncollateralized line of credit that permits borrowing up to a maximum of $35.0 million by T-Bird Nevada, LLC, the borrower, pursuant to the Second Amended and Restated Unconditional Guaranty Agreement, dated as of December 31, 2004, by Outback Steakhouse, Inc. to and for the benefit of Bank of America, N.A.

3. The guarantee of a line of credit that permits borrowing up to a maximum of $24.5 million pursuant to Credit and Guaranty Agreement, dated as of October 31, 2000, between RY-8, Inc., the borrower, the Guarantors (as defined therein) and Wachovia Bank, N.A., as amended.

4. The guarantee of an aggregate maximum of $68.0 million in bonds issued by Kentucky Speedway, LLC, pursuant to the Amended and Restated Limited Guarantee, dated as of June 30, 2006, by and among The Huntington National Bank; Fifth Third Bank; PNC Bank, National Association; The Huntington National Bank, Trustee; OSI Restaurant Partners, Inc.; Richard L. Duchossois; Jerry L. Carroll; Richard T. Farmer; John R. Lindahl; John R. Lindahl, Trustee of the Blue Water Trust and Larry T. Thrailkill, Trustee of the Deepwater Trust.

5. Agreement, dated as of August 2006, between Aussie Chung Ltd., Hana Bank Kang Nam Corporate Branch, Joon Suh Cho, and Myung Hui Chang.

6. Loan for KRW 72,950,000,000 pursuant to the Loan Agreement, dated March 27, 2007, between Outback Steakhouse International, L.P. and Outback Steakhouse Korea Ltd.

7. Loan for JPY2,080,954,467 pursuant to the Loan Agreement, dated March 30, 2007, between Outback Steakhouse International, L.P. and Outback Steakhouse Japan KK.

8. Loan in Korean won for approximately US$30,000,000, consisting of a one-year overdraft line and a one-year line of credit, pursuant to the Loan Agreement, between Outback Steakhouse Korea Ltd. and Citi Bank Korea, Inc. The Hong Kong and Shanghai Banking Corporation, Ltd., Seoul Branch, and Woori Bank.

9. Capitalized Leases set forth on Schedule 7.01(b).

10. Notes existing on the Closing Date in an aggregate principal amount not exceeding $10.0 million issued primarily for buyouts of general manager and chef interests in the cash flows of Restaurant LPs and payable over five years.

Schedule 7.05(l)
Dispositions

1. All or any portion of the existing restaurant concept related to OS Tropical, Inc. and its direct or indirect subsidiaries, including any assets related to the business of OS Tropical, Inc. and its direct or indirect subsidiaries.

2. All or any portion of the existing restaurant concept related to OS Pacific, Inc. and its direct or indirect subsidiaries, including any assets related to the business of OS Pacific, Inc. and its direct or indirect subsidiaries.

3. 3685 W. Flamingo, Las Vegas, NV 89103

4. 7834 Reynolds Road, Mentor, OH 44060-5324

5. 2455 Brice Road, Columbus, OH

6. 7201 McKnight Road, Pittsburgh, PA 15237-3509

7. 713 E. Huntland Drive, Austin, TX 78752

8. 2225 Connector, Dallas, TX 75220

9. 316 S. Meridian, Oklahoma City, OK 73108

10. Lot 10 Dallas Parkway, Plano, TX 75093

11. Two of the three lots owned by OS Realty, Inc. at Falkenburg Road, Brandon, FL 33619

Schedule 7.08
Transactions with Affiliates

1. On October 12, 2006, the Company acquired three joint venture restaurants from limited partnerships in which Paul E. Avery and Benjamin P. Novello had ownership interests. The approximate amounts received by Messrs. Avery and Novello as a result of their ownership interest in those joint ventures were $35,000 and $45,700 respectively.

2. On June 30, 2006, the Company acquired one joint venture restaurant from a limited partnership in which Steven T. Shlemon had an ownership interest. The approximate amount received by Mr. Shlemon as a result of his ownership interest in this joint venture was $56,340.

3. Guaranty, dated as of the June 14, 2007, made by OSI Restaurant Partners, LLC to and for the benefit of Private Restaurant Properties, LLC.

4. Subordination, Non-Disturbance and Attornment Agreement, dated as of June 14, 2007, between German American Capital Corporation and Bank of America, N.A., as lenders and mortgagees, and Private Restaurant Master Lessee, LLC, as tenant, as consented to by Private Restaurant Properties, LLC, as landlord.

5. Environmental Indemnity, dated June 14, 2007, between Holdings, German American Capital Corporation and Bank of America, N.A.

6. Environmental Indemnity (First Mezzanine), dated June 14, 2007, between Holdings, German American Capital Corporation and Bank of America, N.A.

7. Environmental Indemnity (Second Mezzanine), dated June 14, 2007, between Holdings, German American Capital Corporation and Bank of America, N.A.

8. Environmental Indemnity (Third Mezzanine), dated June 14, 2007, between Holdings, German American Capital Corporation and Bank of America, N.A.

9. Environmental Indemnity (Fourth Mezzanine), dated June 14, 2007, between Holdings, German American Capital Corporation and Bank of America, N.A.

10. Environmental Indemnity, dated June 14, 2007, between PRP Holdings, LLC, German American Capital Corporation and Bank of America, N.A.

11. Environmental Indemnity (First Mezzanine), dated June 14, 2007, between PRP Holdings, LLC, German American Capital Corporation and Bank of America, N.A.

12. Environmental Indemnity (Second Mezzanine), dated June 14, 2007, between PRP Holdings, LLC, German American Capital Corporation and Bank of America, N.A.

13. Environmental Indemnity (Third Mezzanine), dated June 14, 2007, between PRP Holdings, LLC, German American Capital Corporation and Bank of America, N.A.

14. Environmental Indemnity (Fourth Mezzanine), dated June 14, 2007, between PRP Holdings, LLC, German American Capital Corporation and Bank of America, N.A.

15. Environmental Indemnity, dated June 14, 2007, between Private Restaurant Master Lessee, LLC, German American Capital Corporation and Bank of America, N.A.

16. Environmental Indemnity (First Mezzanine), dated June 14, 2007, between Private Restaurant Master Lessee, LLC, German American Capital Corporation and Bank of America, N.A.

17. Environmental Indemnity (Second Mezzanine) , dated June 14, 2007, between Private Restaurant Master Lessee, LLC, German American Capital Corporation and Bank of America, N.A.

18. Environmental Indemnity (Third Mezzanine), dated June 14, 2007, between Private Restaurant Master Lessee, LLC, German American Capital Corporation and Bank of America, N.A.

19. Environmental Indemnity (Fourth Mezzanine), dated June 14, 2007, between Private Restaurant Master Lessee, LLC, German American Capital Corporation and Bank of America, N.A.

20. Guaranty of Recourse Obligations, dated June 14, 2007, between OSI HoldCo, Inc., German American Capital Corporation and Bank of America, N.A.

21. Guaranty of Recourse Obligations (First Mezzanine), dated June 14, 2007, between OSI HoldCo, Inc., German American Capital Corporation and Bank of America, N.A.

22. Guaranty of Recourse Obligations (Second Mezzanine), dated June 14, 2007, between OSI HoldCo, Inc., German American Capital Corporation and Bank of America, N.A.

23. Guaranty of Recourse Obligations (Third Mezzanine), dated June 14, 2007, between OSI HoldCo, Inc., German American Capital Corporation and Bank of America, N.A.

24. Guaranty of Recourse Obligations (Fourth Mezzanine), dated June 14, 2007, between OSI HoldCo, Inc., German American Capital Corporation and Bank of America, N.A.

Schedule 7.09
Existing Restrictions

1. Indenture, dated June 14, 2007, between the Borrower, OSI Co-Issuer, Inc., the Guarantors named on the signature pages thereto, and Wells Fargo Bank, National Association, as Trustee.

2. Master Lease Agreement, dated as of June 14, 2007, between Private Restaurant Properties, LLC, as Landlord, and Private Restaurant Master Lessee, LLC, as Tenant.

Schedule 10.02
Administrative Agent's Office, Certain Addresses for Notices

Administrative Agent:

Deutsche Bank AG New York Branch
60 Wall Street
MS NYC 60-0208
New York, NY 10005
Attention: Scottye Lindsey
Facsimile: (212) 797 – 5692

Borrower:

OSI Restaurant Partners, LLC
2202 North West Shore Blvd., Suite 500
Tampa, FL 33607
Attention: Chief Financial Officer
Phone and Fax: (813) 282 – 1225

Lenders:

Deutsche Bank AG New York Branch
60 Wall Street
MS NYC 60-0208
New York, NY 10005
Attention: Scottye Lindsey
Facsimile: (212) 797 – 5692

Bank of America, N.A.
100 North Tryon St.
NC1-007-17-15
Charlotte, NC 28255
Attention: Alysa Trakas
Facsimile: (704) 409 – 0938

LaSalle Bank, N.A.
401 East Jackson St., Suite 2450
Tampa, FL 33602
Attention: David Austin
Facsimile: (813) 202 – 7890

GE Corporate Financial Services
500 West Monroe St.
Chicago, IL 60661-3671
Attention: William McCarthy
Facsimile: (312) 441 – 7920

SunTrust Bank, Inc.
303 Peachtree St. NE, 3rd Floor
Atlanta, GA 30308
Attention: Jean-Paul Purdy
Facsimile: (404) 588 – 1518

Rabobank International – Atlanta LPO
1180 Peachtree St., Suite 2200
Atlanta, GA 30309
Attention: Dana Hall
Facsimile: (404) 870 – 8025

Wells Fargo Bank, N.A.
5938 Priestly Dr., Suite 200
Carlsbad, CA 92008
Attention: Alexandra Burke

Facsimile: (617) 261 – 1064

Sovereign Bank
75 State St., 4th Floor
Boston, MA 02109
Attention: Ravi Kacker
Facsimile: (617) 346 – 7330

Credit Industriel et Commercial
520 Madison Avenue, 37th Floor
New York, NY 10022
Attention: Brian O'Leary
Facsimile: (212) 715 – 4535

United Overseas Bank Limited, New York Agency
592 Fifth Avenue, 10th Floor
New York, NY 10036
Attention: George Lim
Facsimile: (212) 382 – 1881

Fifth Third Bank
201 East Kennedy Blvd.
Tampa, FL 33602
Attention: John A. Marian
Facsimile: (813) 306 – 2530

Carolina First Bank
104 S. Main St.
Greenville, SC 29601
Attention: Charles Chamberlain
Facsimile: (864) 255 – 8920

North Fork Bank
710 Route 46 East
Fairfield, NJ 07004
Attention: Craig Trauterein
Facsimile: (973) 882 – 5017

Keystone Nazareth Bank & Trust Co.
90 Highland Ave.
Bethlehem, PA 18017
Attention: Edwin C. Detwiler
Facsimile: (610) 861 – 7956

Wachovia Bank, N.A.
100 S. Ashley Dr., Suite 1000
Tampa, FL 33602
Attention: Lynn E. Culbreth
Facsimile: (813) 276 – 9700

1st Farm Credit Services, PCA
2000 Jacobson Dr.
Normal, IL 61761
Attention: Dale A. Richardson
Facsimile: (630) 527 – 9459

Natixis
New York Branch
1251 Avenue of the Americas, 34th Floor
New York, NY 10020
Attention: Tefta Ghilaga
Facsimile: (212) 354 – 9106

Web Address for Financial Information:

FIRST AMENDMENT
TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this **"Amendment"**) is dated as of January 28, 2010 and is entered into by and among OSI Restaurant Partners, LLC, a Delaware limited liability corporation (formerly known as OSI Restaurant Partners, Inc., a Delaware corporation, the **"Borrower"**), OSI HoldCo, Inc., a Delaware corporation (**"Holdings"**), Deutsche Bank AG New York Branch, as administrative agent (in such capacity, the **"Administrative Agent"**), the Lenders party hereto, and, for purposes of Section IV hereof, the **GUARANTORS** listed on the signature papers hereto, and is made with reference to that certain **CREDIT AGREEMENT** dated as of June 14, 2007 (as amended, supplemented or otherwise modified through the date hereof, the **"Credit Agreement"**) by and among the Borrower, Holdings, the Lenders, the Administrative Agent, Deutsche Bank AG New York Branch, as pre-funded RC deposit bank, swing line lender and an L/C issuer, and the other Agents named therein. Capitalized terms used herein without definition shall have the same meanings herein as set forth in the Credit Agreement after giving effect to this Amendment.

RECITALS

WHEREAS, the Loan Parties have requested that the Required Lenders and the Lenders holding more than 50% of the aggregate outstanding principal amount of Term Loans (the **"Required Term Lenders"**) agree to amend certain provisions of the Credit Agreement as provided for herein; and

WHEREAS, subject to certain conditions, the Lenders party hereto are willing to agree to such amendment relating to the Credit Agreement.

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

SECTION I. AMENDMENTS TO CREDIT AGREEMENT

1.1 Amendments to Section 1.01: Definitions.

1. Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in proper alphabetical sequence:

"Acceptable Reinvestment Commitment" has the meaning specified in Section 2.06(b)(ii)(B)(2).

"Aggregate Adjusted Amount" means, with respect to consummated Asian Sale Transactions, the sum of the Adjusted Amounts for each such consummated Asian Sale Transaction.

"Adjusted Amount" means, with respect to each Asian Sale Transaction, (a) with respect to the fiscal year in which such Asian Sale Transaction is consummated, an amount equal to the product of (x) 0.50 multiplied by (y) LTM Disposed EBITDA

attributable to such Asian Sale Transaction multiplied by (z) a fraction, the numerator of which is the number of days remaining in such fiscal year following the date on which such Asian Sale Transaction has been consummated and the denominator of which is 365 and (b) thereafter, an amount equal to the product of (x) 0.50 and (y) LTM Disposed EBITDA attributable to such Asian Sale Transaction.

"Asian Sale Transactions" means the sale of all or a portion of the Asian Business.

"Asian Business" means the collective reference to (a) equity owned in, and the assets and liabilities of (including the operations being conducted by), Bloomin Hong Kong Limited and its Subsidiaries, (b) equity owned in, and the assets and liabilities of (including the operations being conducted by), Outback Steakhouse Japan Co., Ltd. and its Subsidiaries, (c) equity owned in, and the assets and liabilities of (including the operations being conducted by), Outback Steakhouse Korea, Ltd. and its Subsidiaries, (d) other assets owned by Holdings, the Borrower or any other Restricted Subsidiary that are directly related to (i) the operation of any of the businesses referred to in the preceding clauses (a), (b) and/or (c) or (ii) operations conducted by any Person in any of the Target Sales Countries, provided that such other assets shall only be included in this clause (d) if a Disposition of such assets would not materially interfere with the business of Holdings, the Borrower and its Restricted Subsidiaries and (e) rights to develop and/or franchise businesses located in the Target Sale Countries, provided, however, that assets and rights described in clauses (d) and (e) of this definition shall only be included in the definition of "Asian Business" to the extent such assets and/or rights are disposed of in connection with the Disposition of any business referred to in clauses (a), (b) and/or (c) above.

"Asian Subsidiaries" means collectively Bloomin Hong Kong Limited, Outback Steakhouse Japan Co., Ltd., Outback Steakhouse Korea, Ltd. and their respective Subsidiaries.

"First Amendment" means that certain First Amendment Agreement to Credit Agreement dated as of January 28, 2010 among the Borrower, Holdings and the Lenders and the Guarantors listed on the signature pages thereto.

"First Amendment Effective Date" means the date of satisfaction of the conditions referred to in Section II of the First Amendment.

"LTM Disposed EBITDA" means, with respect to an Asian Sale Transaction, the aggregate Disposed EBITDA (calculated based on the last twelve calendar month period ending on the last calendar day of the month preceding the consummation of such Asian Sale Transaction) that is attributable to such consummated Asian Sale Transaction, as determined by the Borrower in good faith; provided, that the Borrower shall include in the next annual Compliance Certificate required to be delivered pursuant to Section 6.02(b) a calculation of such LTM Disposed EBITDA.

"Second Reinvestment Commitment" has the meaning specified in Section 2.06(b)(ii)(B)(2).

"**Target Sale Countries**" means Korea, China (including Hong Kong), Japan, Singapore, Malaysia, Indonesia, Thailand, Guam, Taiwan, the Philippines and Vietnam.

2. The definition of "Net Cash Proceeds" in Section 1.01 of the Credit Agreement is hereby amended by (i) inserting the words "without giving effect to any carry-over income (or state or local of a type similar to income) tax attributes (including, without limitation, net operating losses or tax credits)" immediately after the words "in connection therewith" appearing in sub-clause (C) of paragraph (a) thereof, (ii) inserting the following proviso immediately at the end of paragraph (a) thereof: " provided, further, notwithstanding anything contained herein to the contrary, any non-cash consideration received or receivable by the Borrower or any Restricted Subsidiary in connection with a Disposition permitted by Section 7.05(p) or (q) (including any deferred purchase price or note receivable) shall be deemed cash received in connection with such Disposition for purposes of this paragraph (a) (determined at a value equal to its Fair Market Value), and subsequent cash or Cash Equivalents realized or received by the Borrower or any Restricted Subsidiary in respect of such non-cash consideration shall be disregarded for purposes of this paragraph (a)" and (iii) inserting the words "or any Permitted Equity Issuance" immediately after the words "or any Restricted Subsidiary" in paragraph (b) thereof.

1.2 Amendments to Section 2.06: Prepayments.

Section 2.06 of the Credit Agreement is hereby amended by:

a. in paragraph (A) of clause (b)(ii) thereof, deleting the "or" appearing immediately before the "(n)" therein and replacing it with "," and inserting the words ", (p) or (q) (with respect to Sections 7.05(p) and (q), as to which the second proviso of this Section 2.06(b)(ii)(A) and paragraph (B)(2) of this Section 2.06(b)(ii) shall apply))" immediately after the "(n)" therein and adding the following further proviso at the end thereof:

"provided, further, that with respect to any Net Cash Proceeds realized or received with respect to a Disposition permitted by Section 7.05(p) or (q) (it being understood that future franchise, license, sublicense and royalty fees and other substantially similar fees and payments received by Holdings, the Borrower and the Restricted Subsidiaries at market rates shall not be considered Net Cash Proceeds), (i) the Borrower shall cause to be prepaid Term Loans in an aggregate principal amount equal to 75% of such Net Cash Proceeds on or prior to the date which is ten (10) Business Days after the date of the realization or receipt of such Net Cash Proceeds and (ii) so long as no Event of Default has occurred and is then continuing, the remaining Net Cash Proceeds from such Disposition may be reinvested in accordance with Section 2.06(b)(ii)(B)(2);"

b. in paragraph (B) of clause (b)(ii) thereof, inserting "(1)" after "(B)" therein and adding the following as a new clause (2) immediately after clause (B)(1):

"; and (2) with respect to any Net Cash Proceeds realized or received with respect to a Disposition permitted by Section 7.05(p) or (q) (it being understood that future franchise, license, sublicense and royalty fees and other substantially similar fees and payments received by Holdings, the Borrower and the Restricted Subsidiaries at market rates shall

not be considered Net Cash Proceeds), the Borrower may reinvest any or all of the remaining portion of such Net Cash Proceeds (after giving effect to the mandatory prepayment required by the second proviso of Section 2.06(b)(ii)(A) above) in assets useful for its business or its Restricted Subsidiaries within four hundred fifty (450) days following the date of the realization or receipt of such Net Cash Proceeds; provided that (i) so long as an Event of Default shall have occurred and be continuing, the Borrower shall not be permitted to make any such reinvestments (other than pursuant to a legally binding commitment that the Borrower entered into at a time when no Event of Default is continuing) and (ii) a legally binding commitment shall be treated as a permitted application of the Net Cash Proceeds from the date of such commitment so long as the Borrower enters into such commitment with the good faith expectation that such Net Cash Proceeds shall be applied to satisfy such commitment within 180 days of such commitment (an " Acceptable Reinvestment Commitment") and, in the event any Acceptable Reinvestment Commitment is later cancelled or terminated for any reason before the Net Cash Proceeds are applied in connection therewith, the Borrower enters into another Acceptable Reinvestment Commitment (a " Second Reinvestment Commitment") within 180 days of such cancellation or termination; provided, further, that if any Second Reinvestment Commitment is later cancelled or terminated for any reason before such Net Cash Proceeds are applied, then such Net Cash Proceeds (or the remaining unapplied portion thereof) shall be applied to the prepayment of Term Loans as set forth in this Section 2.06. If any Net Cash Proceeds are no longer intended to be or cannot be so reinvested (whether because the applicable reinvestment period has expired, an Event of Default has occurred and is then continuing or otherwise), an amount equal to any such Net Cash Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Cash Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Term Loans as set forth in this Section 2.06."

1.3 Amendment to Section 6.02: Certificates; Other Information .

Section 6.02(e) of the Credit Agreement is hereby amended by inserting the word "solely" appearing immediately before the words "with respect to financial statements delivered pursuant to Section 6.01(a)" and deleting the word "quarter" in clause (ii) thereof and replacing it with the word "year".

1.4 Amendment to Section 7.01: Liens.

Section 7.01 of the Credit Agreement is hereby amended by deleting the "and" appearing at the end of clause (z) thereof, replacing the "." appearing at the end of clause (aa) thereof with "; and" and adding the following new clause (bb) immediately after clause (aa):

"(bb) leases, licenses, subleases or sublicenses of assets granted to others in connection with an Asian Sale Transaction which are directly attributable to, or necessary for the operation of, the businesses and/or assets being sold, provided that the granting of such leases, licenses, subleases or sublicenses do not materially interfere with the business of Holdings, the Borrower and the Restricted Subsidiaries; provided, further, that the consideration received in respect of

such leases, licenses, subleases or sublicenses shall be applied in accordance with, and subject to the limitations set forth in, the second proviso of Section 2.06(b)(ii)(A)."

1.5 Amendments to Section 7.02: Investments.

Section 7.02 of the Credit Agreement is hereby amended by deleting the "and" appearing at the end of clause (s) thereof, replacing the "." appearing at the end of clause (t) thereof with "; and" and adding the following new clause (u) immediately after clause (t) thereof:

"(u) Investments received as consideration for, or consisting of minority interests retained, in connection with an Asian Sale Transaction."

1.6 Amendment to Section 7.05: Dispositions.

Section 7.05 of the Credit Agreement is hereby amended by deleting the "and" appearing at the end of clause (n) thereof, replacing the "." appearing at the end of clause (o) thereof with ";" and adding the following new clauses (p) and (q) immediately after clause (o) thereof:

"(p) the consummation of one or more Asian Sale Transactions; provided that (A) no Default or Event of Default then exists and is continuing at the time of, or would be caused by, such Asian Sale Transaction, (B) no less than 75% of the consideration received by the Borrower or any Restricted Subsidiary with respect to such Asian Sale Transaction shall be in the form of cash or Cash Equivalents (in each case free and clear of all Liens at the time received), (C) the Borrower would be in compliance with the covenant set forth in Section 7.11(a) on a Pro Forma Basis after giving effect to such Asian Sale Transaction and any related transactions including any cash and use of proceeds, (D) immediately after giving Pro Forma Effect to such Asian Sale Transaction and any related transactions including any cash and use of proceeds, the Total Leverage Ratio shall be less than or equal to the Total Leverage Ratio calculated immediately prior to such Asian Sale Transaction, and (E) the Borrower shall apply the Net Cash Proceeds realized or received with respect to such Asian Sale Transaction (it being understood that future franchise, license, sublicense and royalty fees and other substantially similar fees and payments received by Holdings, the Borrower and the Restricted Subsidiaries at market rates shall not be considered Net Cash Proceeds) in accordance with the second proviso of Section 2.06(b)(ii)(A); and"

"(q) leases, licenses, subleases or sublicenses permitted by Section 7.01(bb)."

1.7 Amendment to Section 7.11: Financial Covenants.

Section 7.11(b) of the Credit Agreement is hereby amended by deleting "$75,000,000" appearing in clause (ii) thereof and replacing it with the words "(x) $75,000,000 or (y) if one or more Asian Sale Transactions has been consummated, $75,000,000 minus the Aggregate Adjusted Amount; provided, that, for the avoidance of doubt, Minimum Free Cash Flow shall continue to reflect Consolidated EBITDA attributable to that portion of the Asian Business which has been so disposed of pursuant to an Asian Sale Transaction for that portion of the fiscal year prior to the consummation of such Asian Sale Transaction."

SECTION II. CONDITIONS TO EFFECTIVENESS

This Amendment shall become effective as of the date hereof only upon the satisfaction of all of the following conditions precedent (the date of satisfaction of such conditions being referred to herein as the **"First Amendment Effective Date"**):

A. Execution. Goldman Sachs Lending Partners LLC (**"GS Lending Partners"**) shall have received a counterpart signature page of this Amendment duly executed by each of the Loan Parties and each of the Required Lenders and each of the Required Term Lenders.

B. Fees and Expenses.

(i) GS Lending Partners and the Administrative Agent shall have received from the Borrower all fees and other amounts due and payable on or prior to the First Amendment Effective Date, including (to the extent invoiced prior to the First Amendment Effective Date) the reasonable fees and expenses of Latham & Watkins LLP and White & Case LLP and any other fees due and payable by the Borrower to GS Lending Partners pursuant to any separate agreements entered into between the Borrower and GS Lending Partners.

(ii) The Administrative Agent shall have received from the Borrower, on behalf of each Lender which executes and submits to GS Lending Partners a signature page hereto (provided that the condition set forth in paragraph A above has been satisfied) at or prior to 3:00 PM (New York time), on January 28, 2010, an amendment fee equal to 0.10% of the sum of the aggregate outstanding principal amount of Term Loans held by such Lender as of such date and the aggregate Working Capital RC Commitments and Pre-Funded RC Commitments of such Lender as of such date.

C. Necessary Consents. Each Loan Party shall have obtained all material consents necessary or advisable in connection with the execution and delivery of this Amendment.

SECTION III. REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Amendment and to amend the Credit Agreement in the manner provided herein, each Loan Party which is a party hereto represents and warrants to each Lender that the following statements are true and correct in all material respects:

A. Corporate Power and Authority. Each Loan Party, which is party hereto, has all requisite power and authority to enter into this Amendment and the Borrower and Holdings have the requisite power and authority to carry out the transactions contemplated by, and perform its obligations under, the Credit Agreement as amended by this Amendment (the **"Amended Agreement"**).

B. Authorization of Agreements. The execution and delivery of this Amendment and the performance of the Amended Agreement have been duly authorized by all necessary corporate or other organizational action on the part of the Borrower and Holdings.

C. No Conflict. The execution and delivery by each Loan Party of this Amendment and the performance by the Borrower and Holdings of the Amended Agreement do not and will not (a) contravene the terms of any of such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01 of the Credit Agreement), or require any payment to be made under (i)(x) any Senior Notes Documentation, any Junior Financing Documentation and any other indenture, mortgage, deed of trust or loan agreement evidencing Indebtedness in an aggregate principal amount in excess of the Threshold Amount or (y) any Master Lease or other Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(i)(y), to the extent that such conflict, breach, contravention or payment, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

D. Governmental Consents. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Amendment, except for such actions, consents and approvals the failure to obtain or make, either individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect or which have been obtained and are in full force and effect.

E. Binding Effect. This Amendment has been duly executed and delivered by each of the Loan Parties party hereto and each constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party hereto in accordance with its terms, subject to Debtor Relief Laws, general principles of equity (whether consider in a proceeding in equity or law) and an implied covenant of good faith and fair dealing.

F. Incorporation of Representations and Warranties from Credit Agreement. The representations and warranties of such Loan Party contained in Article V of the Amended Agreement and each other Loan Document to which it is a party are and will be true and correct in all material respects on and as of the First Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case they were true and correct in all material respects on and as of such earlier date.

G. Absence of Default. No event has occurred and is continuing or will result from the consummation of this Amendment that would constitute an Event of Default or a Default.

SECTION IV. ACKNOWLEDGMENT AND CONSENT

Each Guarantor hereby acknowledges that it has reviewed the terms and provisions of the Credit Agreement and this Amendment and consents to the amendment of the Credit Agreement effected pursuant to this Amendment. Each Guarantor hereby confirms that each Loan Document to which it is a party or otherwise bound and all Collateral encumbered thereby will

continue to guarantee or secure, as the case may be, to the fullest extent possible in accordance with the Loan Documents the payment and performance of all "Obligations" under each of the Loan Documents to which is a party (in each case as such terms are defined in the applicable Loan Document).

Each Guarantor acknowledges and agrees that any of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Amendment.

The parties hereto acknowledge and agree that (i) notwithstanding the conditions to effectiveness set forth in this Amendment, the consent of such Guarantor is not required by the terms of the Credit Agreement or any other Loan Document in order to effect the amendments to the Credit Agreement pursuant to this Amendment and (ii) nothing in the Credit Agreement, this Amendment or any other Loan Document shall be deemed to require the consent of such Guarantor to any future amendments to the Credit Agreement.

SECTION V. MISCELLANEOUS

A. Reference to and Effect on the Credit Agreement and the Other Loan Documents .

(i) On and after the First Amendment Effective Date, each reference in the Credit Agreement to "this Amendment", "hereunder", "hereof", "herein" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended by this Amendment.

(ii) This Amendment shall be deemed a "Loan Document" for all purposes under the Credit Agreement.

(iii) Except as specifically amended by this Amendment, the Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(iv) The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of any Agent or Lender under, the Credit Agreement or any of the other Loan Documents.

B. Headings. Section and Subsection headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose or be given any substantive effect.

C. Applicable Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND

SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

D. Counterparts. This Amendment 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 an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

E. Electronic Execution. The words "execution," "signed," "signature," and words of like import 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.

[*Remainder of this page intentionally left blank.*]

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

OSI RESTAURANT PARTNERS, LLC,
as Borrower

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OSI HOLDCO, INC.,
as Holdings and a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S OF BOWIE, LLC,
as a Guarantor

By: **CARRABBA'S/DC-I, LIMITED PARTNERSHIP,** its managing member

By: **CARRABBA'S ITALIAN GRILL, LLC,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S/ARIZONA-I, LIMITED PARTNERSHIP,
CARRABBA'S/BIRCHWOOD, LIMITED PARTNERSHIP,
CARRABBA'S/BOBBY PASTA, LIMITED PARTNERSHIP,
CARRABBA'S/BROKEN ARROW, LIMITED PARTNERSHIP,
CARRABBA'S/CANTON, LIMITED PARTNERSHIP,
CARRABBA'S/CAROLINA-I, LIMITED

PARTNERSHIP,
CARRABBA'S/CENTRAL FLORIDA-I, LIMITED PARTNERSHIP,
CARRABBA'S/CHICAGO, LIMITED PARTNERSHIP,
CARRABBA'S/COLORADO-I, LIMITED PARTNERSHIP,
CARRABBA'S/CRESTVIEW HILLS, LIMITED PARTNERSHIP,
CARRABBA'S/DALLAS-I, LIMITED PARTNERSHIP,
CARRABBA'S/DC-I, LIMITED PARTNERSHIP,
CARRABBA'S/FIRST COAST, LIMITED PARTNERSHIP,
CARRABBA'S/GEORGIA-I, LIMITED PARTNERSHIP,
CARRABBA'S/GREAT LAKES-I, LIMITED PARTNERSHIP,
CARRABBA'S/GULF COAST-I, LIMITED PARTNERSHIP,
CARRABBA'S/HEARTLAND-I, LIMITED PARTNERSHIP,
CARRABBA'S/MID ATLANTIC-I, LIMITED PARTNERSHIP,
CARRABBA'S/MID EAST, LIMITED PARTNERSHIP,
CARRABBA'S/NEW ENGLAND, LIMITED PARTNERSHIP,
CARRABBA'S/OHIO, LIMITED PARTNERSHIP,
CARRABBA'S/OUTBACK, LIMITED PARTNERSHIP,
CARRABBA'S/PENSACOLA, LIMITED PARTNERSHIP,
CARRABBA'S/SECOND COAST, LIMITED PARTNERSHIP,
CARRABBA'S/SOUTH FLORIDA-I, LIMITED PARTNERSHIP,
CARRABBA'S/SOUTH TEXAS-I, LIMITED PARTNERSHIP,
CARRABBA'S/SUN COAST, LIMITED PARTNERSHIP,
CARRABBA'S/TEXAS, LIMITED PARTNERSHIP,
CARRABBA'S/TRI STATE-I, LIMITED

PARTNERSHIP,
CARRABBA'S/TROPICAL COAST, LIMITED PARTNERSHIP,
CARRABBA'S/VIRGINIA, LIMITED PARTNERSHIP,
CARRABBA'S/WEST FLORIDA-I, LIMITED PARTNERSHIP,
CARRABBA'S/Z TEAM TWO-I, LIMITED PARTNERSHIP,
CARRABBA'S/Z TEAM-I, LIMITED PARTNERSHIP, as Guarantors

By: **CARRABBA'S ITALIAN GRILL, LLC,**
the general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S DESIGNATED PARTNER, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S KANSAS DESIGNATED PARTNER, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S MIDWEST DESIGNATED PARTNER, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S/KANSAS TWO-I, LIMITED PARTNERSHIP,
CARRABBA'S/KANSAS-I, LIMITED PARTNERSHIP, as Guarantors

By: **CARRABBA'S KANSAS, INC.,** the general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President

OSF/CIGI OF EVESHAM PARTNERSHIP,
as a Guarantor

By: **OUTBACK/MID ATLANTIC-I, LIMITED PARTNERSHIP,** its general partner

By: **OUTBACK STEAKHOUSE OF FLORIDA, LLC,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

By: **CARRABBA'S/MID ATLANTIC-I, LIMITED PARTNERSHIP,**
its general partner

By: **CARRABBA'S ITALIAN GRILL, LLC,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S OF BATON ROUGE, LLC,
as a Guarantor

By: **CARRABBA'S/GULF COAST-I, LIMITED PARTNERSHIP,**
its sole member

By: **CARRABBA'S ITALIAN GRILL, LLC,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S/MIDWEST-I, LIMITED PARTNERSHIP, as a Guarantor

By: **CARRABBA'S MIDWEST, INC.,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Secretary

CARRABBA'S SHREVEPORT, LLC,
as a Guarantor

By: **CARRABBA'S/DALLAS-I, LIMITED PARTNERSHIP,**
its sole member

By: **CARRABBA'S ITALIAN GRILL, LLC,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CIGI HOLDINGS, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Secretary

HEARTLAND OUTBACK-I, LIMITED PARTNERSHIP,
HEARTLAND OUTBACK-II, LIMITED PARTNERSHIP,
as Guarantors

By: **HEARTLAND OUTBACK, INC.,** the general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President

OS ASSET, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS CAPITAL, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS DEVELOPERS, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS MANAGEMENT, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS MORTGAGE HOLDINGS, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS REALTY, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS RESTAURANT SERVICES, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS TROPICAL, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OSI CO-ISSUER, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OSI GIFT CARD SERVICES, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK & CARRABBA'S OF NEW MEXICO, INC., as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President

A LA CARTE EVENT PAVILION, LTD.,
OUTBACK CATERING OF PITTSBURGH, LTD., as a Guarantor

By: **OUTBACK CATERING, INC.,** the
general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK CATERING DESIGNATED PARTNER, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS SPEEDWAY, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK SPORTS, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK INTERNATIONAL DESIGNATED PARTNER, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

PRIVATE RESTAURANT MASTER LESSEE, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK STEAKHOUSE OF CENTRAL FLORIDA, LTD.,
OUTBACK STEAKHOUSE OF CENTRAL FLORIDA-II, LTD.,
OUTBACK STEAKHOUSE OF DALLAS-I, LTD.,
OUTBACK STEAKHOUSE OF DALLAS-II, LTD.,
OUTBACK STEAKHOUSE OF HOUSTON-I, LTD.,
OUTBACK STEAKHOUSE OF HOUSTON-II, LTD.,
OUTBACK STEAKHOUSE OF INDIANAPOLIS, LTD.,
OUTBACK STEAKHOUSE OF KENTUCKY, LTD.,
OUTBACK STEAKHOUSE OF NORTH GEORGIA-I, L.P.,
OUTBACK STEAKHOUSE OF NORTH GEORGIA-II, L.P.,
OUTBACK STEAKHOUSE OF SOUTH FLORIDA, LTD.,

OUTBACK STEAKHOUSE OF SOUTH GEORGIA-I, L.P.,
OUTBACK STEAKHOUSE OF SOUTH GEORGIA-II, L.P.,
OUTBACK STEAKHOUSE OF WASHINGTON, D.C., LTD.,
OUTBACK/ALABAMA-I, LIMITED PARTNERSHIP,
OUTBACK/ALABAMA-II, LIMITED PARTNERSHIP,
OUTBACK/BAYOU-I, LIMITED PARTNERSHIP,
OUTBACK/BAYOU-II, LIMITED PARTNERSHIP,
OUTBACK/BILLINGS, LIMITED PARTNERSHIP,
OUTBACK/BLUEGRASS-I, LIMITED PARTNERSHIP,
OUTBACK/BLUEGRASS-II, LIMITED PARTNERSHIP,
OUTBACK/BUCKEYE-I, LIMITED PARTNERSHIP,
OUTBACK/BUCKEYE-II, LIMITED PARTNERSHIP,
OUTBACK/CHARLOTTE-I, LIMITED PARTNERSHIP,
OUTBACK/CHICAGO-I, LIMITED PARTNERSHIP,
OUTBACK/CLEVELAND-I, LIMITED PARTNERSHIP,
OUTBACK/CLEVELAND-II, LIMITED PARTNERSHIP,
OUTBACK/DC, LIMITED PARTNERSHIP,
OUTBACK/DENVER-I, LIMITED PARTNERSHIP,
OUTBACK/DETROIT-I, LIMITED PARTNERSHIP,
OUTBACK/HAWAII-I, LIMITED PARTNERSHIP
OUTBACK/HEARTLAND-I, LIMITED PARTNERSHIP,
OUTBACK/HEARTLAND-II, LIMITED PARTNERSHIP,
OUTBACK/INDIANAPOLIS-II, LIMITED PARTNERSHIP,
OUTBACK/METROPOLIS-I, LIMITED PARTNERSHIP,

OUTBACK/MID ATLANTIC-I, LIMITED PARTNERSHIP,
OUTBACK/MIDWEST-I, LIMITED PARTNERSHIP,
OUTBACK/MIDWEST-II, LIMITED PARTNERSHIP,
OUTBACK/MISSOURI-I, LIMITED PARTNERSHIP,
OUTBACK/MISSOURI-II, LIMITED PARTNERSHIP,
OUTBACK/NEVADA-I, LIMITED PARTNERSHIP,
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OUTBACK/NEW ENGLAND-II, LIMITED PARTNERSHIP,
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OUTBACK/NORTH FLORIDA-I, LIMITED PARTNERSHIP,
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OUTBACK/SHENANDOAH-I, LIMITED PARTNERSHIP,
OUTBACK/SHENANDOAH-II, LIMITED PARTNERSHIP,
OUTBACK/SOUTH FLORIDA-II, LIMITED PARTNERSHIP,
OUTBACK/SOUTHWEST GEORGIA, LIMITED PARTNERSHIP,
OUTBACK/STONE-II, LIMITED PARTNERSHIP,
OUTBACK/UTAH-I, LIMITED PARTNERSHIP,
OUTBACK/VIRGINIA, LIMITED PARTNERSHIP,
OUTBACK/WEST FLORIDA-I, LIMITED PARTNERSHIP,
OUTBACK/WEST FLORIDA-II, LIMITED

PARTNERSHIP,
OUTBACK/WEST PENN, LIMITED PARTNERSHIP,
OUTBACK STEAKHOUSE-NYC, LTD.,
OUTBACK CATERING COMPANY, LIMITED PARTNERSHIP,
OUTBACK CATERING COMPANY-II, LIMITED PARTNERSHIP,
OUTBACK/CENTRAL MASS, LIMITED PARTNERSHIP,
OUTBACK/EAST MICHIGAN, LIMITED PARTNERSHIP,
OUTBACK/EMPIRE-I, LIMITED PARTNERSHIP,
as Guarantors

By: **OUTBACK STEAKHOUSE OF FLORIDA, LLC,** the general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK DESIGNATED PARTNER, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK KANSAS DESIGNATED PARTNER, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK/CARRABBA'S PARTNERSHIP,
as a Guarantor

By: **OUTBACK/MID ATLANTIC-I, LIMITED PARTNERSHIP,** its general partner

By: **OUTBACK STEAKHOUSE OF FLORIDA, LLC,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

By: **CARRABBA'S/MID ATLANTIC-I, LIMITED PARTNERSHIP,** its general partner

By: **CARRABBA'S ITALIAN GRILL, LLC,** its general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK ALABAMA, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President

OUTBACK STEAKHOUSE WEST VIRGINIA, INC., as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President

OSF NEBRASKA, INC., as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Secretary

OBTEX HOLDINGS, INC., as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Secretary

CARRABBA'S MIDWEST, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Secretary

CARRABBA'S ITALIAN GRILL, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CARRABBA'S ITALIAN MARKET, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

CIGI NEBRASKA, INC.
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Secretary

CARRABBA'S KANSAS INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President

HEARTLAND OUTBACK, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Vice President

OSI INTERNATIONAL, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK CATERING, INC.,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK STEAKHOUSE INTERNATIONAL, LLC,
as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK STEAKHOUSE OF FLORIDA, LLC, as a Guarantor

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK STEAKHOUSE INTERNATIONAL, L.P.,
as a Guarantor

By: **OSI INTERNATIONAL, LLC,** its
general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OS NIAGARA FALLS, LLC, as a Guarantor

By: **OUTBACK STEAKHOUSE**
INTERNATIONAL, L.P., its general partner

By: **OSI INTERNATIONAL, LLC,** its
general partner

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

OUTBACK BEVERAGES OF TEXAS, INC. (f/k/a OUTBACK BEVERAGES OF NORTH TEXAS, INC.), as a Guarantor

By: /s/ Dirk A. Montgomery
Name: Dirk A. Montgomery
Title: Treasurer

CIGI BEVERAGES OF TEXAS, INC.,
as a Guarantor

By: /s/ Dirk A. Montgomery
Name: Dirk A. Montgomery
Title: Treasurer

OUTBACK STEAKHOUSE OF SOUTH CAROLINA, INC., as a Guarantor

By: /s/ Dirk A. Montgomery
Name: Dirk A. Montgomery
Title: Senior Vice President

FREDERICK OUTBACK, INC.,
as a Guarantor

By: /s/ Stephen S. Newton
Name: Stephen S. Newton
Title: President

OUTBACK OF ASPEN HILL, INC.,
as a Guarantor

By: /s/ Stephen S. Newton
Name: Stephen S. Newton
Title: President

OUTBACK OF GERMANTOWN, INC.,
as a Guarantor

By: /s/ Stephen S. Newton
Name: Stephen S. Newton
Title: President

OUTBACK OF WALDORF, INC.,
as a Guarantor

By: /s/ Cornell L. Barnett
Name: Cornell L. Barnett
Title: President

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent

By: /s/ Socttye Lindsey
Name: Scottye Lindsey
Title: Director

By: /s/ Evelyn Thierry
Name: Evelyn Thierry
Title: Vice President

Exhibit 10.11

MEZZANINE LOAN AND SECURITY AGREEMENT (FIRST MEZZANINE)

Dated as of March 27, 2012

Between

NEW PRP MEZZ 1, LLC

as Borrower

and

GERMAN AMERICAN CAPITAL CORPORATION

and

BANK OF AMERICA, N.A.

collectively, as Lender

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EXHIBITS AND SCHEDULES

MEZZANINE LOAN AND SECURITY AGREEMENT (FIRST MEZZANINE)

THIS MEZZANINE LOAN AND SECURITY AGREEMENT (FIRST MEZZANINE) dated as of March 27, 2012 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), between NEW PRP MEZZ 1, LLC, a Delaware limited liability company ("Borrower"), having an office at 2202 North West Shore Blvd., Suite 470C, Tampa, Florida 33607, GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a "Co-Lender", and, collectively, "Lender").

RECITALS:

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 Definitions. For all purposes of this Agreement:

"Account Collateral" shall have the meaning set forth in Section 3.1.2.

"Act" shall have the meaning set forth in Section 5.3(c).

"Additional Non-Consolidation Opinion" shall mean a non-consolidation opinion, from the counsel that delivered the Non-Consolidation Opinion or other outside counsel to Borrower reasonably acceptable to Lender, that is in form and substance reasonably satisfactory to Lender, and is required to be delivered subsequent to the Closing Date pursuant to, and in connection with, the Loan Documents.

"Affiliate" shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person. An Affiliate of a Person includes, without limitation, (i) any officer or director of such Person, and (ii) any Affiliate of the foregoing; provided, however, that no Sponsor Portfolio Company shall be deemed to be an Affiliate of Sponsors. Notwithstanding the above, for purposes of this definition, references to an Affiliate of Borrower, Mortgage Borrower or Second Mezzanine Borrower shall not include Master Lease Guarantor or its subsidiaries, and references to an Affiliate of Master Lease Guarantor or its subsidiaries shall not include PropCo or its subsidiaries.

"Affiliate Agreements" shall have the meaning set forth in Section 5.2.15.

"Agent" shall have the meaning set forth in Section 19.29.

"Agreement" shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Allocated Loan Amount" shall mean, with respect to each Individual Property, the designated "Allocated Loan Amount" applicable to the Restaurant Location that is located on such Individual Property, as set forth on Schedule III attached hereto; provided, however, that with respect to any Individual Property on which two or more Restaurant Locations are located, the Allocated Loan Amount for such Individual Property shall equal the sum of the Allocated Loan Amounts for all Restaurant Locations located thereon, as set forth on Schedule III attached hereto.

"Applicable Interest" shall mean (a) if such prepayment or repayment is made on a Payment Date, then interest on the Principal Amount through the end of the Interest Period ending immediately prior to such Payment Date, or (b) if such prepayment or repayment is made on any day other than a Payment Date, then interest on the Principal Amount through the end of the Interest Period ending immediately prior to the immediately succeeding Payment Date, notwithstanding that such Interest Period extends beyond such prepayment date or repayment date and calculated as if the Principal Amount has not been prepaid or repaid on such prepayment date or repayment date.

"Applicable Interest (Mortgage)" shall have the meaning ascribed to the term "Applicable Interest" in the Mortgage Loan Agreement.

"Asset Manager" shall mean OS Management, Inc., a Florida corporation.

"Assumption Fee" shall mean a fee in the amount of $43,800.

"Bankruptcy Code" shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"Base PropCo Ownership Requirements" shall have the meaning set forth in Section 8.1(b).

"Base Transfer Conditions" shall mean, with respect to any Transfer for which the Base Transfer Conditions are required to be satisfied pursuant to the terms of this Agreement, the following conditions to such Transfer: (a) Lender shall receive no less than thirty (30) days prior written notice of such Transfer (provided that such notice may be given within thirty (30) days after such Transfer in the event of transfers among Permitted Holders that do not require delivery of an Additional Non-consolidation Opinion under clause (c) below); (b) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing; (c) in the case of a Transfer to an Intermediate Entity, or if such Transfer shall otherwise cause any transferee, together with its Affiliates, to acquire indirect Equity Interests in Borrower aggregating more than forty-nine percent (49%), or to increase its indirect Equity Interests in Borrower from an amount that is less than forty-nine percent (49%) to an amount that is greater than forty-nine

percent (49%), then Borrower shall deliver to Lender an Additional Non-Consolidation Opinion, (d) the Base PropCo Ownership Requirements shall continue to be satisfied subsequent to such Transfer, (e) Borrower shall continue at all times to be a Special Purpose Entity; and (f) if such Transfer, together with all prior Transfers occurring after the Closing Date, results in a Transfer of more than forty-nine percent (49%) of the indirect Equity Interests in Borrower, then Borrower shall pay to Lender the Assumption Fee; provided, however, that no Assumption Fee shall be owed in the case of a Qualifying IPO or if immediately following such Transfer, Permitted Holders (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders) continue to own no less than fifty-one percent (51%) of the indirect Equity Interests in Borrower.

"Borrower" shall have the meaning set forth in the first paragraph of this Agreement.

"Borrower Group" means Borrower and all other Single Purpose Entities which are taxable as domestic corporations for federal income tax purposes (or which would be taxable as domestic corporations in the case of Borrower and each other Single Purpose Entity created or organized in or under the laws of the United States of America or any state that is a disregarded entity for federal income tax purposes if each such entity had timely made an election to be treated as an association for federal income tax purposes effective on the date of such entity's formation).

"Borrower's Account" shall mean an account or accounts maintained by Borrower for its own account at such bank and with such account number as may be designated in writing by Borrower to Lender and Cash Management Bank from time to time.

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York or Pittsburgh, Pennsylvania, or in the state in which Servicer or the special servicer is located are not open for business. When used with respect to a Floating Rate Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"Cash" shall mean the legal tender of the United States of America.

"Cash and Cash Equivalents" shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Government Obligations.

"Cash Management Bank" shall mean any Eligible Institution acting as Cash Management Bank, or other financial institution selected by Lender.

"Cause" shall have the meaning set forth in Section 5.4.

"Close Affiliate" shall mean with respect to any Person (the "First Person") any other Person (each, a "Second Person") which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, beneficial and/or equitable interest in both the First Person and the Second Person.

"Close Subsidiary" of a Person shall mean a Subsidiary of such Person, no less than 75% of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by Legal Requirements) are owned by such Person and/or by one or more wholly-owned Subsidiaries of such Person.

"Closing Date" shall mean the date of this Agreement set forth in the first paragraph hereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Co-Lenders" shall have the meaning set forth in Section 19.29.

"Co-Lender Agreement" shall have the meaning set forth in Section 19.29.

"Collateral" shall mean collectively (i) all of the Pledged Collateral and all proceeds thereof, (ii) all Distributions, (iii) any stock certificates or other certificates, membership interest certificates or instruments evidencing any of the foregoing property described in clauses (i) and (ii) above, (iv) the Account Collateral and (v) all other rights appurtenant to the property described in clauses (i) through (iv) above.

"Collateral Account" shall have the meaning set forth in Section 3.1.1.

"Combined Allocated Loan Amount" shall mean, with respect to each Individual Property, the designated "Combined Allocated Loan Amount" applicable to the Restaurant Location that is located on such Individual Property, as set forth on Schedule III attached hereto; provided, however, that with respect to any Individual Property on which two or more Restaurant Locations are located, the Combined Allocated Loan Amount for such Individual Property shall equal the sum of the Combined Allocated Loan Amounts for all Restaurant Locations located thereon, as set forth on Schedule III attached hereto.

"Combined Release Price" shall mean with respect to each Individual Property, the product of the designated Combined Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage; provided, however, that with respect to any Individual Property transferred to any Affiliate of Mortgage Borrower, Guarantor, Master Lessee or Master Lease Guarantor, the Combined Release Price for such Individual Property shall be the greater of (a) the product of the designated Combined Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage, and (b) the Fair Market Value of such Individual Property at the time of such transfer.

"Contemplated Transactions" shall mean, collectively, (i) the transfers of the Individual Properties to Mortgage Borrower, (ii) the leasing of the Individual Properties from Mortgage Borrower to Master Lessee pursuant to the Master Lease, and (iii) the execution and delivery of the Mortgage Loan Documents, the Loan Documents, or the Second Mezzanine Loan Documents, Mortgage Borrower's, Borrower's or Second Mezzanine Borrower's performance thereunder, and the recordation of the Security Instrument.

"Continuing Directors" shall mean the directors of HoldCo on the Closing Date, and each other director of HoldCo if such other director's nomination for election to the board of directors of HoldCo (or Master Lease Guarantor after a Qualifying IPO of Master Lease Guarantor) is recommended by a majority of the then Continuing Directors or such other director receives (i) the vote of one or more of the Permitted Holders or (ii) following a Transfer to one or more Permitted Transferees permitted under this Agreement, the vote of one or more of such Permitted Transferees in such director's election by the stockholders of HoldCo (or Master Lease Guarantor after a Qualifying IPO of Master Lease Guarantor).

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise, and Control shall not be deemed absent solely because another member, partner or other Person shall have a veto with respect to major decisions and shall not be deemed absent solely because such other member, partner or other Person has been granted such veto right, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"Controlling Mezzanine Lender" shall have the meaning set forth in Section 18.1.4(b).

"Creditors Rights Laws" shall mean with respect to any Person any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, assignment for the benefit of creditors, composition or other relief with respect to its debts or debtors.

"DBRS" shall mean DBRS, Inc.

"Debt" shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person (to the extent such obligations or liabilities otherwise constitute "Debt" under another subclause of the definition of "Debt"); (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien (excluding Liens for Real Estate Impositions or Other Charges not yet due and payable) on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"Debt Service" shall mean, with respect to any particular period of time, scheduled interest and principal payments due and payable under the Loan Agreement and the Note.

"Default" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"Default Rate" shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) three percent (3%) above the Interest Rate.

"Defeasance Collateral" shall mean the Total Defeasance Collateral or the Partial Defeasance Collateral, as the context may require.

"Defeasance Collateral Account" shall have the meaning set forth in Section 2.4.3.

"Defeasance Date" shall mean the Total Defeasance Date or the Partial Defeasance Date, as the context may require.

"Defeasance Event" shall mean the Total Defeasance Event or the Partial Defeasance Event, as the context may require.

"Defeasance Security Agreement" shall mean a security agreement in form and substance that would be reasonably satisfactory to a prudent lender pursuant to which Borrower grants Lender a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

"Defeased Note" shall have the meaning set forth in Section 2.4.2(d).

"Direct Control Remedies" shall have the meaning set forth in Section 18.1.4(b).

"Disqualified Transferee" shall mean any Person that (i) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (ii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iii) as to which an involuntary petition has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law and which was not dismissed prior to the entry of an order for relief; (iv) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time consented to or acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; or (vi) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; provided, however, that any Person that would otherwise be a "Disqualified Transferee" by reason of any one or more of clauses (ii) through (vi) above, such Person shall not be a Disqualified Transferee if, at the time of determination, (A) such Person is solvent, such Person and such Person's property is not subject to a custodian, receiver, trustee or examiner, and neither such Person nor its debts or assets are subject to any federal or state bankruptcy or insolvency proceeding and (B) such Person has been reasonably approved by Lender.

"Distributions" shall have the meaning set forth in the Pledge.

"Divested Borrower" shall have the meaning set forth in Section 18.1.4(a).

"Divested Property" shall have the meaning set forth in Section 18.1.4(a).

"Eligible Account" shall mean (i) a segregated trust account or accounts maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit such as or similar to Title 12 of the Code of Federal Regulations Section 9.10(b) which, in either case, has corporate trust powers, acting in its fiduciary capacity or (ii) a segregated account maintained at an Eligible Institution. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

"Eligible Institution" shall mean (a) a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations and commercial paper of which are rated at least "P1" by Moody's and "R-1 (middle)" by DBRS in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "A2" by Moody's and "A (low)" by DBRS), or (b) an insured depository institution that is the subject of a Rating Agency Confirmation (i) from the Rating Agency for which the minimum rating is not met with respect to any account listed in the clauses above or which is not expressly enumerated above, or (ii) from each Rating Agency, with respect to a depository institution other than one listed in the clauses above.

"Enforcement Costs" shall have the meaning set forth in Section 17.4.

"Environmental Certificate" shall have the meaning set forth in Section 12.2.1.

"Environmental Claim" shall mean any claim, action, cause of action, investigation or written notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based upon or resulting from (a) the presence, threatened presence, release or threatened release into the environment of any Hazardous Materials from or at the Property, or (b) the violation, or alleged violation, of any Environmental Law relating to the Property.

"Environmental Event" shall have the meaning set forth in Section 12.2.1.

"Environmental Indemnity" shall mean (a) those certain Environmental Indemnities, each dated the date hereof, one executed by PropCo, one executed by Guarantor and one executed by Master Lease Guarantor and Master Lessee, and each in favor of Lender, and (b) any Replacement Indemnity, in each case, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Environmental Law" shall have the meaning provided in the Environmental Indemnity.

"Environmental Reports" shall have the meaning set forth in Section 12.1.

"Equity Interests" means (i) any ownership, management or membership interests in any limited liability company, (ii) any general or limited partnership interest in any partnership, (iii) any common, preferred or other stock interest in any corporation, (iv) any share, participation, unit or other interest in the property or enterprise of an issuer that evidences ownership rights therein, (v) any ownership or beneficial interest in any trust or, (vi) any option, warrant or other right to convert into or otherwise receive any of the foregoing.

"ERISA" shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"Event of Default" shall have the meaning set forth in Section 17.1(a).

"Exchange Act" shall mean the Securities and Exchange Act of 1934, as amended.

"Excluded Licenses" shall mean the month to month parking licenses and sign leases and other minor licenses and leases in the name of the Master Lessee or its Affiliates, including those set forth on Schedule I of the Mortgage Loan Agreement, as the same may be amended, modified or replaced by Mortgage Borrower, Master Lessee or their respective Affiliates without Lender's or Mortgage Lender's consent except to the extent such amendment, modification or replacement would have a Material Adverse Effect.

"Excluded Personal Property" shall mean, collectively, (a) all of the Personal Property and Trade Fixtures of Master Lessee, Master Lease Guarantor, and its Affiliates, (b) any licenses or other intellectual property of Master Lessee, Master Lease Guarantor and its Affiliates, and any Tenants (including without limitation, relating to the Concepts or Third-Party Brands, or directly relating to the business of any Tenant under an Unaffiliated Sublease or Specified Prior Sublease), and (c) any Personal Property or Trade Fixtures owned by Tenants under Unaffiliated Subleases or Specified Prior Subleases; provided, that such Excluded Personal Property shall not include any capital improvements, replacements or alterations to any Individual Property that automatically become the landlord's property upon the expiration or termination of the Master Lease. Without limiting the generality of the foregoing, with respect to any Restaurant Location, Excluded Personal Property includes all items labeled as "Excluded Personal Property" on Schedule XIV of the Mortgage Loan Agreement, but expressly excludes all items labeled as "Fixtures" on Schedule XIV of the Mortgage Loan Agreement.

"Excluded SPE Breach" shall mean a breach by Borrower or any SPE Component Entity of (a) Section 5.3(a)(xv), (b) Section 5.3(a)(xviii), provided that such breach shall constitute an Excluded SPE Breach if and only if such breach arises from Borrower or any SPE Component Entity failing to pay its own liabilities or failing to be solvent (as opposed to a breach arising from Borrower or any SPE Component Entity paying its own liabilities from funds of another Person), and (c) Section 5.3(a)(vii), provided that such breach shall constitute an Excluded SPE Breach if and only if such breach arises from the fact that there is insufficient cash flow from the

operation of the Property to pay trade payables, operational debt, deferred purchase payments for services and indebtedness incurred by Borrower in the financing of equipment, personal property and Fixtures used on the Property incurred in the ordinary course of Borrower's business, not secured by Liens on the Property or the Collateral.

"Exculpated Parties" shall have the meaning set forth in Section 18.1.1.

"Excusable Delay" shall mean a delay solely due to acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower or Mortgage Borrower, but Borrower's or Mortgage Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower or Mortgage Borrower, as applicable.

"Existing Intercompany Loans" shall have the meaning set forth in the definition of Guarantor Intercompany Loans herein.

"Fiscal Quarter" shall mean each three month period ending March 31, June 30, September 30 and December 31.

"Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan or the portion of any such 12-month period falling within the term of the Loan in the event that such a 12-month period occurs partially before or after, or partially during, the term of the Loan.

"Fitch" shall mean Fitch Ratings Inc.

"Fixed Rate Components (Mortgage)" shall have the meaning ascribed to the term "Fixed Rate Components" in the Mortgage Loan Agreement.

"Floating Rate Component (Mortgage)" shall have the meaning ascribed to the term "Floating Rate Component" in the Mortgage Loan Agreement.

"Foreclosure Divestment" shall have the meaning set forth in Section 18.1.4(a).

"Founders" shall mean (i) Christopher T. Sullivan, Robert D. Basham and J. Timothy Gannon, or in the event of any such Person's death such Person's estate; (ii) any trust Controlled by any of the Persons described in clause (i) (or in the event of the death or incompetency of any such Person, such Person's estate, executor, administrator or committee administering such estate) created for the benefit of any of the Persons described in clause (i) or any of (or any combination of) the spouses, ancestors, siblings, descendants (including children or grandchildren by adoption) and the descendants of any of the siblings of the Persons referred to in clause (i), or any trust for the benefit of such trust Controlled by any of the Persons described in clause (i) (or in the event of the death or incompetency of any such Person, such Person's estate, executor, administrator or committee administering such estate); or (iii) any entity that both (a) is Controlled by any of the Persons described in clause (i) (or in the event of the death or incompetency of any such Person, such Person's estate, executor, administrator or committee administering such estate) and (b) no less than fifty-one percent (51%) of the Equity Interests in which entity are owned by any of the Persons described in any of clauses (i) or (ii) above (any such entity described in this clause (iii), a " Founder Entity").

"Founder Entity" shall have the meaning in the definition of "Founders" above.

"GAAP" shall mean generally accepted accounting principles from time to time in effect and as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination; provided, however, that if Borrower or Master Lessee (with respect to reports to be generated by Master Lessee) notifies Lender that such Person requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Lender notifies Borrower and Master Lessee (with respect to reports to be generated by Master Lessee) that Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"Go Dark" shall mean, with respect to any Restaurant Location (a Restaurant Location that shall Go Dark is sometimes referred to herein as a " Go Dark Restaurant Location", (a) if the Restaurant Location is not open for business to the public for a period of thirty (30) consecutive days, unless such closure (i) is a result of a Taking of or casualty or other damage or injury to such Individual Property, so long as Borrower shall cause Mortgage Borrower to (A) promptly and diligently pursue and complete repair or restoration of such Restaurant Location, or take other appropriate actions to resolve such closure, and (B) reopen such Restaurant Location to the public no later than two hundred seventy (270) days after the date of the initial closure, subject to an extension not to exceed an additional two hundred seventy (270) days in the event that such closure continues due to Excusable Delay, upon the expiration of which, such Restaurant Location shall be a Go Dark Restaurant Location; or (ii) subject to the proviso below, is temporary and is in connection with an Alteration permitted hereunder, so long as Borrower shall cause Mortgage Borrower to (A) promptly and diligently pursue and complete such Alteration, and (B) reopen such Restaurant Location to the public no later than one hundred eighty (180) days after the date of the initial closure, subject to an extension not to exceed sixty (60) days in the event that such closure continues due to Excusable Delay, upon the expiration of which, such Restaurant Location shall be a Go Dark Restaurant Location; provided, however, that no greater than ten percent (10%) of all Restaurant Locations that remain subject to the Lien of the Security Instrument at the time of determination (rounded up to the nearest whole number, which number as of the Closing Date is 27 based on 261 Restaurant Locations being subject to the Lien of the Security Instrument as of the Closing Date) shall be permitted to be closed pursuant to this clause (a)(ii) at any one time; and (b) if the Restaurant Location is a Go Dark Purchase Option Property, if the Restaurant Location is not open for business to the public for any period of time, and such closure would constitute an event after which a purchase right, termination right, recapture right or option could be triggered (regardless of the applicability of the provisions of the foregoing clause (a) that would otherwise result in such Restaurant Location not being considered a Go Dark Restaurant Location).

"Go Dark Purchase Option Property" means any Restaurant Location having an Operating Agreement or other agreement of record (or off record and evidenced by a recorded memorandum) which contains a purchase right, termination right, recapture right or option that would be exercisable if such Restaurant Location is not open for business to the public for a period designated in such Operating Agreement or other agreement of record, including, but not limited to, the Restaurant Locations listed on Schedule VI to the Mortgage Loan Agreement, which are specifically designated as having such a purchase right, termination right, recapture right or option.

"Go Dark Restaurant Location" has the meaning set forth in the definition of "Go Dark" above.

"Go Dark/Sublease Limit" shall mean, at any given time, fourteen percent (14%) of the Restaurant Locations that remain subject to the Lien of the Security Instrument at the time of determination (rounded up to the nearest whole number). As of the Closing Date, the Go Dark/Sublease Limit is equal to 37 Restaurant Locations based on 261 Restaurant Locations being subject to the Lien of the Security Instrument as of the Closing Date.

"Governmental Authority" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Guarantor" shall mean OSI HoldCo I, Inc., a Delaware corporation.

"Guarantor Asset Covenant" shall mean the covenant that Guarantor shall continue to own, directly or indirectly, 100% of the Equity Interests in Master Lease Guarantor.

"Guarantor Group" means, collectively, Guarantor and all other entities taxable as corporations for federal (or applicable state, local or foreign) Tax purposes which join with Guarantor (or any other entity which is (i) either (x) directly or indirectly Controlled by Guarantor or (y) a domestic corporation for federal tax purposes that owns, directly or indirectly through wholly owned domestic corporations, all of the Equity Interests in Guarantor and (ii) neither a member of the Borrower Group nor any Equity Interests in which are owned directly or indirectly by Borrower) in filing a consolidated federal income tax return (or any consolidated, combined, unitary or similar group tax return pursuant to state, local or foreign Tax law) for any taxable year with Guarantor (or such other entity) as the common parent of such group.

"Guarantor Group Tax" means, for any period, the actual consolidated federal income Tax liability and the actual applicable consolidated, combined, unitary or similar group Tax liability imposed under state, local or foreign Tax law of the Guarantor Group for such period. For avoidance of doubt, in no event shall the term "Tax liability" as used in this definition be construed to refer to a negative amount.

"Guarantor Intercompany Loans" means (i) the current outstanding loans from HoldCo to Guarantor in the original principal amount of $20,539,053 (the "Existing Intercompany Loans"), and (ii) future loans from HoldCo to Guarantor (the " Guarantor Subsequent Intercompany Loans"); provided that (A) the aggregate original principal amount of Existing Intercompany Loans and Guarantor Subsequent Intercompany Loans outstanding at any time shall not exceed $50,000,000 and (B) the Guarantor Subsequent Intercompany Loans shall be distributed to Guarantor's direct or indirect parent entities (which direct or indirect parent entities shall not include the Sponsors or any Founder Entity) to permit such direct or indirect parent to (1) make loans or other payments in connection with, or satisfy any funding or other contractual obligation with respect to, any employment, compensation or equity participation arrangement to any future, present or former employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which direct or indirect parent entities shall not include the Sponsors or any Founder Entity), (2) pay for the repurchase, retirement or other acquisition or retirement for value of, or any tax withholding or other obligation with respect to, Equity Interests of Guarantor or of any parent of Guarantor (which parent shall not include the Sponsors or any Founder Entity) held by any future, present or former employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which parent shall not include the Sponsors or any Founder Entity) or (3) pay principal or interest on promissory notes that were issued to any future, present or former employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which parent shall not include the Sponsors or any Founder Entity) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests held by such Persons, in each case, pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which direct or indirect parent shall not include the Sponsors or any Founder Entity).

"Guarantor Net Worth Requirements" shall have the meaning set forth in Section 8.5.

"Guarantor Subsequent Intercompany Loans" shall have the meaning set forth in the definition of Guarantor Intercompany Loans herein.

"Hazardous Materials" shall have the meaning provided in the Environmental Indemnity.

"HoldCo" shall mean OSI HoldCo, Inc., a Delaware corporation.

"Holdings" shall mean Kangaroo Holdings, Inc., a Delaware corporation.

"Hypothetical Borrower Group Tax" means, for any period, the sum of the hypothetical consolidated federal income tax liability and the applicable Tax liability imposed under state, local or foreign Tax law of the Borrower Group for such period with respect to a Tax that is described in the definition of Guarantor Group Tax (including any Tax liability of any member of the Borrower Group) determined in accordance with the Code and Treasury regulations thereunder and comparable provisions of applicable state, local or foreign Tax law as if the Borrower Group were, as applicable, a separate affiliated group of corporations filing a consolidated federal income tax return (or the applicable comparable group filing consolidated,

unitary, combined or similar group Tax returns, or applicable separate entity filing separate Tax returns, under state, local or foreign Tax law) including any elections and accounting methods available which the Master Lessee or Guarantor on behalf of the Master Lessee (or other parent of the applicable Guarantor Group) has made pursuant to the Code and Treasury regulations (or comparable provisions of applicable state, local or foreign Tax law) and other administrative pronouncements. For avoidance of doubt, in no event shall the term "Tax liability" as used in this definition be construed to refer to a negative amount.

"Impositions" shall mean all Taxes, governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rents (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Guarantor Group, provided such amounts shall in no event exceed the Separate Borrower Group Tax Liability for the applicable period, (b) the Property, or any other collateral delivered or pledged to Lender in connection with the Loan, or any part thereof, or any Rents therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property or the leasing or use of all or any part thereof. Nothing contained in this Agreement shall be construed to require Borrower to pay any Tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of the Property or (ii) except as provided in Section 2.5, Lender in the nature of a capital levy, estate, inheritance, succession, income or net revenue Tax.

"Income Tax" means federal, state, local and foreign income Taxes and franchise Taxes based on net income, including alternative minimum Tax and any interest, penalties, fines, assessments or additions imposed in respect of the foregoing.

"Increased Costs" shall have the meaning set forth in Section 2.5.1.

"Indebtedness" shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Lender pursuant hereto, under the Note or in accordance with the other Loan Documents and all other amounts, sums and expenses paid by or payable to Lender hereunder or pursuant to the Note or the other Loan Documents.

"Indemnified Parties" shall have the meaning set forth in Section 19.12(b).

"Independent" shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in any Borrower or in any Affiliate of any Borrower or Master Lessee, (ii) is not connected with any Borrower or any Affiliate of any Borrower or Master Lessee as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, customer or supplier (other than a customer or supplier in the ordinary course of business on terms applicable generally to all customers and suppliers) or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"Independent Accountant" shall mean a firm of nationally recognized, certified public accountants which is Independent and which is selected by Borrower or Mortgage Borrower, as applicable, and reasonably acceptable to Lender.

"Independent Manager" of any corporation or limited liability company means an individual with at least three (3) years of employment experience serving as an independent director or independent manager, and who is provided by, and is in good standing with, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors or independent managers, another nationally-recognized company reasonably approved by Lender in each case, that is not an Affiliate of such corporation or limited liability company and that provides professional independent directors or independent managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as a member of the board of directors or board of managers or as an Independent Manager of such corporation or limited liability company and is not, and has never been, and will not while serving as Independent Manager be:

(i) a member (other than an independent, non-economic "springing member"), partner, equityholder, manager, director, officer or employee of such corporation or limited liability company, or any of its equityholders or Affiliates (other than as an independent director or independent manager of an Affiliate of such corporation or limited liability company that is not in the direct chain of ownership of such corporation or limited liability company and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Manager is employed by a company that routinely provides professional independent directors or independent managers);

(ii) a customer, creditor, supplier or service provider (including provider of professional services) to such corporation or limited liability company or any of its equityholders or Affiliates (other than a nationally-recognized company that routinely provides professional independent directors or independent managers and other corporate services to such corporation or limited liability company or any of its equityholders or Affiliates in the ordinary course of business);

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that Controls or is under common Control with (whether directly, indirectly or otherwise) any of (i), (ii) or (iii) above.

A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the independent director or independent manager of a single purpose bankruptcy remote entity in the direct chain of ownership of such corporation or limited liability company

shall not be disqualified from serving as an Independent Manager of such corporation or limited liability company, provided that the fees that such individual earns from serving as independent director or independent manager of such Affiliates in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding anything to the contrary herein, (A) Borrower may not have the same independent directors or independent managers as Mortgage Borrower or Second Mezzanine Borrower, and (B) Borrower's independent directors or independent managers shall not be Affiliates of Master Lessee or Master Lease Guarantor.

"Initial Interest Period" shall mean a period from and including the Closing Date and ending on and including April 9, 2012.

"Intercreditor Agreement" shall have the meaning set forth in Section 19.26.

"Interest Period" shall mean a period from and including the tenth (10th) calendar day of each calendar month during the term of the Loan and ending on and including the ninth (9th) calendar day of the immediately succeeding calendar month.

"Interest Rate" shall mean a rate of nine percent (9.0%) per annum, or where applicable pursuant to this Agreement or any other Loan Document, the Default Rate.

"Intermediate Entity" means any Intermediate HoldCo Entity or Intermediate PropCo Entity.

"Intermediate HoldCo Entity" shall mean any Person satisfying all of the following: (a) 100% of the direct or indirect Equity Interests in such Person are owned by, and such Person is Controlled by, Guarantor, (b) such Person owns, directly or indirectly, 100% of the Equity Interests in, and Controls, HoldCo, and (c) such Person does not own, directly or indirectly, any Equity Interest in any Person other than another Intermediate HoldCo Entity (if any) and, indirectly by virtue of its direct or indirect Equity Interests in HoldCo, the Persons in which HoldCo owns a direct or indirect Equity Interest. As of the Closing Date, there are no Intermediate HoldCo Entities.

"Intermediate PropCo Entity" shall mean any Person satisfying all of the following: (a) 100% of the direct or indirect Equity Interests in such Person are owned by, and such Person is Controlled by, HoldCo, (b) such Person owns, directly or indirectly, 100% of the Equity Interests in, and Controls, PropCo and does not directly or indirectly own any Equity Interest in Master Lease Guarantor, and (c) such Person does not own, directly or indirectly, any Equity Interest in any Person other than another Intermediate PropCo Entity (if any) and, indirectly by virtue of its direct or indirect Equity Interests in PropCo, PRP, Mortgage Borrower, Borrower and Second Mezzanine Borrower. As of the Closing Date, there are no Intermediate PropCo Entities.

"Involuntary Lien" shall mean any lien on the Property other than a lien that Mortgage Borrower or any Affiliate of Mortgage Borrower voluntarily causes to be placed, or which Mortgage Borrower or any Affiliate of Mortgage Borrower colludes in the placing, on the Property.

"IPO Entity" shall mean any Lower Tier Entity or Upper Tier Entity.

"Late Payment Charge" shall have the meaning set forth in Section 2.2.3.

"Leaseable Building Pad" shall have the meaning set forth in Section 8.8.11.

"Lease Coverage Ratio" shall mean a ratio, as determined by Lender for the twelve calendar months immediately preceding the date of calculation, in which:

(a) the numerator is the Portfolio Four-Wall EBITDAR, applied consistently, stated on the most recent monthly report or reports delivered to Lender pursuant to Sections 11.2.1 through 11.2.3 for the trailing twelve (12) month period ended on the last day of the period covered by such report; and

(b) the denominator is the aggregate amount of Master Lease Base Rent payable under the Master Lease for the twelve calendar months immediately prior to the applicable calculation date, provided that for the twelve-month period following the Closing Date, Lease Coverage Ratio shall be calculated based on the Master Lease Base Rent payable under the Master Lease from the Closing Date through the full calendar month preceding the calculation date, with such sum annualized to determine the Master Lease Base Rent for a full twelve month period.

Notwithstanding the foregoing, when determining whether the Lease Coverage Ratio condition is satisfied in connection with a Property Release, the following shall apply: (i) the numerator of Lease Coverage Ratio immediately prior to the Release Date shall only include the trailing twelve (12) month Portfolio Four-Wall EBITDAR contributed by the Individual Properties that are subject to the Lien of the Security Instrument immediately prior to the Property Release, including the subject Release Property, but excluding all previous Release Properties regardless of the applicable Release Dates; (ii) the numerator of Lease Coverage Ratio on the Release Date shall only include the trailing twelve (12) month Four-Wall EBITDAR contributed by the Individual Properties that are subject to the Lien of the Security Instrument immediately following the Property Release, excluding the subject Release Property and all previous Release Properties regardless of the applicable Release Date; (iii) the denominator of Lease Coverage Ratio immediately prior to the Release Date shall equal the monthly Master Lease Base Rent in effect immediately prior to the Property Release, multiplied by twelve (12); and (iv) the denominator of Lease Coverage Ratio on the Release Date shall equal the monthly Master Lease Base Rent to be in effect immediately following the Property Release (taking into account the reduction of the Master Lease Base Rent with respect to the subject Release Property), multiplied by twelve (12).

"Legal Requirements" shall mean all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements of every Governmental Authority affecting the Loan, any Securitization of the Loan, Borrower or any Individual Property or any part thereof, or the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any Individual Property or any part thereof, or the Improvements or the Building Equipment thereon, whether now or hereafter enacted and in force, including without limitation, the Securities Act, the Exchange Act, Regulation AB, the rules and regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Environmental Laws, all covenants, restrictions and conditions now or hereafter of record, building and zoning codes and ordinances and laws relating to handicapped accessibility.

"Lender" shall have the meaning set forth in the first paragraph of this Agreement.

"Lien" shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Borrower, Mortgage Borrower, the Collateral, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances, in each case, excluding any such items filed against and solely affecting the Excluded Personal Property.

"LLC Agreement" shall have the meaning set forth in Section 5.3(c).

"Loan" shall mean the loan in the amount of the Loan Amount made by Lender to Borrower pursuant to this Agreement.

"Loan Amount" shall mean the original principal amount of the Loan equal to $87,600,000.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Pledge, the Environmental Indemnity, the Recourse Guaranty, the Subordination of Asset Management Agreement, and all other documents executed and/or delivered by Borrower to Lender in connection with the Loan, including any opinion certificates or other certifications or representations delivered by or on behalf of Borrower or any Affiliate of Borrower to Lender.

"Loan Party" shall mean, individually or collectively as the context requires, Borrower, each SPE Component Entity, Second Mezzanine Borrower, Mortgage Borrower and Guarantor.

"Lockout Expiration Date" shall have the meaning set forth in Section 2.3.1 hereof.

"Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to reasonable legal fees and other costs of defense).

"Lower Tier Entity" shall mean any of Master Lease Guarantor, HoldCo or any Intermediate HoldCo Entity.

"Management Stockholders" means the bona fide members of management of Master Lease Guarantor or its Subsidiaries (excluding the Founders) who are as of the relevant date of determination both (i) actively involved in the management of Master Lease Guarantor or its Subsidiaries and (ii) investors in Guarantor or any direct or indirect parent thereof.

"Master Lease" shall mean that certain Amended and Restated Master Lease Agreement for the Property by and between Mortgage Borrower, as lessor, and Master Lessee, as lessee, dated the date hereof. Lender acknowledges that Mortgage Borrower does not own, and Mortgage Lender does not have a lien on, the Excluded Personal Property and that the term "Master Lease" shall not include the Excluded Personal Property or leases or licenses with respect to the Excluded Personal Property.

"Master Lease Default" shall mean a default by Master Lessee or Mortgage Borrower under the terms of the Master Lease beyond any applicable notice and cure periods contained therein.

"Master Lease Guarantor" shall mean OSI Restaurant Partners, LLC, a Delaware limited liability company.

"Master Lease Guarantor Asset Covenants" shall mean the following covenants pertaining to the Master Lease Guarantor, except to the extent such covenants are no longer complied with as a result of a foreclosure (or transfer in lieu thereof) of the Liens granted by HoldCo, Master Lease Guarantor or any of Master Lease Guarantor's Subsidiaries resulting from the exercise of remedies as set forth in the Master Lease Guarantor Facility: (i) Master Lease Guarantor shall continue to own, directly or through Close Subsidiaries, the restaurant brands and related intellectual property and businesses known as "Outback Steakhouse" and "Carraba's Italian Grill"; (ii) Master Lease Guarantor shall not dispose of all or substantially all of its assets, exclusive of transfers to and among Master Lease Guarantor's Close Subsidiaries; and (iii) Master Lessee shall continue to be a wholly owned Subsidiary of Master Lease Guarantor and Master Lease Guarantor shall not permit and shall not consent to any assignment by Master Lessee of its interest in the Master Lease or its rights and interests thereunder.

"Master Lease Guarantor Consolidated EBITDA" shall mean, as of any date of determination, Consolidated EBITDA (as defined in the Master Lease Guarantor Initial Credit Agreement, assuming for this purpose all adjustments thereto made pursuant to the Master Lease Guarantor Initial Credit Agreement for purposes of determining the Total Leverage Ratio, as defined in the Master Lease Guarantor Initial Credit Agreement) for the Test Period (as defined in the Master Lease Guarantor Initial Credit Agreement) then last ended.

"Master Lease Guarantor Facility" shall mean the credit facilities provided under the Credit Agreement, dated as of June 14, 2007, by and among Master Lease Guarantor, as borrower, HoldCo, Deutsche Bank AG, New York Branch, as Administrative Agent, and the other lenders from time to time party thereto (the "Master Lease Guarantor Initial Credit Agreement"), and any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof and any one or more indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that extend, replace, refund, refinance, renew or defease any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof or adds additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders; provided, however, that in no event shall such credit facilities, or any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof, be secured in whole or in part by the direct or indirect Equity Interests in Guarantor or any of its direct or indirect parent entities or in HoldCo, any Intermediate Entity, PropCo, PRP, Mortgage Borrower, Second Mezzanine Borrower or Borrower.

"Master Lease Guarantor Initial Credit Agreement" shall have the meaning set forth in the definition of Master Lease Guarantor Facility, without giving effect to any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof.

"Master Lease Guarantor Total Leverage Ratio" shall mean, as of any date of determination, the Total Leverage Ratio (as defined in the Master Lease Initial Credit Agreement) for the Test Period (as defined in the Master Lease Guarantor Initial Credit Agreement) then last ended.

"Master Lease Guaranty" shall mean that certain Master Lease Guaranty, dated as of the date hereof, by Master Lease Guarantor in favor of Mortgage Borrower, as the same may, with Lender's consent, be amended, supplemented, restated or otherwise modified from time to time.

"Master Lease Tenant Default" shall mean a default by Master Lessee under the terms of the Master Lease beyond any applicable notice and cure periods contained therein.

"Master Lease Variable Additional Rent" shall mean the "Variable Additional Charges" as defined under the Master Lease.

"Master Lessee" shall mean Private Restaurant Master Lessee, LLC, a Delaware limited liability company.

"Material Action" shall mean, as to any Person, (i) to consolidate or merge such Person with or into any Person, (ii) to sell all or substantially all of the assets of such Person, (iii) to institute proceedings to have such Person be adjudicated bankrupt or insolvent or, to file or consent to the institution of bankruptcy or insolvency proceedings against such Person, (iv) to file, institute, commence or seek relief under, any petition, proceeding, action or case under any Creditors Rights Laws, or to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, (v) to make any assignment for the benefit of creditors of such Person, (vi) to admit in writing such Person's inability to pay its debts generally as they become due (other than, with respect to Borrower, Mortgage Borrower and Second Mezzanine Borrower, communications with Lender, Mortgage Lender or Second Mezzanine Lender), (vii) to the fullest extent permitted by law, to dissolve or liquidate such Person, or (viii) to take action in furtherance of any of the foregoing.

"Material Adverse Effect" shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of any Individual Property, (iii) the business, profits, operations or financial condition of Borrower or Mortgage Borrower, (iv) the ability of Mortgage Borrower to repay the principal and/or interest of the Mortgage Loan as it becomes due or to satisfy any of Mortgage Borrower's material obligations under the Mortgage Loan Documents, (v) the ability of Borrower to repay the principal and/or interest of the Loan as it becomes due or to satisfy any of Borrower's material obligations under the Loan Documents, or (vi) the Collateral taken as a whole.

"Material Agreements" shall mean any contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property or any Individual Property that provides for annual payments by Mortgage Borrower or any other Loan Party of $50,000.00 or more unless the same is cancelable without penalty or premium on no more than thirty (30) days notice (other than the Master Lease, the Asset Management Agreement, the Operating Agreements, and excluding any contracts entered into for the restoration of an Individual Property in accordance with the Mortgage Loan Documents and the Master Lease).

"Maturity Date" shall mean the Stated Maturity Date, or such earlier date on which the final payment of principal of the Loan becomes due and payable as provided herein, whether by declaration of acceleration, or otherwise.

"Maximum Legal Rate" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Member" shall have the meaning set forth in Section 5.3(c).

"Mezzanine Foreclosure Divestment" shall have the meaning set forth in Section 18.1.4(a).

"Mezzanine Lender" shall mean Lender and/or Second Mezzanine Lender, or both such lenders collectively, as the context may require.

"Mezzanine Lender Controlled Actions" shall have the meaning set forth in Section 18.1.4(b).

"Mezzanine Lender Monthly Debt Service Notice" shall have the meaning set forth in Section 3.1.6(c).

"Mezzanine Loan" shall mean the Loan and/or the Second Mezzanine Loan, or both such loans collectively, as the context may require.

"Mezzanine Loan Agreement" shall mean this Agreement and/or the Second Mezzanine Loan Agreement, or both such loan agreements collectively, as the context may require.

"Mezzanine Loan Debt Service Amount" shall mean, with respect to any Payment Date, interest and principal payments scheduled to be due under the Loan (or the undefeased portion thereof in the event of a defeasance of a portion thereof) pursuant to the Loan Documents (excluding default or accrued interest other than regularly scheduled interest, but including all servicing fees due on such Payment Date under Section 16.3) on such date (as set forth in the Mezzanine Lender Monthly Debt Service Notice delivered to Lender), assuming repayment in full of the principal balance of the Note on the Stated Maturity Date (but excluding any principal payments on account of an acceleration of the Loan or a default under any of the Loan Documents).

"Mezzanine Loan Default Notice" shall have the meaning set forth in Section 3.1.6(e).

"Mezzanine Loan Documents" shall mean the Loan Documents and/or the Second Mezzanine Loan Documents, or all such loan documents, collectively, as the context may require.

"Minimum Net Worth" shall have the meaning set forth in Section 8.5.

"Minimum Ownership/Control Requirements" shall have the meaning set forth in Section 8.4(d).

"Monetary Default" shall mean a Default (i) that can be cured with the payment of money or (ii) arising pursuant to Section 17.1(a)(vi) or (vii).

"Monthly Payment Amount" shall mean, for each Payment Date, an amount equal to the sum of (a) the aggregate amount of interest which has accrued during the relevant Interest Period, plus (b) the amount of principal payable on such Payment Date based on the amortization schedule attached hereto as Schedule I and made a part hereof, as such schedule may be amended from time to time in accordance with the last sentence of the definition of Scheduled Defeasance Payments.

"Mortgage Borrower" shall have the meaning ascribed to the term "Borrower" in the Mortgage Loan Agreement.

"Mortgage Borrower's Account" shall have the meaning ascribed to the term "Borrower's Account" in the Mortgage Loan Agreement.

"Mortgage Cash Management Bank" shall have the meaning ascribed to the term "Cash Management Bank" in the Mortgage Loan Agreement.

"Mortgage Collateral Account" shall have the meaning ascribed to the term "Collateral Accounts" in the Mortgage Loan Agreement.

"Mortgage Default" shall have the meaning ascribed to the term "Default" in the Mortgage Loan Agreement.

"Mortgage Event of Default" shall have the meaning ascribed to the term "Event of Default" in the Mortgage Loan Agreement.

"Mortgage Lender" shall have the meaning ascribed to the term "Lender" in the Mortgage Loan Agreement.

"Mortgage Loan" shall have the meaning ascribed to the term "Loan" in the Mortgage Loan Agreement.

"Mortgage Loan Agreement" shall mean the Loan and Security Agreement, dated as of the date hereof, between Mortgage Borrower, as borrower, and Mortgage Lender, as lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Mortgage Loan Documents" shall have the meaning ascribed to the term "Loan Documents" in the Mortgage Loan Agreement.

"Mortgage Note" shall have the meaning ascribed to the term "Note" in the Mortgage Loan Agreement.

"Mortgage Obligations" shall have the meaning ascribed to the term "Obligations" in the Mortgage Loan Agreement.

"Mortgage Trust Fund Expenses" shall have the meaning ascribed to the term "Trust Fund Expenses" in the Mortgage Loan Agreement.

"Net Worth" of a Person shall mean, as of a given date, the net worth of such Person as calculated in accordance with GAAP; provided (a) that the Individual Properties and such Person's direct or indirect equity therein shall be excluded from the calculation of net worth, and (b) all computations of Net Worth shall be made without giving effect to any election under Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any indebtedness or other liabilities at "fair value", as defined therein.

"Net Worth Covenants" shall have the meaning set forth in Section 8.5.

"New Sublease" shall have the meaning set forth in Section 8.8.1.

"Non-Consolidation Opinion" shall mean that certain bankruptcy non-consolidation opinion letter dated the date hereof delivered by Edwards Wildman Palmer LLP in connection with the Loan.

"Note" shall mean collectively, (a) that certain Mezzanine Note A-1 (First Mezzanine) in the original principal amount of $9,000,000 dated as of the date hereof, made by Borrower, as maker, in favor of Bank of America, N.A., as payee, (b) that certain Mezzanine Note A-2 (First Mezzanine) in the original principal amount of $6,000,000 dated as of the date hereof, made by Borrower, as maker, in favor of German American Capital Corporation, as payee, (c) that certain Mezzanine Note A-3 (First Mezzanine) in the original principal amount of $17,400,000 dated as of the date hereof, made by Borrower, as maker, in favor of Bank of America, N.A., as payee, (d) that certain Mezzanine Note A-4 (First Mezzanine) in the original principal amount of $11,600,000 dated as of the date hereof, made by Borrower, as maker, in favor of German American Capital Corporation, as payee, (e) that certain Mezzanine Note A-5 (First Mezzanine) in the original principal amount of $3,000,0000 dated as of the date hereof, made by Borrower, as maker, in favor of Lender, as payee, (f) that certain Mezzanine Note A-6 (First Mezzanine) in the original principal amount of $15,600,000 dated as of the date hereof, made by Borrower, as maker, in favor of Lender, as payee and (g) that certain Mezzanine Note A-7 (First Mezzanine)

in the original principal amount of $25,000,000 dated as of the date hereof, made by Borrower, as maker, in favor of Lender, as payee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, including any Undefeased Note that may exist from time to time, but excluding any Defeased Note.

"Obligations" shall mean, collectively, Borrower's obligations for the payment of the Indebtedness and the performance of all other obligations of Borrower contained in this Agreement, the Note or any other Loan Document, or any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Agreement, the Note or any other Loan Document.

"OFAC" List means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

"Officer's Certificate" shall mean a certificate executed by an authorized signatory of Borrower that is familiar with the financial condition of Borrower and the operation of the Property, or, in the case of Officer's Certificates required under Section 11, the Chief Financial Officer of Borrower.

"Opco Equity Foreclosure" shall have the meaning set forth in Section 8.4(a).

"Operating Agreements" shall mean, collectively, the REAs, the Condominium Documents and all amendments, modifications and supplements thereto.

"Opinion of Counsel" shall mean an opinion of counsel of a law firm selected by Borrower and reasonably acceptable to Lender.

"Other Taxes" shall have the meaning set forth in Section 2.5.3.

"Ownership Interest" shall mean the 100% membership interest in Mortgage Borrower pledged to Lender by Borrower pursuant to the Pledge and a membership certificate and transfer power delivered to Lender in the form attached as Exhibit A to that certain Acknowledgement (Mortgage Borrower), dated as of the date hereof, by Mortgage Borrower to Lender.

"Partial Defeasance Collateral" shall mean, with respect to a Partial Defeasance Event, U.S. Securities that provide payments (a) on or prior to, but as close as possible to, the Business Day immediately preceding each Payment Date after the Defeasance Date of such Partial Defeasance Event and up to and including the Lockout Expiration Date (or any date thereafter as specified by Borrower on or prior to the Defeasance Date), and (b) in amounts equal to or greater than the Scheduled Defeasance Payments relating to each such Partial Defeasance Event.

"Partial Defeasance Date" shall have the meaning set forth in Section 2.4.2(a).

"Partial Defeasance Event" shall have the meaning set forth in Section 2.4.2.

"Partner Equity Program" shall mean the Outback Steakhouse, Inc. Partner Equity Plan and OSI Restaurant Partners, LLC Partner Ownership Account Plan, each as may be modified, amended, extended, supplemented, restated or replaced from time to time.

"Payment Date" shall mean the tenth (10th) calendar day of each calendar month, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on April 10, 2012 and continuing to and including the Maturity Date.

"Permitted Debt" shall mean, as applicable:

(a) with respect to Borrower only, (i) the Loan and the other obligations, indebtedness and liabilities specifically provided for in any Loan Document to which Borrower is a party, and secured by this Agreement, the Pledge and the other Loan Documents, and (ii) trade payables, operational debt, deferred purchase payments for services incurred in the ordinary course of Borrower's business, not secured by Liens on the Collateral (other than liens being properly contested in accordance with the provisions of the Loan Documents or the Mortgage Loan Documents), not to exceed $100,000 in the aggregate at any one time outstanding, payable by or on behalf of Borrower in the ordinary course of operating Borrower's business, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred;

(b) with respect to Mortgage Borrower only, the Mortgage Loan and the other obligations, indebtedness and liabilities specifically provided for in the Mortgage Loan Documents evidencing and/or securing the Mortgage Loan to which Mortgage Borrower is a party and any other Debt permitted to be incurred by Mortgage Borrower pursuant to the Mortgage Loan Documents;

(c) with respect to Second Mezzanine Borrower only, the Second Mezzanine Loan and the other obligations, indebtedness and liabilities specifically provided for in the Second Mezzanine Loan Documents evidencing and/or securing the Second Mezzanine Loan to which Second Mezzanine Borrower is a party and any other Debt permitted to be incurred pursuant to the Second Mezzanine Loan Documents;

(d) with respect to Guarantor, the Guarantor Intercompany Loans and the obligations, indebtedness and liabilities of Guarantor specifically provided for in the Loan Documents, Mortgage Loan Documents and Second Mezzanine Loan Documents to which Guarantor is a party;

(e) with respect to PropCo, the obligations, indebtedness and liabilities of PropCo specifically provided for in the Loan Documents, Mortgage Loan Documents and Second Mezzanine Loan Documents to which PropCo is a party; and

(f) with respect to HoldCo, the Master Lease Guarantor Facility and any Debt permitted to be incurred by HoldCo pursuant thereto; provided that HoldCo shall not grant Liens upon, nor shall the Master Lease Guarantor Facility be secured in whole or in part by, the direct or indirect Equity Interests in Guarantor, or any of its direct or indirect parent entities, or in HoldCo, any Intermediate Entity, PropCo, PRP, Mortgage Borrower, Borrower or Second Mezzanine Borrower.

Nothing contained herein shall be deemed to require Borrower to pay any amount, so long as Borrower is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, and (iii) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount and such contest is maintained and prosecuted continuously and with diligence. Notwithstanding anything set forth herein, in no event shall Borrower be permitted under this provision to enter into a note (other than the Note and the other Loan Documents) or other instrument for borrowed money.

"Permitted Holders" shall mean the Sponsors, the Founders and the Management Stockholders; provided that, for purposes of determining under the provisions of this Agreement the percentage of stock or ownership interests directly or indirectly owned by the Permitted Holders at any time, (i) if the Management Stockholders own beneficially or of record more than ten percent (10%) of the outstanding Equity Interests of any Person in the aggregate, they shall be treated as Permitted Holders of only ten percent (10%) of the outstanding Equity Interests of such Person at such time; and (ii) if the Founders own beneficially or of record more than fifteen percent (15%) of the outstanding Equity Interests of any Person in the aggregate, they shall be treated as Permitted Holders of only fifteen percent (15%) of the outstanding Equity Interests of such Person at such time.

"Permitted Mortgage Loan Amendment" shall have the meaning set forth in Section 5.1.22(b).

"Permitted Transferee" shall mean any Person that, immediately prior to the applicable Transfer, satisfies the following: (a) such Person, together with its Close Affiliates, has (or at least fifty-one percent (51%) of the Equity Interests in such Person are owned, directly or indirectly, by and such Person is Controlled, directly or indirectly, by one or more Persons that each, together with its Close Affiliates, has) a net worth of at least $1 Billion, and (b) if immediately following the applicable Transfer, such Person will own direct or indirect Equity Interests in PropCo, PRP, Mortgage Borrower, Borrower, Second Mezzanine Borrower or any Transferee Borrower, then such Person, together with its Close Affiliates, controls (or at least fifty-one percent (51%) of the Equity Interests in such Person are owned, directly or indirectly, by and such Person is Controlled, directly or indirectly by one or more Persons that each, together with its Close Affiliates, controls) real estate assets of at least $1 Billion, and (c) neither such Person, nor any Person directly or indirectly Controlling such Person is, a Disqualified Transferee.

"Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Plan" shall have the meaning set forth in Section 4.1.10(a).

"Pledge" shall mean that certain Pledge and Security Agreement (First Mezzanine), dated as of the date hereof, by Borrower in favor of Lender.

"Pledged Collateral" shall have the meaning set forth in the Pledge.

"Pledged Entity's Organizational Document" shall have the meaning set forth in the Pledge.

"Pledged Entity's Organizational Document (Second Mezzanine)" shall have the meaning set forth in the Second Mezzanine Pledge.

"Portfolio Four-Wall EBITDAR" shall mean, with respect to any Individual Property or the Property, as the case may be, earnings from restaurant and related operations conducted thereon (after deducting compensation payable directly or indirectly to restaurant employees in the nature of regular salaries, wages and bonuses, but prior to deductions, without duplication, for payment of management services fees to any management partnerships owned by employees or other partners which are based upon earnings or cash flow, elimination of minority partner interest or distributions payable to partners and joint venturers) plus, to the extent deducted in determining such earnings:

(a) interest expense,

(b) income taxes,

(c) depreciation and amortization,

(d) any rental expense on real property,

(e) regional office allocation and corporate-level overhead expense (including marketing, insurance, accounting and supervision expense allocable to the restaurant-level for internal accounting purposes),

(f) royalty charges from affiliates,

(g) pre-opening expenses and restructuring expenses,

(h) provisions for impairments, closings and disposals, and

(i) any non-cash charges (whether positive or negative including but not limited to gains/losses on sales of assets, provisions for restatement of prior periods and non-cash compensation expense, including Partner Equity Program expense).

Portfolio Four-Wall EBITDAR shall be calculated consistently with past practice, as reflected in the Portfolio Four-Wall EBITDAR calculations for purposes of determining the Closing Date Lease Coverage Ratio and past periods pursuant to the past period calculations and associated financial statements attached as Schedule VIII of the Mortgage Loan Agreement.

"Post-IPO Change of Control" shall mean, in the event of a Qualifying IPO of any IPO Entity, that the Post-IPO Control Requirements are no longer satisfied.

"Post-IPO Control Requirements" shall mean, in the event of a Qualifying IPO of an IPO Entity, that either (i) Permitted Holders or, following a Transfer to a Permitted Transferee permitted under this Agreement, such Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), shall own, directly or indirectly, of record and beneficially, no less than fifty-one percent (51%) of the voting stock of such IPO Entity, and have the right, directly or indirectly, to designate (and do so designate) a majority of the board of directors of such IPO Entity, or (ii) both of the following criteria are satisfied: (A) no "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person and its subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Permitted Holders or, following a Transfer to a Permitted Transferee permitted under this Agreement, such Permitted Transferee, shall become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of more than the greater of (x) thirty-five percent (35%) of the shares outstanding of such IPO Entity, and (y) the percentage of the then outstanding voting stock of such IPO Entity owned, directly or indirectly, beneficially by the Permitted Holders or, following a Transfer to a Permitted Transferee permitted under this Agreement, such Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), and (B) the majority of the board of directors of such IPO Entity consist of Continuing Directors.

"Principal Amount" shall mean the aggregate outstanding principal balance from time to time of the Loan.

"Principal Amount (Mortgage)" shall mean the "Principal Amount" as such term is defined in the Mortgage Loan Agreement.

"Prohibited Person" shall mean any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"PropCo" shall mean PRP Holdings, LLC, a Delaware limited liability company.

"Property" shall mean, collectively, all Individual Properties.

"Property Release Notice" shall have the meaning set forth in Section 2.3.6(a).

"Proprietary Information" shall have the meaning set forth in Section 11.2.9.

"PRP" shall mean Private Restaurant Properties, LLC, a Delaware limited liability company.

"Qualifying IPO" shall mean, with respect to any IPO Entity, the issuance by such IPO Entity of its common equity interests in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8), satisfying the following conditions:

(a) such public offering is made pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act, (b) the publicly-offered common equity interests of such IPO Entity are listed and traded on the New York Stock Exchange, the NASDAQ Global Market or other nationally or internationally recognized stock exchange or automated quotation system, and (c) after giving effect to such public offering, the Post-IPO Change of Control Requirements are satisfied.

"Qualifying Replacement Guarantor" shall mean a Person that: (a) Controls each of PropCo, PRP, Mortgage Borrower, Second Mezzanine Borrower and Borrower; and (b) satisfies the Guarantor Net Worth Requirements.

"REAs" shall mean, collectively, any recorded "construction, operation and reciprocal easement agreement" or similar agreement (including any "separate agreement" or other agreement between Mortgage Borrower and one or more other parties to an REA with respect to such REA) affecting any Individual Property or portion thereof.

"Receivership Event" shall have the meaning set forth in Section 18.1.4(a).

"Receivership Period" shall have the meaning set forth in Section 18.1.4(a).

"Receivership Property" shall have the meaning set forth in Section 18.1.4(a).

"Recourse Guaranty" shall mean (a) that certain Guaranty of Recourse Obligations of Borrower, dated as of the date hereof, by Guarantor in favor of Lender, and (b) any Replacement Guaranty, in each case, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Recourse Obligations" shall have the meaning set forth in Section 18.1.4.

"Register" shall have the meaning set forth in Section 15.2.

"Regulation AB" shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

"Regulatory Change" shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person Controlling Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"Related Holding Entity shall have the meaning set forth in Section 8.4(d).

"Release" shall have the meaning provided in the Environmental Indemnity.

"Release Date" shall have the meaning provided in Section 2.3.6(a).

"Release Instruments" shall have the meaning provided in Section 2.3.6(a).

"Release Price" shall mean, with respect to each Individual Property, the product of the designated Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage; provided, however, that with respect to any Individual Property transferred to any Affiliate of Mortgage Borrower, Borrower, Guarantor, Master Lessee or Master Lease Guarantor, the Release Price for such Individual Property shall be the greater of (a) the product of the designated Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage, and (b) the product of (i) the Fair Market Value of such Individual Property at the time of such transfer, multiplied by (ii) a fraction, the numerator of which is the Allocated Loan Amount for such Individual Property, and the denominator of which is the Combined Allocated Loan Amount for such Individual Property.

"Release Price (Mortgage)" shall have the meaning ascribed to the term "Release Price" in the Mortgage Loan Agreement.

"Release Price Percentage" shall mean 115%; provided, however, that with respect to a release in connection with a casualty or Taking pursuant to Section 6.2.3 hereof, the Release Price Percentage shall equal 100%.

"Release Price (Second Mezzanine)" shall have the meaning ascribed to the term "Release Price" in the Second Mezzanine Loan Agreement.

"Release Property" shall have the meaning provided in Section 2.3.6(a).

"Release Property-Specific Default" shall have the meaning set forth in Section 2.3.6(a).

"Remaining Property" shall have the meaning set forth in Section 2.3.6(b).

"Replacement Cash Management Agreement" shall have the meaning set forth in Section 3.1.7.

"Replacement Guaranty" shall have the meaning set forth in Section 8.5.

"Replacement Indemnity" shall have the meaning set forth in Section 8.5.

"Required Tax Distribution Amount" shall mean, for any period, that portion of the amount required by law to be paid by a member of the Stand Alone Guarantor Group equal to the following: (i) solely with respect to Separate Borrower Group Tax Liability, if payments of estimated Taxes (as reasonably determined pursuant to Section 6655 of the Code or comparable provisions of state, local or foreign Tax law and payable on a timely basis) are required to be made by a member of the Stand Alone Guarantor Group for any quarter in which all of the interests in Borrower were owned by a member of the Stand Alone Guarantor Group, the amount of any estimated Separate Borrower Group Tax Liability for such period and (ii) if the consolidated federal Income Tax return (or any consolidated, combined, unitary or similar group Tax return pursuant to state, local or foreign Tax law) of the Guarantor Group is required to be filed for any taxable year during which all of the interests in Borrower were owned by a member of the Stand Alone Guarantor Group, the positive difference between the Separate Borrower Group Tax Liability for such taxable year and the sum of the estimated Tax amounts computed in accordance with clause (i) above for each prior quarter of such taxable year.

"Restricted Party" shall mean Borrower, Mortgage Borrower, Second Mezzanine Borrower, any SPE Component Entity, PRP, PropCo, HoldCo, Guarantor, any Intermediate Entity, or any shareholder, partner, member or non-member manager, or direct or indirect legal or beneficial owner of Borrower, Mortgage Borrower, Second Mezzanine Borrower, any SPE Component Entity, HoldCo, Guarantor or any Intermediate Entity.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Scheduled Defeasance Payments" shall mean (a) in the case of a Total Defeasance Event, scheduled payments of interest on and principal of the Loan (less, for clarity, any previously defeased portion thereof) for each Payment Date occurring after the Defeasance Date and up to and including the Payment Date selected by Borrower from and after (and including) the Lockout Expiration Date (including the outstanding principal balance of the Loan as of such Payment Date so selected), and (b) in the case of a Partial Defeasance Event, with respect to the principal portion of the Loan being defeased, scheduled payments of interest on and principal of such principal portion for each Payment Date occurring after the Defeasance Date and up to and including the Payment Date selected by Borrower from and after (and including) the Lockout Expiration Date (including the outstanding principal balance of such principal portion as of such Payment Date so selected). In the case of a Partial Defeasance Event, for purposes of clause (b) of the preceding sentence, the scheduled payments of principal on each Payment Date in respect of the principal portion being defeased will be equal to the product of (i) the amount of principal payable on such Payment Date based on the amortization schedule attached hereto as Schedule I (as the same shall have been amended in connection with any prior Partial Defeasance Event in accordance with the immediately following sentence) multiplied by (ii) a fraction, the numerator of which is such principal portion being defeased as of the Defeasance Date for such Partial Defeasance Event, and the denominator of which is the Principal Amount as of the Defeasance Date for such Partial Defeasance Event (for clarity, excluding any portion of the Loan previously defeased). Such amortization schedule will be amended in connection with such Partial Defeasance Event by deducting from the scheduled principal payment to be made on each Payment Date pursuant to such schedule (as the same may have been previously amended in connection with a prior Partial Defeasance Event) the scheduled payments of principal on such Payment Date in respect of the Defeased Note for such Partial Defeasance Event, as determined in accordance with the immediately preceding sentence.

"SEC" shall mean the United States Securities and Exchange Commission.

"Secondary Market Transaction" shall have the meaning set forth in Section 14.1.

"Second Mezzanine Borrower" shall mean New PRP Mezz 2, LLC, a Delaware limited liability company.

"Second Mezzanine Borrower's Account" shall have the meaning ascribed to the term "Borrower's Account" in the Second Mezzanine Loan Agreement.

"Second Mezzanine Collateral Account" shall have the meaning ascribed to the term "Collateral Account" in the Second Mezzanine Loan Agreement.

"Second Mezzanine Lender" shall mean German American Capital Corporation, a Maryland corporation, and Bank of America, N.A., a national banking association, and each of their respective successors and/or assigns, as the holder of the Second Mezzanine Loan.

"Second Mezzanine Loan" shall mean that certain $87,600,000 mezzanine loan, made as of the date hereof, from Second Mezzanine Lender to Second Mezzanine Borrower.

"Second Mezzanine Loan Agreement" shall mean that certain Mezzanine Loan and Security Agreement (Second Mezzanine), dated as of the date hereof, between Second Mezzanine Borrower, as borrower, and Second Mezzanine Lender, as lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Second Mezzanine Loan Documents" shall have the meaning ascribed to the term "Loan Documents" in the Second Mezzanine Loan Agreement.

"Second Mezzanine Pledge" shall have the meaning ascribed to the term "Pledge" in the Second Mezzanine Loan Agreement.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Securitization" shall have the meaning set forth in Section 14.1.

"Security Deposits" shall have the meaning set forth in Section 8.8.5.

"Separate Borrower Group Tax Liability" means, with respect to any period, the lesser of (a) the Hypothetical Borrower Group Tax for such period and (b) the Guarantor Group Tax for such period reduced by any payments (estimated or otherwise) made in respect of any applicable Imposition for or with respect to such period by a member of the Borrower Group other than any such payments financed by short term Debt that is Permitted Debt or other Debt permitted to be incurred hereunder.

"Servicer" shall mean such Person designated in writing with an address for such Person by Lender, in its sole discretion, to act as Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement or otherwise, together with such other powers as are reasonably incidental thereto.

"Single Purpose Entity" shall mean a Person, other than an individual, that complies with the provisions of Sections 5.3 and 5.4.

"Special Member" shall have the meaning set forth in Section 5.3(c).

"Special Taxes" shall mean any and all Taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, arising after the date hereof as result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of Lender, such Taxes (including Income Taxes, franchise Taxes and branch profit Taxes) as are imposed on or measured by Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Lender is organized or maintains a lending office.

"SPE Component Entity" shall have the meaning set forth in Section 5.3(b).

"Sponsors" shall mean Bain Capital Partners, LLC, Catterton Partners and any investment funds advised or managed by either of them, but not including, however, any Sponsor Portfolio Companies.

"Sponsor Portfolio Company" shall mean a company and the related business in which any Sponsor, or any investment fund advised or managed by any Sponsor, is invested, so long as such company is not otherwise an Affiliate of Mortgage Borrower, Borrower, Second Mezzanine Borrower, PRP, PropCo, HoldCo, Guarantor, Master Lessee, Master Lease Guarantor or any of their respective Subsidiaries.

"Stand Alone Guarantor Group" shall mean Guarantor and all other members of the Guarantor Group, other than Borrower and each subsidiary of Guarantor which owns, directly or indirectly, Equity Interests in Borrower.

"State" shall mean, with respect to each Individual Property, the State in which such Individual Property or any part thereof is located.

"Stated Maturity Date" shall mean the Payment Date occurring in April, 2017.

"Store-Level Information" shall mean the information delivered pursuant to Sections 11.2.1(A), 11.2.2(A) and 11.2.3(A) hereof.

"Sublease" shall mean any lease (other than the Master Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, letting, license, concession or other agreement entered into in connection with such lease, sublease, subsublease, letting, license, concession or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto. Lender acknowledges that Mortgage Borrower does not own, and Mortgage Lender does not have a lien on, the Excluded Personal Property and that the term " Subleases" shall not include the Excluded Personal Property or leases or licenses with respect to the Excluded Personal Property.

"Subordination of Asset Management Agreement" shall mean that certain First Mezzanine Asset Manager's Consent and Subordination of Asset Management Agreement, dated as of the date hereof, among Borrower, Lender and Asset Manager.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise Controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

"Successor Borrower" shall have the meaning set forth in Section 2.4.4.

"Taking" shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, environmental, customs duties, capital stock, profits, documentary, property, franchise, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add on minimum, or other tax of any kind whatsoever, including any interest, penalty, fine, assessment or addition thereto.

"Tenant" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property, other than Master Lessee and its employees and agents.

"Tenant Competitor" shall mean (i) any entity listed on Schedule IV attached hereto as such Schedule IV may be supplemented in accordance with the provisions of Section 11.2.9(g) and (ii) any subsidiary (a) Controlled by any such entity listed on Schedule IV (as may be supplemented in accordance with the terms hereof) and (b) owned at least fifty-one percent (51%) by any such entity listed on Schedule IV (as may be supplemented in accordance with the terms hereof).

"Tenant Security Period" shall have the meaning assigned thereto in the Master Lease.

"Third-Party Brand" shall mean any restaurant brand operated at an Individual Property where such restaurant brand is not owned by Master Lease Guarantor or its Close Subsidiaries (regardless of whether such Individual Property is subleased by a Pass-Through Subsidiary). As of the Closing Date, the Third-Party Brands are Cheeseburger in Paradise, Lee Roy Selmon's and Sterling's Bistro.

"Threat of Release" shall have the meaning provided in the Environmental Indemnity.

"Title Company" shall mean, collectively, Chicago Title Insurance Company (as to one-third of coverage), Fidelity National Title Insurance Company (as to one-third of coverage) and Lawyers Title Insurance Corporation (as to one-third of coverage).

"Title Policy (Owner)" shall mean an ALTA owner's title insurance policy in a form reasonably acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and reasonably acceptable to Lender) issued by the Title Company with respect to an Individual Property and insuring ownership of such Individual Property.

"Total Defeasance Collateral" shall mean, with respect to a Total Defeasance Event, U.S. Securities that provide payments (a) on or prior to, but as close as possible to, the Business Day immediately preceding each Payment Date after the Defeasance Date of such Total Defeasance Event and up to and including the Lockout Expiration Date (or any date thereafter as specified by Borrower on or prior to the Defeasance Date), and (b) in amounts equal to or greater than the Scheduled Defeasance Payments relating to such Total Defeasance Event.

"Total Defeasance Date" shall have the meaning set forth in Section 2.4.1(a).

"Total Defeasance Event" shall have the meaning set forth in Section 2.4.1.

"Transfer" shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any legal or beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of any legal or beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A "Transfer" shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell the Property, or Borrower agrees to sell the Collateral, or any part thereof for a price to be paid in installments; (b) an agreement by Mortgage Borrower to lease all or any part of the Property other than pursuant to the Master Lease and the Subleases in accordance with the terms of the Mortgage Loan Agreement (including without limitation, Sections 5.1.22 and 8.8 of the Mortgage Loan Agreement), or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower's right, title and interest in and to the Master Lease, any Subleases or any Rents except in favor of Mortgage Lender in accordance with the Mortgage Loan Documents; (c) if a Restricted Party is a corporation, any merger or consolidation, or any sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of such corporation's stock, or the creation or issuance of new stock in one or a series of transactions; (d) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation, or any sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests, or the change, removal, resignation or addition of a general partner, or the creation or issuance of new partnership interests; (e) if a Restricted Party is a limited liability company, any merger or consolidation, or any sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of the membership interest of any member or any profits or proceeds relating to such membership interest, or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member); or (f) if a Restricted Party is a trust or nominee trust, any merger or consolidation, or sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of the legal or beneficial interest in such Restricted Party, or the creation or issuance of new legal or beneficial interests.

"Transferee Borrower" shall have the meaning set forth in Section 8.7.

"Transferee Mortgage Borrower" shall have the meaning set forth in Section 8.7.

"True Lease Opinion" shall mean that certain true lease opinion letter dated the date hereof delivered by Sullivan & Cromwell LLP in connection with the Loan.

"UCC" or "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in the State of Delaware or New York, as applicable, from time to time.

"Unaffiliated Business" shall mean a business being operated at an Individual Property where either or both of the following conditions are satisfied: (a) such business is a Third-Party Brand restaurant or is any other business that is not a Concept restaurant; and/or (b) the Tenant operating such business is the subtenant under an Unaffiliated Sublease.

"Undefeased Note" shall have the meaning set forth in Section 2.4.2(d) hereof.

"Upper Tier Entity" shall mean any of Guarantor or any direct or indirect parent of Guarantor.

"U.S. Government Obligations" shall mean any direct obligations of, or obligations guaranteed as to principal and interest by, the United States Government or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States of America. Any such obligation must be limited to instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If any such obligation is rated by S&P, it shall not have an "r" highlighter affixed to its rating. Interest must be fixed or tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with said index. U.S. Government Obligations include, but are not limited to: U.S. Treasury direct or fully guaranteed obligations, Farmers Home Administration certificates of beneficial ownership, General Services Administration participation certificates, U.S. Maritime Administration guaranteed Title XI financing, Small Business Administration guaranteed participation certificates or guaranteed pool certificates, U.S. Department of Housing and Urban Development local authority bonds, and Washington Metropolitan Area Transit Authority guaranteed transit bonds. In no event shall any such obligation have a maturity in excess of 365 days.

"U.S. Securities" shall mean obligations or securities not subject to prepayment, call or early redemption which are (a) obligations of, or obligations fully guaranteed as to timely payment by, the United States of America or (b) obligations of any agency or instrumentality of the United States of America that qualify as "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

"wholly-owned" shall mean, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by Legal Requirements) are owned by such Person and/or by one or more wholly-owned Subsidiaries of such Person.

"Yield Maintenance Premium" shall mean the amount (if any) which, when added to the aggregate outstanding principal amount of the Loan (or any portion thereof evidenced by any Undefeased Note as applicable, but excluding any Defeased Note) will be sufficient to purchase U.S. Securities providing the required Scheduled Defeasance Payments.

1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. All references to the Mortgage Loan Agreement, the Mortgage Note or any other Mortgage Loan Document shall mean the Mortgage Loan Agreement, the Mortgage Note or such other Mortgage Loan Document as in effect on the date hereof, as each of the same may hereafter be amended, restated, replaced, supplemented or otherwise modified as permitted by Section 5.1.22(b), and to the extent Lender's consent is required pursuant to Section 5.1.22(b), only to the extent that Lender's consent has been obtained. Capitalized terms defined in the Mortgage Loan Agreement that are used but not defined herein shall have the respective meanings assigned to them in the Mortgage Loan Agreement as of the date hereof, and no modifications to the Mortgage Loan Agreement shall have the effect of changing such definitions for the purposes of this Agreement unless Lender expressly agrees that such definitions as used in this Agreement have been revised to the extent Lender's consent is required pursuant to Section 5.1.22(b).

II. GENERAL TERMS

2.1 Loan; Disbursement to Borrower.

2.1.1 The Loan. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower. Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Lender to Borrower on the Closing Date.

2.1.3 The Note, Pledge and Loan Documents. The Loan shall be evidenced by the Note and secured by the Pledge, this Agreement and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower may use the proceeds of the Loan only (i) as a contribution to Mortgage Borrower to (a) acquire and refinance the Property, (b) make deposits into the Holding Account (and/or the Sub Accounts thereof) as required under the Mortgage Loan Agreement, (c) pay Mortgage Trust Fund Expenses due and payable on the Closing Date and (d) pay costs and expenses incurred in connection with the closing of the Mortgage Loan, and (ii) pay costs and expenses incurred in connection with the closing of the Loan.

2.2 Interest; Loan Payments; Late Payment Charge.

2.2.1 Payment and Accrual of Interest.

(i) Except as set forth in Section 2.2.1(ii), interest shall accrue on the outstanding principal balance of the Loan during each Interest Period at the Interest Rate.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the Loan and shall be secured by the Pledge. This clause (ii) shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default, and Lender retains its rights under the Loan Documents to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

(iii) Except as expressly set forth herein to the contrary, interest shall accrue on all amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents (other than the Principal Amount, which shall accrue interest in accordance with clauses (i) and (ii) above) at the Default Rate.

(iv) Interest on the Principal Amount shall accrue and be computed based on the daily rate produced assuming a three hundred sixty (360) day year, consisting of twelve (12) months of thirty (30) days each, determined (a) for each Interest Period (other than the Initial Interest Period) as one-twelfth (1/12th) of the aggregate annualized interest that would accrue on such Principal Amount at the Interest Rate, and (b) for the Initial Interest Period, as the product of (x) one-twelfth (1/12th) of the aggregate annualized interest that would accrue on such Principal Amount at the Interest Rate multiplied by (y) a fraction the numerator of which is the number of days from and including the Closing Date through and including the last day of the Initial Interest Period, and the denominator of which is 30. The accrual period for calculating interest due on each Payment Date shall be the Interest Period ending immediately prior to such Payment Date.

(v) The provisions of this Section 2.2.1 are subject in all events to the provisions of Section 2.2.4 below.

2.2.2 Payment of Monthly Payment Amount; Application of Principal; Method and Place of Payment.

(a) On each Payment Date, Borrower shall pay to Lender consecutive monthly installments of principal and interest in an amount equal to the Monthly Payment Amount until the entire Indebtedness is fully paid, except that any remaining Indebtedness, if not sooner paid, shall be due and payable on the Maturity Date; provided, however, that on the first Payment Date (occurring on April 10, 2012), Borrower shall pay to Lender interest only on the Principal Amount accruing during the Initial Interest Period at the Interest Rate, with no principal amortization due on such first Payment Date.

(b) All payments made by Borrower hereunder or under any of the Loan Documents shall be made on or before 2:00 p.m. New York City time. Any payments received after such time shall be credited to the next following Business Day.

(c) All amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents, other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents. In the event any such advance or charge is not so repaid by Borrower, Lender may, at its option, first apply any payments received under the Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents, and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(d) The entire Principal Amount, all unpaid accrued interest (including all Applicable Interest) and all other fees and sums then payable hereunder or under the Loan Documents, including, without limitation the Yield Maintenance Premium (if applicable), shall be due and payable in full on the Maturity Date.

(e) Amounts due hereunder shall be payable, without any counterclaim, setoff or deduction whatsoever, at the office of Lender or its agent or designee at the address set forth on the first page of this Agreement or at such other place as Lender or its agent or designee may from time to time designate in writing.

(f) All amounts due hereunder, including, without limitation, interest and the Principal Amount, shall be due and payable in lawful money of the United States of America.

(g) To the extent that Borrower makes a payment or Lender receives any payment or proceeds for Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the obligations of Borrower hereunder intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Lender.

(h) All sums received by Lender on account of the Loan shall be applied to each Note pro rata based on relative principal balances.

2.2.3 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (other than the outstanding Principal Amount due and payable on the Maturity Date) is not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal Rate (the " Late Payment Charge") in order to defray the expense

incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Security Instrument and the other Loan Documents to the extent permitted by applicable law.

2.2.4 Usury Savings. This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of the Maximum Legal Rate, then the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.3 Prepayments.

2.3.1 Voluntary Prepayments. Except as otherwise provided in this Agreement, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Stated Maturity Date. Notwithstanding the foregoing, on the Payment Date occurring in January, 2017 (the " Lockout Expiration Date") and on any Business Day thereafter, Borrower may, at its option and upon ten (10) Business Days' prior written notice to Lender (provided such notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment), prepay the entire Principal Amount in whole (but not in part) without payment of the Yield Maintenance Premium or other penalty or premium; provided that as a condition precedent to such prepayment, Borrower shall also cause Mortgage Borrower to prepay the entire Principal Amount (Mortgage) in whole in accordance with the terms of the Mortgage Loan Agreement simultaneously with such prepayment of the entire Principal Amount. If Borrower prepays the entire Principal Amount, Borrower shall pay Lender, in addition to the Principal Amount, all Applicable Interest. Except in connection with a prepayment of the Floating Rate Component (Mortgage) as expressly permitted under the Mortgage Loan Agreement, Borrower shall not consent to or permit a prepayment of the Mortgage Loan (other than in connection with the simultaneous repayment of the Loan, in its entirety and in accordance with the terms and provisions of the Loan Documents and the Mortgage Loan Documents, respectively), unless it obtains the prior written consent of Lender, which consent may be given or withheld by Lender in its sole discretion.

2.3.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Proceeds in accordance with Section 6.2.3 of the Mortgage Loan Agreement, (a) such Proceeds shall be applied to prepay the Principal Amount to the extent of the Release Price for the affected Individual Property in accordance with the terms hereof, and such amount prepaid by Borrower shall result in a corresponding reduction of the Release Price and the Combined Release Price of the affected Individual Property, (b) Borrower shall pay to Lender all Applicable Interest, and (c) Borrower shall pay (without duplication) all reasonable costs and expenses of Lender incurred in connection with such prepayment (including without limitation, any reasonable attorneys' fees and expenses). Notwithstanding anything to the contrary contained herein, if the Proceeds applied by Mortgage Lender, Lender and Second Mezzanine Lender in accordance with Section 6.2.3 of the Mortgage Loan Agreement (together with any other prepayment or defeasance permitted under this Agreement, the Mortgage Loan Agreement and the Second Mezzanine Loan Agreement) equal or exceed the Combined Release Price for the applicable Individual Property, then Lender hereby agrees that Borrower shall be entitled to cause Mortgage Borrower to obtain a Property Release for such Individual Property consistent with, and subject to, the terms of Section 6.2.3 of the Mortgage Loan Agreement, and neither the release of such Individual Property from the Lien of the applicable Security Instrument and related Loan Documents and Mortgage Loan Documents, the Transfer of such Individual Property or the amendment of the Master Lease pursuant to Section 3.2.6(a)(xiv) of the Master Lease shall be deemed an Event of Default hereunder or under the other Loan Documents.

2.3.3 Prepayments After Event of Default; Application of Amounts Paid . If, after the occurrence and during the continuance of an Event of Default, Lender shall accelerate the Indebtedness and Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all Applicable Interest and all other fees and sums payable hereunder or under the Loan Documents, including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges, (b) such payment shall be deemed a voluntary prepayment by Borrower, and (c) to the extent that the same would, if a prepayment, be prohibited under Section 2.3.1, Borrower shall pay, in addition to the Indebtedness, an amount equal to the greater of (i) three percent (3%) of the then outstanding principal amount of the Loan to be prepaid or satisfied (excluding any portion thereof evidenced by Defeased Notes), or (ii) the Yield Maintenance Premium in respect of the then outstanding principal amount of the Loan to be prepaid or satisfied (excluding any portion thereof evidenced by Defeased Notes).

2.3.4 Reserved.

2.3.5 Release of All Collateral.

(a) Upon Repayment in Full of Loan. If Borrower has repaid the entire Principal Amount in accordance with Section 2.3.1 or Section 2.3.3 and paid to Lender all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, then Lender shall release the Lien of this Agreement and the Pledge upon the Collateral (or assign it (together with the Note), in whole or in part, to a new lender without representation, warranty or recourse). In such event, Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release or assignment, a release of lien or assignment of lien, as applicable, for such Collateral for execution by Lender. Such

release or assignment, as applicable, shall be in a form satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release or assignment, as applicable.

(b) Upon Total Defeasance Event. If Borrower has defeased the Loan in its entirety in accordance with Section 2.4.1, and paid to Lender all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, then Lender shall release the Lien of this Agreement and the Pledge upon the Collateral (or assign it to a new lender without representation, warranty or recourse), and the U.S. Securities constituting the Total Defeasance Collateral, pledged pursuant to the Defeasance Security Agreement, shall be the sole source of collateral securing the Note. In such event, Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release or assignment, a release of lien for such Collateral for execution by Lender. Such release shall be in a form satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release.

2.3.6 Release of Individual Properties and Outparcels.

(a) Individual Properties. In the event Mortgage Borrower requests the release of any Individual Property from the Lien of the applicable Security Instrument and related Mortgage Loan Documents (or to the extent so requested by Mortgage Borrower, the assignment of the Lien of the applicable Security Instrument to a new lender without representation, warranty or recourse) (each release under this Section 2.3.6, a "Property Release"), subject to satisfaction of each of the conditions set forth below with respect to such Individual Property, Lender shall consent to such Property Release and the other actions to be taken by Mortgage Lender in accordance with Section 2.3.6 of the Mortgage Loan Agreement with respect to such Individual Property (each a " Release Property"):

(i) Borrower shall deliver a written notice (a "Property Release Notice") to Lender of its desire to cause Mortgage Borrower to effect such Property Release no later than thirty (30) days prior to the date of such desired Property Release, and setting forth the Business Day (the " Release Date") on which Borrower desires that Mortgage Lender release its interest in such Release Property (provided such Property Release Notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment);

(ii) Borrower shall cause Mortgage Borrower to either:

(A) if the outstanding principal balance of the Floating Rate Component (Mortgage) is greater than or equal to the Combined Release Price for the Release Property, pay to Mortgage Lender (x) the Combined Release Price for the Release Property, to be applied in reduction of the Floating Rate Component (Mortgage), (y) all Applicable Interest (Mortgage) on the portion of the Floating Rate Component (Mortgage) being repaid, and (z) all other sums due and payable under the Mortgage Loan Agreement, the Mortgage Note, the Security Instrument and the other Mortgage Loan Documents through and including the Release Date; or

(B) if the outstanding principal balance of the Floating Rate Component (Mortgage) has previously been reduced to zero, partially defease the Fixed Rate Components (Mortgage) in an aggregate amount equal to the Release Price (Mortgage) for the Release Property, in accordance with Section 2.4.2 of the Mortgage Loan Agreement; or

(C) if the outstanding principal balance of the Floating Rate Component (Mortgage) is greater than zero but less than the Combined Release Price for the Release Property, then (x) pay to Mortgage Lender the outstanding principal balance of the Floating Rate Component (Mortgage), to be applied in reduction of the Floating Rate Component (Mortgage), (y) pay to Mortgage Lender the amounts specified in clauses (y) and (z) of subparagraph (ii)(A) above, and (z) if and only if the outstanding principal balance of the Floating Rate Component (Mortgage) being repaid pursuant to clause (x) of this subparagraph (C) is less than the Release Price (Mortgage) for the Release Property, partially defease the Fixed Rate Components (Mortgage) in an amount equal to the positive difference between the Release Price (Mortgage) for the Release Property and the outstanding principal balance of the Floating Rate Component (Mortgage) being repaid, in accordance with Section 2.4.2 of the Mortgage Loan Agreement;

(iii) as a condition precedent to a Property Release when the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Combined Release Price for the Release Property, on the Release Date, Borrower shall partially defease the Loan in accordance with the provisions of this Agreement, in an amount equal to either:

(A) if the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Release Price (Mortgage) or has previously been reduced to zero, then the Release Price for the Release Property; otherwise

(B) the amount by which the Combined Release Price for the Release Property exceeds the outstanding principal balance of the Floating Rate Component (Mortgage), multiplied by a fraction, the numerator of which is the principal balance of the Loan immediately prior to the Property Release, and the denominator of which is the aggregate principal balance of all Mezzanine Loans immediately prior to the Property Release.

(iv) as a condition precedent to a Property Release when the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Combined Release Price for the Release Property, but not as a direct covenant of Borrower, on the Release Date, Second Mezzanine Borrower shall partially defease the Second Mezzanine Loan in accordance with the provisions of the Second Mezzanine Loan Agreement, in an amount equal to either:

(A) if the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Release Price (Mortgage) or has previously been reduced to zero, then the applicable Release Price (Second Mezzanine) for the Release Property; otherwise

(B) the amount by which the Combined Release Price for the Release Property exceeds the outstanding principal balance of the Floating Rate Component (Mortgage), multiplied by a fraction, the numerator of which is the principal balance of the Second Mezzanine Loan immediately prior to the Property Release, and the denominator of which is the aggregate principal balance of all Mezzanine Loans immediately prior to the Property Release. This paragraph (iv) shall not create a debtor-creditor relationship between Borrower and Second Mezzanine Lender;

(v) Borrower shall deliver to Lender not less than ten (10) Business Days prior to the Release Date (which must be on a Business Day) all documentation that may be reasonably required by Lender to be delivered by Borrower in connection with such Property Release (collectively, " Release Instruments"), together with an Officer's Certificate certifying that (A) any and all Release Instruments, if applicable, are in compliance with all Legal Requirements, (B) the release to be effected will not violate the terms of this Agreement, (C) the release to be effected will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released and (D) the requirement described in paragraph (vi) below is satisfied in connection with such Property Release (together with calculations and supporting documentation demonstrating the same in reasonable detail);

(vi) with respect to any Property Release (other than an Excluded Release), after giving effect to such Property Release, the Lease Coverage Ratio as of the Release Date for all of the Individual Properties then remaining subject to the Liens of the Security Instrument shall not be less than the greater of (A) the Closing Date Lease Coverage Ratio and (B) the Lease Coverage Ratio for the Individual Properties subject to the Lien of the Security Instrument immediately prior to the Release Date;

(vii) no Event of Default shall have occurred and then be continuing on the date on which Borrower delivers the Property Release Notice or on the Release Date (except as provided in the last grammatical paragraph of this Section 2.3.6(a));

(viii) the Release Property is simultaneously transferred pursuant to a bona fide all-cash sale on arms-length terms and conditions;

(ix) Borrower shall cause Mortgage Borrower to execute and deliver such other instruments, certificates, opinions of counsel and documentation as Mortgage Lender shall reasonably request in order to preserve, confirm or secure the Liens and security granted to Mortgage Lender by the Mortgage Loan Documents, including any amendments, modifications or supplements to any of the Mortgage Loan Documents;

(x) Borrower shall pay for any and all reasonable out-of-pocket costs and expenses incurred in connection with any proposed Property Release, including Lender's reasonable attorneys' fees and disbursements;

(xi) prior to the Release Date, Borrower shall deliver to Lender evidence reasonably satisfactory to Lender that all amounts owing to any parties in connection with the transaction relating to the proposed Property Release have been paid in full, or will simultaneously be paid in full on the Release Date or adequate reserves therefor are established by Borrower in cash with respect to contingent or other liabilities that may arise out of such transaction and for which Borrower is not adequately indemnified or insured against as reasonably determined by Lender;

(xii) as a condition precedent to a Property Release, on the Release Date, Borrower shall cause Mortgage Borrower to satisfy all conditions to such Property Release set forth in the Mortgage Loan Documents;

(xiii) as a condition precedent to a Property Release but not as a direct covenant of Borrower, on the Release Date, Second Mezzanine Borrower shall have satisfied all conditions to such Property Release set forth in the Second Mezzanine Loan Documents; provided that this paragraph (xiii) shall not create a debtor-creditor relationship between Borrower and Second Mezzanine Lender;

(xiv) the transfer of the Release Property in connection with the Property Release does not trigger any rights of first refusal or purchase options in any Operating Agreements, including, but not limited to the rights or obligations set forth on Schedule VI of the Mortgage Loan Agreement as to any remaining Property unless the same have been waived or terminated by the holder thereof;

(xv) following such Property Release, Mortgage Borrower and Borrower shall each continue to be a Single Purpose Entity and comply with all provisions of the Loan Documents pertaining to a Single Purpose Entity; and

(xvi) Borrower shall cause Mortgage Borrower to enter into an amendment to the Master Lease with Master Lessee (A) to effect the reduction in the Master Lease Base Rent by an amount not to exceed the amount allocable to such Individual Property as set forth on Schedule IV to the Mortgage Loan Agreement, and (B) to cause such Release Property to be removed from the Master Lease, including amending the legal description of the "Leased Property" (as defined therein) to effect such removal.

Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, if on the date Borrower delivers a Property Release Notice, (a) a Default or Event of Default has occurred and is continuing which relates solely to the Individual Property or Individual Properties subject to the proposed Property Release (each or any such Default or Event of Default, a " Release Property-Specific Default"), (b) the Allocated Loan Amounts of such Individual Properties do not exceed, in the aggregate of all Individual Properties that are then subject to a Release Property-Specific Default, 15% of the Principal Amount, and (c) no other Default or Event of Default exists, Borrower shall not be prohibited from causing Mortgage Borrower to exercise a release with respect to such Individual Property or Individual Properties and such Release-Property-Specific Default will be deemed to have been cured upon completion of the Property Release of such Individual Property or Individual Properties by (1) delivery of such Property Release Notice and (2) completion of the Property Release of such Individual Property or Individual Properties; provided, that, if Borrower fails to cause Mortgage Borrower to complete the Property Release of each Individual Property then subject to a Release-Property-Specific Default by a Release Date that is not more than forty-five (45) days after receiving written notice from Lender or otherwise obtaining actual knowledge of the occurrence of such Release Property-Specific Default, such Default or Event of Default shall be deemed not to have been cured by delivery of such Property Release Notice and shall be retroactive to the date such Default or Event of Default first occurred.

(b) Outparcels. Provided that (i) no Event of Default has occurred and is continuing, and (ii) Mortgage Borrower shall have satisfied each of the conditions set forth in Section 2.3.6(b) of the Mortgage Loan Agreement, Borrower shall be permitted to cause Mortgage Borrower to request that Mortgage Lender release certain Outparcels in accordance with the terms of Section 2.3.6(b) of the Mortgage Loan Agreement without the consent of Lender.

2.3.7 Provisions Relating to Individual Properties That Go Dark .

(a) At any one time and from time to time, Borrower may cause Mortgage Borrower to allow Restaurant Locations to Go Dark provided that (i) the number of Go Dark Restaurant Locations plus the number of Restaurant Locations that are being operated as one or more Unaffiliated Businesses (without duplication) does not exceed the Go Dark/Sublease Limit at any time, and (ii) in no event may Borrower cause Mortgage Borrower to allow any Go Dark Purchase Option Property to Go Dark unless the holder of the purchase right, termination right, recapture right, option or similar right has irrevocably waived in writing such rights with respect to the period during which such Go Dark Purchase Option Property continues to be a Go Dark Restaurant Location. If the number of Go Dark Restaurant Locations plus the number of Restaurant Locations that are being operated as one or more Unaffiliated Businesses (without duplication) exceeds the Go Dark/Sublease Limit at any time, then within thirty (30) days of such Go Dark/Sublease Limit being exceeded, Borrower shall cause Mortgage Borrower to cause one or more Individual Properties to be released from the Lien of the applicable Security Instrument in accordance with Section 2.3.6 hereof such that the number of Go Dark Restaurant Locations plus the number of Restaurant Locations that are being operated as one or more Unaffiliated Businesses (without duplication) does not exceed the Go Dark/Sublease Limit.

(b) If any Restaurant Location shall Go Dark, Borrower will promptly send written notice thereof to Lender. If any Restaurant Location shall Go Dark, the full Master Lease Rent payment as and when, and to the extent, required under the Master Lease and the Master Lease Rent Payment Direction Letter with respect to all Restaurant Locations that are leased pursuant to the Master Lease shall nonetheless be required to be deposited into the Holding Account without reduction.

2.4 Defeasance. Provided no Event of Default shall have occurred and be continuing, Borrower shall have the right at any time after the Closing Date to voluntarily defease all or any portion of the Loan by and upon satisfaction of the following conditions (such event being a " Defeasance Event"):

2.4.1 Conditions to Total Defeasance Event. Provided that Mortgage Borrower shall have paid in full the Floating Rate Component (Mortgage) (either previously or simultaneously with the Total Defeasance Event), Borrower shall have the right to voluntarily defease the entire outstanding principal balance of the Loan without Yield Maintenance Premium or other premium or penalty and obtain a release of the Lien of the Pledge and this Agreement by providing Lender with the Total Defeasance Collateral (herein, a "Total Defeasance Event"), subject to the satisfaction of the following conditions precedent:

(a) Except as otherwise set forth herein, Borrower shall have delivered to Lender all documentary deliveries required pursuant to this Section 2.4.1 at least thirty (30) days prior to the requested effective date of such proposed Total Defeasance Event and shall specify a date (the " Total Defeasance Date") on which the Total Defeasance Event is to occur (provided such notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment);

(b) Borrower shall pay to Lender (i) all payments of principal and interest due on the Loan to and including the Total Defeasance Date, and (ii) all other sums then due on such Total Defeasance Date under the Note, this Agreement, the Pledge and the other Loan Documents;

(c) Borrower shall deposit the Total Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Section 2.4.3 hereof;

(d) Borrower shall execute and deliver to Lender a Defeasance Security Agreement in respect of the Defeasance Collateral Account and the Total Defeasance Collateral;

(e) Borrower shall deliver to Lender (i) an Opinion of Counsel for Borrower that is reasonably satisfactory to Lender opining that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Total Defeasance Collateral, and (B) the Total Defeasance Event pursuant to this Section 2.4.1 does not constitute a "significant modification" under Section 1001 of the Code, will not cause any Securitization vehicle to fail to qualify as a grantor trust under the Code and will not cause a federal income tax to be imposed on any Securitization vehicle and (ii) a non-consolidation opinion with respect to the Successor Borrower;

(f) reserved;

(g) On or prior to the Total Defeasance Date, Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.4.1 have been satisfied;

(h) Borrower shall deliver a certificate of an Independent certified public accounting firm reasonably acceptable to Lender certifying that the Total Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(i) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request, to the extent such delivery would be required by a reasonably prudent lender defeasing mortgage loans for securitization similar to the Loan, provided that Borrower shall not be required to deliver any certificate, opinion, document or instrument that would increase Borrower's obligations or liabilities under this Agreement or any other Loan Document;

(j) Borrower shall pay to Lender a defeasance and release fee in an amount equal to $10,000; and

(k) Borrower shall pay all reasonable out-of-pocket costs and expenses of Lender incurred in connection with the Total Defeasance Event, including Lender's reasonable attorneys' fees and expenses.

Notwithstanding the foregoing, Borrower shall not consent to or permit a total defeasance of the Mortgage Loan (other than in connection with a simultaneous defeasance of the Loan in its entirety in accordance with the terms and conditions of the Loan Documents), unless it obtains the prior written consent of Lender, which consent may be given or withheld by Lender in its sole discretion.

2.4.2 Conditions to Partial Defeasance. Provided that Mortgage Borrower shall have paid in full the Floating Rate Component (Mortgage) (either previously or simultaneously with the Partial Defeasance Event), Borrower shall have the right to voluntarily defease a portion of the outstanding principal balance of the Loan without Yield Maintenance Premium or other premium or penalty, in connection with a Property Release consummated in accordance with Section 2.3.6(a), by providing Lender with the Partial Defeasance Collateral (herein, a " Partial Defeasance Event"), subject to the satisfaction of the following conditions precedent:

(a) Except as otherwise set forth herein, Borrower shall have delivered to Lender all documentary deliveries required pursuant to this Section 2.4.2 at least thirty (30) days prior to the requested effective date of such proposed Partial Defeasance Event and shall specify a date (the " Partial Defeasance Date") on which the Partial Defeasance Event is to occur (provided such notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment);

(b) Borrower shall pay to Lender (i) all payments of principal and interest due on the Loan to and including the Partial Defeasance Date, and (ii) all other sums then due on such Partial Defeasance Date under the Note, this Agreement, the Pledge and the other Loan Documents;

(c) Borrower shall deposit the Partial Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Section 2.4.3 hereof;

(d) Borrower shall prepare all necessary documents to modify this Agreement and to amend and restate the Note and issue substitute notes, with one or more substitute notes having an aggregate principal balance equal to the aggregate Release Price for the Release Property or Release Properties (collectively, the "Defeased Note"), and one or more substitute notes having a principal balance equal to the excess of (i) the original principal amount of the Loan, over (ii) the amount of the Defeased Note and any prior Defeased Note issued (collectively, the " Undefeased Note"). The Defeased Note and Undefeased Note shall have identical terms as the Note except for the principal balance and the monthly payment amount. The Defeased Note and the Undefeased Note shall not be cross defaulted or cross collateralized. A Defeased Note may not

be the subject of any further defeasance, and all amounts paid in reduction of the principal balance thereof will be exclusively from the Scheduled Defeasance Payments in accordance herewith. In addition, a Defeased Note may be repaid in whole in connection with a repayment of the entire Loan on or after the Lockout Expiration Date in accordance with the terms hereof. For the avoidance of doubt, in connection with any Partial Defeasance Event, each Note shall be substituted with a Defeased Note and an Undefeased Note with the applicable principal balances thereof equal to such Note's ratable portion (based on outstanding principal balances) for the Defeased Note and the Undefeased Note determined in accordance with the above but assuming the Loan was evidenced by one Note instead of multiple Notes;

(e) Borrower shall execute and deliver to Lender a Defeasance Security Agreement in respect of the Defeasance Collateral Account and the Partial Defeasance Collateral;

(f) Borrower shall deliver to Lender (i) an Opinion of Counsel for Borrower that is reasonably satisfactory to Lender opining that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Partial Defeasance Collateral and (B) that the Partial Defeasance Event pursuant to this Section 2.4.2 does not constitute a "significant modification" under Section 1001 of the Code, will not cause any Securitization vehicle to fail to qualify as a grantor trust under the Code and will not cause any federal income tax to be imposed on any Securitization vehicle and (ii) a non-consolidation opinion with respect to the Successor Borrower;

(g) reserved;

(h) on or prior to the Partial Defeasance Date, Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.4.2 have been satisfied;

(i) Borrower shall deliver a certificate of an Independent certified public accounting firm reasonably acceptable to Lender certifying that the Partial Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(j) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request, to the extent such delivery would be required by a reasonably prudent lender defeasing mortgage loans for securitization similar to the Loan, provided that Borrower shall not be required to deliver any certificate, opinion, document or instrument that would increase Borrower's obligations or liabilities under this Agreement or any other Loan Document;

(k) Borrower shall pay to Lender a defeasance and release fee in an amount equal to $10,000;

(l) Borrower shall pay all reasonable out-of-pocket costs and expenses of Lender incurred in connection with the Partial Defeasance Event, including Lender's reasonable attorneys' fees and expenses;

(m) Borrower shall have complied with the provisions of Section 2.3.6 with respect to the Individual Property or Individual Properties being released; and

(n) as a condition precedent to a Partial Defeasance Event, on the Defeasance Date, Borrower shall cause Mortgage Borrower to partially defease the Mortgage Loan in accordance with the provisions of the Mortgage Loan Agreement in the amount specified in Section 2.3.6(a)(ii); and

(o) as a condition precedent to a Partial Defeasance Event but not as a direct covenant of Borrower, on the Defeasance Date, Second Mezzanine Borrower shall have partially defeased the Second Mezzanine Loan in accordance with the provisions of the Second Mezzanine Loan Agreement in the amount specified in Section 2.3.6(a)(iv).

2.4.3 Defeasance Collateral Account. On or before the date on which Borrower delivers the Total Defeasance Collateral or Partial Defeasance Collateral, as applicable, Borrower shall open at any Eligible Institution the defeasance collateral account (the " Defeasance Collateral Account") which shall at all times be an Eligible Account. The Defeasance Collateral Account shall contain only (a) Total Defeasance Collateral or the applicable Partial Defeasance Collateral, and (b) cash from interest and principal paid on the Total Defeasance Collateral or the applicable Partial Defeasance Collateral. All cash from interest and principal payments paid on the Total Defeasance Collateral or Partial Defeasance Collateral shall be paid over to Lender on each Payment Date and applied in accordance with the terms of this Agreement. Following the payment of all Scheduled Defeasance Payments, any cash from interest and principal paid on the Total Defeasance Collateral or Partial Defeasance Collateral in excess of the amounts necessary to pay the Scheduled Defeasance Payments shall be paid to Borrower or, if there is a Successor Borrower, to Successor Borrower. Borrower shall cause the Eligible Institution at which the Total Defeasance Collateral or Partial Defeasance Collateral is deposited to enter into an agreement with Borrower or Successor Borrower, as applicable, and Lender, satisfactory to Lender in its reasonable discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Total Defeasance Collateral or Partial Defeasance Collateral in accordance with this Agreement. Borrower or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Total Defeasance Collateral or Partial Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrower shall pay all costs and expenses associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account. At Borrower's election, different Defeasance Collateral Accounts may be established for each defeasance consummated pursuant to this Agreement.

2.4.4 Successor Borrower. In connection with a Defeasance Event under this Section 2.4, Borrower shall, if reasonably required by Lender or if Borrower elects to do so, establish or designate a successor entity (the " Successor Borrower") which shall be a single purpose bankruptcy remote entity and which shall be reasonably approved by Lender. Any such Successor Borrower may, at Borrower's option, be an Affiliate of Borrower unless Lender shall reasonably require otherwise. Borrower shall transfer and assign all obligations, rights and duties under and to the Note (in connection with a Total Defeasance Event) and under the Defeased Note (in connection with a Partial Defeasance Event), together with the Total Defeasance Collateral or Partial Defeasance Collateral, as applicable, to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note (in connection with a Total Defeasance Event) and under the Defeased Note (in connection with a Partial

Defeasance Event) and the Defeasance Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay all reasonable, out-of-pocket costs and expenses incurred by Lender, including Lender's reasonable attorney's fees and expenses, incurred in connection therewith. A different Successor Borrower may be established for each defeasance consummated pursuant to this Agreement.

2.5 Regulatory Change; Taxes.

2.5.1 Increased Costs. If as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation of payments to Lender or any company Controlling Lender of the principal of or interest on the Loan is changed or Lender or the company Controlling Lender shall be subject to (i) any Tax, duty, charge or withholding of any kind with respect to this Agreement (excluding taxation of the overall net income of Lender or the company Controlling Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Lender or any company Controlling Lender is imposed, modified or deemed applicable; and Lender determines that, by reason thereof, the cost to Lender or any company Controlling Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by Lender or any company Controlling Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called " Increased Costs"), then Lender shall provide notice thereof to Borrower and Borrower agrees that it will pay to Lender upon Lender's written request such additional amount or amounts as will compensate Lender or any company Controlling Lender for such Increased Costs to the extent Lender determines that such Increased Costs are allocable to the Loan; provided, however, that with respect to the period during which the Loan is held by a Securitization trust, Borrower's liability under this Section 2.5.1 shall be limited to the Increased Costs to which such Securitization trust itself is subject, if any. If Lender requests compensation under this Section 2.5.1, Borrower may, by notice to Lender, require that Lender furnish to Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof. In the event that Borrower is required to pay any Increased Costs in accordance with the terms hereof, Borrower shall have the right to prepay the Principal Amount (together with all Applicable Interest) without the imposition of any Yield Maintenance Premium.

2.5.2 Special Taxes. Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.5.2) Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law. Notwithstanding anything to the contrary contained in this Section 2.5, Borrower shall not be liable for any amounts as a result of (a) withholding for Special Taxes or additional costs incurred as a result of the assignment of all or any portion of the Loan by Lender to any Person that is subject to Special Taxes at the time of such assignment, which Special Taxes

exceed the Special Taxes to which the assignor is subject, and which is organized under or has its principal place of business outside of the United States of America or any political subdivision thereof or (b) failure of Lender to comply with any certification, identification, information, documentation or other reporting requirement if (i) such compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or reduction in the rate of, deduction or withholding of any Special Taxes and (ii) at least thirty (30) days prior to the first Payment Date with respect to which Borrower shall apply this clause (b), Borrower shall have notified Lender that Lender will be required to comply with such requirement, provided, however, that the exclusion set forth in this clause (b) shall not apply in respect of any certification, identification, information, documentation or other reporting requirement if such requirement would be materially more onerous, in form, in procedure or in the substance of information disclosed, to Lender than comparable information or other reporting requirements imposed under U.S. Tax law, regulation and administrative practice (such as IRS Forms W-8BEN and W-9).

2.5.3 Other Taxes. In addition, Borrower agrees to pay any present or future stamp or documentary taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (hereinafter referred to as " Other Taxes").

2.5.4 Indemnity. Subject to the limitations in the last sentence of Section 2.5.2, Borrower shall indemnify Lender for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.5.4) paid by Lender and any liability (including penalties, interest, and reasonable out-of-pocket expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Lender makes written demand therefor.

2.5.5 Change of Office. To the extent that changing the jurisdiction of Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Lender.

2.5.6 Survival. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.5 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

III. CASH MANAGEMENT

3.1 Cash Management.

3.1.1 Establishment of Collateral Account. Borrower hereby acknowledges that (A) simultaneously with the execution of this Agreement, Lender (or Lender's Servicer on Lender's behalf) has established with Cash Management Bank, in the name of Lender (or

Lender's Servicer on Lender's behalf), an account (the "Collateral Account"), which has been established as a deposit account, (B) Lender (or Lender's Servicer on Lender's behalf) shall be the customer (within the meaning Section 4-104(a)(5) of the UCC) of Cash Management Bank with respect to the Collateral Account. The Collateral Account and the funds deposited therein shall serve as additional security for the Loan. Borrower shall not have any right to make, and shall not deliver any orders to Cash Management Bank for, and withdrawals from the Collateral Account. The Collateral Account shall be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement. For the avoidance of doubt, the Collateral Account is the same account as the First Mezzanine Account (as defined in the Mortgage Loan Agreement).

3.1.2 Pledge of Account Collateral. To secure the full and punctual payment and performance of the Obligations, Borrower hereby collaterally assigns, grants a security interest in and pledges to Lender, to the extent not prohibited by applicable law, a first priority continuing security interest in and to the following property of Borrower, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the "Account Collateral"):

(a) the Collateral Account and all cash, deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Account;

(b) all interest and cash from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Account unless released; and

(c) to the extent not covered by clauses (a) or (b) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Account Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts.

(a) Borrower agrees that the Collateral Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a)(29) of the UCC), (ii) in such a manner that Lender (or Lender's Servicer on behalf of Lender) is the customer (within the meaning of Section 4-104(a)(5) of the UCC) of the Cash Management Bank with respect to the Collateral Account and Lender (or such other Person designated in writing by Lender to Borrower from time to time) shall have control (within the meaning of Section 9-104(a)(2) of the UCC) over the Collateral Account, and (iii) such that Borrower shall have no right of withdrawal from the Collateral Account and, except as provided herein, no Account Collateral shall be released to Borrower from the Collateral Account.

(b) Notwithstanding Section 3.1.3(a)(i) above, Lender (or Lender's Servicer on behalf of Lender) shall be permitted to cause the Collateral Account to be maintained as "securities accounts" pursuant to Article 8 of the UCC, provided that (i) Lender is the entitlement holder (within the meaning of Section 8-102(a)(7) of the UCC) with respect to the Collateral Account, (ii) Lender (or such other Person designated in writing by Lender to Borrower from time to time) shall have control (within the meaning of Section 8-106(d) of the UCC) over such "securities account" and at all times Lender shall have a perfected first priority lien on the Collateral Account, (iii) such account shall be maintained in such a manner that the Cash Management Bank shall agree to treat all property credited to the Collateral Account as "financial assets" and, (iv) all securities or other property underlying any financial assets credited to the Collateral Account shall be registered in the name of Cash Management Bank, endorsed to Cash Management Bank or in blank or credited to another securities account maintained in the name of Cash Management Bank and in no case will any financial asset credited to any of the Collateral Account be registered in the name of Borrower, payable to the order of Borrower or specially endorsed to Borrower except to the extent the foregoing have been specially indorsed to Cash Management Bank or in blank.

3.1.4 Eligible Account. The Collateral Account shall be an Eligible Account. The Collateral Account shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Account or any investments held in such account shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement. Borrower shall be the beneficial owner of the Collateral Account for federal income tax purposes and shall report all income on the Collateral Account.

3.1.5 Cash Management Arrangement. Borrower shall cause Mortgage Borrower to cause all Rents to be deposited and applied in accordance with the Mortgage Loan Documents and shall cause Mortgage Borrower to at all times comply with the provisions of Article 3 of the Mortgage Loan Agreement. All funds deposited by the Mortgage Cash Management Bank into the Collateral Account shall be deemed to be a distribution from Mortgage Borrower to Borrower and shall be applied and disbursed in accordance with this Agreement.

3.1.6 Monthly Funding.

(a) Borrower hereby irrevocably authorizes Lender to transfer, and Lender shall transfer, from the Collateral Account by 11:00 a.m. New York time on each Payment Date, or as soon thereafter as there shall be sufficient collected funds on deposit in the Collateral Account, and from time to time (but no less frequently than weekly thereafter) to Lender funds in an amount equal to the sum of any Protective Advances which may have been advanced by (and not previously reimbursed to) Lender pursuant to the terms of the Loan Documents to cure any Default or Event of Default, any Mortgage Default or Mortgage Event of Default, or to protect the Collateral together with any interest payable on such amounts pursuant to the Loan Documents, plus (x) the unpaid Mezzanine Loan Debt Service Amount due on the Payment Date on which the transfer from the Collateral Account is made, plus (y) an amount equal to such payments for any prior month(s), to the extent not previously paid, plus (z) an amount equal to the amount, if any, deducted from the Collateral Account in any preceding month to pay any other amounts then due under the Loan Documents (other than any Mezzanine Loan Debt Service Amounts).

(b) If for any reason there will be insufficient amounts in the Collateral Account on any Payment Date to pay the Mezzanine Loan Debt Service Amount due on such Payment Date, Borrower shall immediately deposit into the Collateral Account an amount equal to the shortfall of available funds. Any failure by Borrower to deposit the full amount required by the preceding sentence shall constitute an Event of Default hereunder. If Lender shall reasonably determine that there will be insufficient amounts in the Collateral Account to pay any Protective Advances as and when the same are due and payable, Lender shall provide written notice of same to Borrower setting forth the basis for such determination. Within five (5) Business Days of receipt of said notice, Borrower shall deposit into the Collateral Account an amount equal to the shortfall of available funds in the Collateral Account. Any failure by Borrower to deposit the full amount required by the preceding sentence within said five (5) Business Day period shall constitute an Event of Default hereunder.

(c) Lender agrees to deliver to Mortgage Lender at least five (5) Business Days prior to each Payment Date a written notice setting forth the Mezzanine Loan Debt Service Amount payable by Borrower on the first Payment Date occurring after the date such notice is delivered (the " Mezzanine Lender Monthly Debt Service Notice"); provided, however, that any Mezzanine Lender Monthly Debt Service Notice sent to Mortgage Lender shall be applicable with respect to all future Payment Dates until Lender sends a new Mezzanine Lender Monthly Debt Service Notice to Mortgage Lender, it being understood that Lender will not be required to send a new Mezzanine Lender Monthly Debt Service Notice to Mortgage Lender unless and until the Mezzanine Loan Debt Service Amount due on the ensuing Payment Date is different from the Mezzanine Loan Debt Service Amount due on the immediately preceding Payment Date, and Mortgage Lender shall be permitted to rely on the most recently received Mezzanine Lender Monthly Debt Service Notice until Mortgage Lender receives a new Mezzanine Lender Monthly Debt Service Notice from Lender. Borrower agrees that Lender shall not be required to deliver to Mortgage Lender any additional notice with respect to distribution of Proceeds prior to the deposit of Proceeds into the Collateral Account.

(d) Borrower hereby acknowledges that, (i) pursuant to Section 3.1.6 of the Mortgage Loan Agreement, to the extent that a Mortgage Event of Default has occurred and is continuing, all Excess Cash Flow and any other payments that would otherwise be distributed to Borrower, Second Mezzanine Borrower, Lender or Second Mezzanine Lender are to be held in the Holding Account and applied in accordance with the Mortgage Loan Agreement (unless otherwise agreed to by Mortgage Lender) and (ii) to the extent required by, and in accordance with, Section 6.2.3(b) of the Mortgage Loan Agreement, any Proceeds will be disbursed to Lender to prepay the Loan in the amount of the Release Price for such Individual Property to which the Proceeds relate. Any Proceeds received by Mortgage Lender in excess of the release price specified in Section 6.2.3(b) of the Mortgage Loan Agreement for such affected Individual Property shall be paid in accordance with the payment priorities set forth in Section 6.2.3(b) of the Mortgage Loan Agreement.

(e) Borrower hereby also acknowledges that (i) Lender has the right to deliver notice to Mortgage Lender that an Event of Default has occurred and is continuing under the Loan Documents (a "Mezzanine Loan Default Notice"), and (ii) pursuant to the Mortgage Loan Agreement, provided there is no Mortgage Event of Default and to the extent Mortgage Lender has received a Mezzanine Loan Default Notice, Mortgage Borrower has irrevocably directed that all Excess Cash Flow is to be deposited directly into the Collateral Account for application as provided in this Agreement (in lieu of transferring such funds to the Mortgage Borrower's Account if Mortgage Lender had not received a Mezzanine Loan Default Notice) until such time as Mortgage Lender receives a notice from Lender that such Event of Default is no longer continuing.

(f) Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, payments or distributions made directly to or on behalf of Mortgage Borrower or Mortgage Lender, including the distribution or payment of any Asset Management Fee pursuant to the Mortgage Loan Agreement and any funds distributed or paid to the Mortgage Borrower's Account pursuant to the Mortgage Loan Agreement or to the Borrower's Account pursuant to this Agreement shall be free and clear of any lien of the Mortgage Loan Documents and the Loan Documents and may be paid, used, or distributed without the same being transferred to the Mortgage Collateral Account or the Collateral Account.

3.1.7 Cash Management Agreement Upon Repayment of Mortgage Loan . In the event that the Mortgage Loan has been fully repaid and the Loan has not been fully repaid, then Borrower shall, and shall cause Mortgage Borrower to, enter into a cash management agreement with Lender, in form and substance reasonably satisfactory to Lender (the "Replacement Cash Management Agreement"), that shall require, among other things, that Borrower and Mortgage Borrower establish certain accounts and reserves, and pledge such accounts and reserves to Lender as additional Collateral for the Loan, such that Lender has the same legal and economic rights and remedies as Mortgage Lender has under the cash management and reserve provisions of the Mortgage Loan Documents, including without limitation, Article 3 of the Mortgage Loan Agreement. Until such time as the Replacement Cash Management Agreement has been fully-executed, Borrower shall cause Mortgage Borrower to continue to comply with the cash management and reserve provisions of the Mortgage Loan Documents notwithstanding the repayment of the Mortgage Loan, provided that such performance by Mortgage Borrower shall be in favor of Lender rather than Mortgage Lender.

3.1.8 Cash Management Bank. Lender shall have the right at Borrower's sole cost and expense to replace the Cash Management Bank at any time with another Eligible Institution without the consent of, or notice to, Borrower. Borrower shall cooperate with Lender in connection with the appointment of any replacement Cash Management Bank. Borrower shall have no right to replace the Cash Management Bank.

3.1.9 Borrower's Representations, Warranties and Covenants Regarding Collateral Account . Borrower represents, warrants and covenants that:

(a) Borrower will not have any right, title or interest in or to any Excess Cash Flow during any period with respect to which Mortgage Lender is obligated under the Mortgage Loan Agreement to transfer such Excess Cash Flow to the Collateral Account, except any rights Borrower shall have to allocations of such funds following the disbursement to Borrower of any Excess Cash Flow as provided in Section 3.1.6(d).

(b) There are no accounts other than the Mortgage Collateral Account, the Collateral Account and the Second Mezzanine Collateral Account maintained by Mortgage Borrower, Borrower, Second Mezzanine Borrower or any other Person with respect to the collection of rents, revenues, proceeds or other income of Mortgage Borrower, Borrower or Second Mezzanine Borrower from the Property or for the collection of Proceeds in respect of Mortgage Borrower, Borrower or Second Mezzanine Borrower.

(c) So long as the Loan shall be outstanding, neither Mortgage Borrower, Borrower nor any other Person shall open any other accounts with respect to the collection of rents, revenues, proceeds or other income from the Property or for the collection of Proceeds in respect of Mortgage Borrower or Borrower, except as provided in the Mortgage Loan Agreement or this Agreement.

3.1.10 Account Collateral and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Lender to Borrower, (i) Lender may, in addition to and not in limitation of Lender's other rights, make any and all withdrawals from the Collateral Account as Lender shall determine in its sole and absolute discretion and in any order of priority to pay any Obligations, operating expenses and/or capital expenditures for the Property; and (ii) Distributions shall be retained in the Collateral Account.

(b) Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Account Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Lender may perform or cause performance of any such agreement, and any reasonable out-of-pocket expenses of Lender incurred in connection therewith shall be paid by Borrower as provided in Section 5.1.16.

(c) Except for any notice required by this Agreement and the related Loan Documents, Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind in connection with this Agreement or the Account Collateral. Borrower acknowledges and agrees that ten (10) days' prior written notice of the time and place of any public sale of the Account Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

3.1.11 Transfers and Other Liens. Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral or (ii) create or permit to exist any Lien upon or with respect to all or any of Borrower's interest in the Account Collateral, except for the Lien granted to Lender under this Agreement.

3.1.12 Reasonable Care. Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Account Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody of the Account Collateral in its possession if the Account Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. In no event shall Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Lender's reasonable control or for indirect, special or consequential damages except to the extent of Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Borrower acknowledges and agrees that (i) Cash Management Bank has custody of the Account Collateral, and (ii) Lender has no obligation or duty to supervise Cash Management Bank or to see to the safe custody of the Account Collateral.

3.1.13 Lender's Liability.

(a) Lender shall be responsible for the performance only of such duties with respect to the Account Collateral as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents, and no other duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with the transactions contemplated hereby with respect to the Account Collateral except as such may be caused by the gross negligence or willful misconduct of Lender, its employees, officers or agents.

(b) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.14 Continuing Security Interest. This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until payment in full of the Indebtedness. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the Account Collateral.

3.1.15 Distributions. Transfers of Mortgage Borrower's funds from the Holding Account to or for the benefit of Borrower shall constitute distributions to Borrower and must comply with the requirements as to distributions of the Delaware Limited Liability Company Act. The provisions of this Article III shall not create a debtor-creditor relationship between Mortgage Borrower and Lender.

IV. REPRESENTATIONS AND WARRANTIES

4.1 Borrower Representations. Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization. Each of Mortgage Borrower, Borrower, Master Lessee and Master Lease Guarantor is a limited liability company and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Guarantor is a corporation and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Mortgage Borrower, Borrower, Guarantor, Master Lessee and Master Lease Guarantor has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, or, in the case of qualifications in the various States (a) an application for such qualification has been duly filed with the applicable Governmental Authority and all fees required in order to obtain such qualification have been paid in full, (b) all conditions to obtaining such qualification have been satisfied under applicable law and the issuance of such qualification is a ministerial act of the applicable Governmental Authority, and (c) no such failure to qualify would be reasonably likely to have a Material Adverse Effect. Each of Mortgage Borrower, Borrower, Guarantor, Master Lessee and Master Lease Guarantor possesses all material rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership of the Ownership Interests. The organizational structure of Mortgage Borrower, Borrower, Guarantor, Master Lessee and Master Lease Guarantor is accurately depicted by the schematic diagram attached hereto as Exhibit A. Borrower shall not change or permit to be changed (i) Borrower's name, (ii) Borrower's identity (including its trade name or names), (iii) Borrower's principal place of business set forth on the first page of this Agreement, (iv) the corporate, partnership or other organizational structure of Borrower or any SPE Component Entity, (v) Borrower's state of organization, or (vi) Borrower's organizational identification number, unless it shall have given Lender thirty (30) days prior written notice of any such change (and, in the case of a change in Borrower's structure, has first obtained the prior written consent of Lender) and shall have taken all steps reasonably requested by Lender to grant, perfect, protect and/or preserve the liens and

security interest granted to Lender under the Loan Documents. Borrower expressly authorizes Lender and its counsel to file such financing statements, with or without the signature of Borrower, as Lender may elect, as may be necessary or desirable to perfect the lien of Lender's security interest in the Collateral, including without limitation, UCC financing statements describing the collateral as all assets and personal property of Borrower, whether now owned or existing or hereafter acquired or arising and wheresoever located, including all accessions thereto and products and proceeds thereof, or using words with similar effect. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change. Subject to the provisions of the Pledged Entity's Organizational Document which require actions and/or consents of Mortgage Borrower's Independent Managers, Borrower has the power and authority and the requisite ownership interests in Mortgage Borrower to control the actions of Mortgage Borrower, and upon the realization of the Collateral, Lender or any other party succeeding to Borrower's interest in the Collateral would have such control. Without limiting the foregoing and subject to the provisions of the Pledged Entity's Organizational Document which require actions and/or consents of Mortgage Borrower's Independent Managers, Borrower has sufficient control over Mortgage Borrower to cause Mortgage Borrower to (i) take any action on Mortgage Borrower's part required to be taken by Mortgage Borrower under the Mortgage Loan Documents and (ii) refrain from taking any action prohibited to be taken by Mortgage Borrower under the Mortgage Loan Documents.

4.1.2 Proceedings. Each of Mortgage Borrower, Borrower, Guarantor and Master Lessee has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party. The Loan Documents to which such Person is a party have been duly executed and delivered by, or on behalf of, Mortgage Borrower, Borrower, Guarantor and Master Lessee, as applicable, and constitute legal, valid and binding obligations of such Persons, as applicable, enforceable against such Persons, as applicable in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Mortgage Borrower, Borrower, Guarantor and Master Lessee, as applicable, will not conflict with or result in a material breach of any of the terms or provisions of, or constitute a material default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of any such Person pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement or other agreement or instrument to which any such Person is a party or by which any of such Person's property or assets is subject (unless consents from all applicable parties thereto have been obtained), except for any conflict that would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority, and any material consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Mortgage Borrower, Borrower, Guarantor and Master Lessee of this Agreement or any other Loan Document has been obtained and is in full force and effect.

4.1.4 Litigation. Except as set forth on Schedule II attached hereto, there are no arbitration proceedings, governmental investigations, actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the best of Borrower's knowledge, threatened against or affecting Mortgage Borrower, Borrower, Guarantor, Master Lessee, Master Lease Guarantor or any Individual Property or the Collateral (other than claims (A) (i) which are being covered by insurance, (ii) which are being defended by the relevant insurance company and (iii) as to which Borrower has not received a notice from such insurance company that the claim exceeds the total amount of insurance coverage with respect to such claim by more than $500,000; or (B) which relate to claims for which liability in the event any such matter is adversely determined could not reasonably be expected to exceed $500,000). The actions, suits or proceedings identified on Schedule II, if determined against Mortgage Borrower, Borrower, Guarantor, Master Lessee, Master Lease Guarantor or the Individual Property, would not materially and adversely affect the condition or operation of any Individual Property or the value of the Collateral, as applicable.

4.1.5 Agreements. The Pledged Entity's Organizational Document, the Pledged Entity's Organizational Document (Second Mezzanine), the Operating Agreements, the Master Lease and the Subleases listed on Schedule I attached to the Mortgage Loan Agreement (including the Concept Subleases, the RLP Subleases, the Pass-Through Subleases, the Specified Prior Leases and the Unaffiliated Subleases) constitute all of the material agreements to which Borrower and/or Mortgage Borrower or any of their Affiliates are party or are bound which are material to the ownership and operation of any Individual Property or the Collateral. Borrower is not a party to any agreement or instrument or subject to any restriction which is reasonably likely to materially and adversely affect Borrower or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower or the Collateral is bound. Borrower has no material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other similar agreement or instrument to which Borrower is a party or by which Borrower or the Collateral is otherwise bound, other than (a) obligations constituting Permitted Debt which are incurred in the ordinary course of the ownership and operation of the Collateral and (b) obligations under the Loan Documents.

4.1.6 Title.

(a) Borrower owns all of the Collateral as of the date hereof, subject to no rights of others, including any mortgages, leases, conditional sales agreements, title retention agreements, liens or other encumbrances, except for the Permitted Encumbrances and other Liens permitted under the Loan Documents or the Mortgage Loan Documents. The Pledge, together with the UCC financing statements relating to the Collateral, when properly filed in the appropriate records, will create a valid, perfected first priority security interest in and to the Collateral (other than the Pledged Collateral), all in accordance with the terms thereof, for which a Lien can be perfected by filing a UCC financing statement. Borrower's delivery of the Certificate (as defined in the Pledge), together with the applicable undated limited liability company membership power, covering the applicable certificate duly executed in blank, creates a first priority valid and perfected security interest in the Pledged Collateral.

(b) Mortgage Borrower has good, marketable and insurable fee simple title to the Land and the Improvements relating to the Individual Properties, in each case free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Mortgage Loan Documents and the Liens created by the Mortgage Loan Documents. Mortgage Borrower has good and marketable title to the remainder of the Property (excluding the Excluded Personal Property), free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first mortgage lien on the Land and the Improvements subject only to Permitted Encumbrances and (ii) perfected security interests in and to all personalty other than the Excluded Personal Property (including the Subleases) or any leases of equipment from third parties, all in accordance with the terms thereof, to the extent such security interest may be perfected by filing a UCC financing statement under Article 9 of the UCC (as defined in the Mortgage Loan Agreement), in each case subject only to any applicable Permitted Encumbrances. There are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents other than the Permitted Encumbrances. Borrower represents and warrants that none of the Permitted Encumbrances would individually or in the aggregate reasonably be expected to result in a Material Adverse Effect as of the Closing Date and thereafter. Borrower shall cause Mortgage Borrower to preserve its right, title and interest in and to the Property, except for Individual Properties released under the terms hereof, for so long as the Note and Mortgage Note remain outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Encumbrances.

(c) With respect to any Individual Property for which no survey has been prepared or updated in connection with the Loan, to the actual knowledge of Borrower after diligent inquiry (which shall not generally include site visits except where deemed necessary to confirm or investigate issues raised in reviewing company files or interviews with property managers):

(i) other than as disclosed in the 2007 surveys provided to Lender in connection with the Loan, there are no easements, encroachments or other title defects that would be disclosed by an accurate survey as of this date that could interfere in any material respect with the continued use and operation of such Individual Property as used as of the date hereof; and

(ii) other than as disclosed in the 2007 surveys provided to Lender in connection with the Loan, the Improvements and parking at such Individual Property and purported to be owned by Mortgage Borrower and appraised pursuant to the appraisal received by Lender in connection with the origination of the Loan are wholly located on the Land related to such Individual Property.

4.1.7 No Bankruptcy Filing. None of Mortgage Borrower, Borrower, Guarantor, Master Lessee or Master Lease Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or against Borrower, Mortgage Borrower, Guarantor, Master Lessee or Master Lease Guarantor.

4.1.8 Full and Accurate Disclosure.

(a) To Borrower's knowledge, no material information submitted by Borrower to Lender in writing in connection with the Loan, nor any statement of material fact made by Borrower in this Agreement or in any of the other Loan Documents, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not materially misleading as of the date made in light of the circumstances in which such information was submitted or such statements were made.

(b) There is no fact presently known to Borrower which has not been disclosed which would reasonably be expected to have a Material Adverse Effect.

4.1.9 Ownership Interests. The Ownership Interests constitute all of the Ownership Interests currently owned by Borrower.

4.1.10 No Plan Assets.

(a) Borrower does not maintain an employee benefit plan as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA, and Borrower (i) has no knowledge of any material liability which has been incurred or is expected to be incurred by Borrower which is or remains unsatisfied for any taxes or penalties with respect to any "employee benefit plan," within the meaning of Section 3(3) of ERISA, or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a multiemployer plan) maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under common control with Borrower within the meaning of ERISA Section 4001(a)(14) (a " Plan") or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans, if any. Each such Plan has been and will be administered in compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(b) Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, subject to Title I of ERISA, none of the assets of Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and Borrower is not a governmental plan within the meaning of Section 3(32) of ERISA and transactions by or with Borrower are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.11 Compliance. Borrower, Mortgage Borrower, the Property and the Collateral and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes (except for any non-compliance that individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect). To the best of Borrower's knowledge, none of Borrower or Mortgage Borrower is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the best of Borrower's knowledge, there has not been committed by Borrower, or Mortgage Borrower any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property, the Collateral or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.12 Financial and Property Information. The information set forth in the Master Owned Property Schedule of even date herewith (a) is true, complete and correct in all material respects and (b) fairly represents the financial condition of the Property as of the Closing Date. Neither Borrower nor Mortgage Borrower has any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower (other than (i) such liabilities as are set forth in the financial statements furnished to Lender, and (ii) obligations arising under this Agreement, the other Loan Documents and the Mortgage Loan Documents).

4.1.13 Absence of UCC Financing Statements, Etc. Except with respect to the Permitted Encumbrances, the Mortgage Loan Documents and the Loan Documents , there is no financing statement, security agreement, chattel mortgage, real estate mortgage or other document filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest or security title in the interest in the Property or any of the Collateral.

4.1.14 Federal Reserve Regulations. None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X, which in any such case would cause the Loan, Borrower or Lender to be in violation of Regulation U. As of the Closing Date, Borrower does not own any "margin stock."

4.1.15 Setoff, Etc. The Collateral and the rights of Lender with respect to the Collateral are not subject to any setoff, claims, withholdings or other defenses.

4.1.16 Not a Foreign Person. Borrower is not a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.17 Perfection of Collateral Account.

(a) This Agreement, together with the other Loan Documents, creates a valid and continuing security interest (as defined in the Uniform Commercial Code) in the Collateral Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold or otherwise conveyed the Collateral Account;

(b) The Collateral Account constitutes a "deposit account" or "securities account" within the meaning of the Uniform Commercial Code; and

(c) The Collateral Account is not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Cash Management Bank's complying with instructions with respect to the Collateral Account from any Person other than Lender.

4.1.18 Reserved.

4.1.19 Reserved.

4.1.20 Reserved.

4.1.21 Reserved.

4.1.22 Insurance. Borrower has obtained (or has caused Mortgage Borrower to obtain) and has delivered to Lender certified copies or originals of all insurance policies required under this Agreement, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. Borrower has not, and to the best of Borrower's knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.23 Reserved.

4.1.24 Reserved.

4.1.25 Reserved.

4.1.26 Physical Condition. To the best of Borrower's knowledge, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the best of Borrower's knowledge, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would materially and adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.27 Reserved.

4.1.28 Subleases. The Property is not subject to any leases other than the Master Lease, Affiliated Subleases, Unaffiliated Subleases, Excluded Licenses and the Specified Prior Subleases, in each case as set forth on Schedule I to the Mortgage Loan Agreement. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Master Lease, the Affiliated Subleases, the Unaffiliated Subleases, the Excluded Licenses, the Specified Prior Subleases and the REAs. The current Subleases are in full force and effect and to Borrower's knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed in the Mortgage Loan Agreement). No Rent has been paid more than one (1) month in advance of its due date, except as disclosed on Schedule I to the Mortgage Loan Agreement. There has been no prior sale, transfer or assignment, hypothecation or pledge by Mortgage Borrower or Master Lessee of the Master Lease or any Sublease or of the Rents received thereunder, which will be outstanding following the funding of the Loan, other than those being assigned to Mortgage Lender concurrently herewith.

4.1.29 Subsidiaries. Borrower has no subsidiaries other than Mortgage Borrower.

4.1.30 Opinion Assumptions.

(a) All of the assumptions relating to Borrower and each SPE Component Entity made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto, are true and correct in all material respects and any Additional Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all material respects. Mortgage Borrower, Borrower and each SPE Component Entity have complied and will comply in all material respects with all of the assumptions made with respect to it in the Non-Consolidation Opinion in all material respects. Mortgage Borrower, Borrower and each SPE Component Entity will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion. Each entity other than Mortgage Borrower and Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply in all material respects with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

(b) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct in all material respects; provided, however, that Borrower is not making any representation or warranty with respect to any assumption that relies upon factual information provided by Cushman & Wakefield or any other third party.

4.1.31 Non-imputation. Solely with respect to the Individual Properties located in Florida, New Mexico, Pennsylvania and Texas, Borrower has no knowledge of any fact, circumstance, information, state of facts, defect, lien, encumbrance, adverse claim or other matter that has not been disclosed to the Title Company by Borrower on or before the date hereof and that would permit the Title Company to assert an exclusion from the coverage provided under the Title Policy (Owner) covering such Individual Property, other than any such fact, circumstance, information, state of facts, defect, lien, encumbrance, adverse claim or other matter with respect to the Individual Properties located in Florida, New Mexico, Pennsylvania and Texas that is either (A) disclosed by the public records of the county in which such Individual Property is located, (B) otherwise known to the Title Company, (C) Permitted Encumbrances, or (D) as would not reasonably be expected to result in a Material Adverse Effect.

4.1.32 Reserved.

4.1.33 Reserved.

4.1.34 Reserved.

4.1.35 Tax Filings. Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower.

4.1.36 Solvency/Fraudulent Conveyance. Borrower (a) does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay such Debts and liabilities as they mature in their ordinary course; (b) is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which its assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which Borrower is engaged; (c) represents that the fair value of the assets of Borrower is greater than the total amount of liabilities, including without limitation, contingent liabilities of Borrower, such contingent liabilities computed at the amount which, in light of all the facts and circumstances existing at this time, represents the amount that can reasonably be expected to become an actual or matured liability; (d) represents that the present fair saleable value of the assets of Borrower is not less than the amount that will be required to pay the probable liability of Borrower on its debts as they become absolute and matured; (e) has not entered into the transaction contemplated by this Agreement or any Loan Document with the actual intent to hinder, delay, or defraud either present or future creditors or any other person to which Borrower is or will become, on or after the date hereof, indebted; and (f) has received reasonably equivalent value in exchange for its obligations under the Loan Documents.

4.1.37 Investment Company Act. Borrower is not an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.1.38 Reserved.

4.1.39 Reserved.

4.1.40 Brokers. Borrower has not dealt with, and Lender hereby represents that it has not dealt with, any broker or finder with respect to the transactions contemplated by the Loan Documents, and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents. Borrower and Lender shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of

appeal, incurred by the other party and arising out of or relating to any breach or default by the indemnifying party of its representations, warranties and/or agreements set forth in this Section 4.1.40. The provisions of this Section 4.1.40 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.41 No Other Debt. Borrower has not borrowed or received debt financing that has not been heretofore repaid in full, other than the Permitted Debt.

4.1.42 Taxpayer Identification Number. Borrower's Federal taxpayer identification number is 38-3869503.

4.1.43 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws. (i) None of Borrower, Guarantor or any Person who Controls Borrower or Guarantor currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and (ii) none of Borrower or Guarantor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time. To Borrower's knowledge, no tenant at the Property currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and no tenant at the Property is owned or Controlled by a Prohibited Person.

4.1.44 Representations and Warranties in the Mortgage Loan Documents. Borrower hereby represents and warrants that each of the representations and warranties contained in the Mortgage Loan Documents (which are hereby incorporated by reference as if fully set forth herein) is true and correct in all material respects, as of the Closing Date and there is no Mortgage Event of Default thereunder.

4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall be deemed given and made as of the date hereof and survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower or Guarantor unless a longer survival period is expressly stated in a Loan Document with respect to a specific representation or warranty, in which case, for such longer period. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

4.3 Borrower's Knowledge. Whenever a representation or warranty is made "to Borrower's knowledge," "to Borrower's best knowledge," or a term of similar import, such term shall mean the actual knowledge of Borrower or its officers or directors who would be likely to have actual knowledge of the relevant subject matter.

V. BORROWER COVENANTS

5.1 Affirmative Covenants. From the Closing Date and until payment and performance in full of all obligations of Borrower under the Loan Documents (other than contingent obligations for which a claim has not been made), Borrower (as to itself and Mortgage Borrower) hereby covenants and agrees with Lender that:

5.1.1 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill in all material respects each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower, as applicable, without the prior written consent of Lender.

5.1.2 Existence; Compliance with Legal Requirements; Insurance. Subject to Mortgage Borrower's right of contest pursuant to Section 7.3 of the Mortgage Loan Agreement, Borrower shall at all times comply and cause Mortgage Borrower and the Property to be in compliance in all material respects with all Legal Requirements applicable to Borrower and/or Mortgage Borrower, as applicable, any SPE Component Entity and the Property and the uses permitted upon the Property. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, material rights, licenses, permits and material franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall not knowingly permit Mortgage Borrower or any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property, the Collateral, or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect (and shall cause Mortgage Borrower to at all time maintain, preserve and protect) all franchises and trade names where the failure to so preserve and protect would be reasonably likely to have a Material Adverse Effect, and preserve all the remainder of its property used in and necessary for the conduct of its business and shall keep the Property (or cause Mortgage Borrower to keep the Property) in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto as required by the Mortgage Loan Agreement. Borrower shall keep or cause Mortgage Borrower to keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as is more fully set forth in this Agreement and the Mortgage Loan Agreement.

5.1.3 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower, Mortgage Borrower, the Collateral or the Property which, if determined adversely to such party, the Collateral or the Property would reasonably be expected to result in liability (not covered by insurance) to Borrower or Mortgage Borrower in excess of $500,000.

5.1.4 Reserved.

5.1.5 Reserved.

5.1.6 Access to Property. Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender to inspect the Property or any part thereof during normal business hours on Business Days upon reasonable advance notice.

5.1.7 Notice of Default. Borrower shall promptly advise Lender (a) of any event or condition of which Borrower has knowledge that has or is likely to have a Material Adverse Effect or (b) of the occurrence of any Event of Default of which Borrower has knowledge.

5.1.8 Cooperate in Legal Proceedings. Borrower shall and shall cause Mortgage Borrower to cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.9 Reserved.

5.1.10 Reserved.

5.1.11 Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder.

5.1.12 Taxes. Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender.

5.1.13 Reserved.

5.1.14 Business and Operations. Borrower shall continue to and shall cause Mortgage Borrower to continue to engage in the businesses presently conducted by each of them as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property and the Collateral, as applicable. Borrower shall and shall cause Mortgage Borrower to qualify to do business and shall remain in good standing subject to the terms hereof under the laws of all applicable jurisdictions as and to the extent required for Mortgage Borrower's ownership, maintenance, management and operation of the Property and, as applicable, Borrower's ownership of the Collateral.

5.1.15 Title to the Collateral . Borrower shall warrant and defend (a) its title to the Collateral and every part thereof, subject to the Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Pledge and this Agreement on the Collateral, subject to the Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Collateral is claimed by another Person.

5.1.16 Costs of Enforcement. In the event (a) that this Agreement or the Pledge is foreclosed upon in whole or in part or that by reason of Borrower's default hereunder this Agreement or the Pledge is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement or the Pledge in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Mortgage Borrower, Borrower, or any of its constituent Persons or an assignment by Mortgage Borrower, Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.17 Estoppel Statements. Borrower shall, from time to time, upon thirty (30) days' prior written request from Lender, execute, acknowledge and deliver to Lender (and shall cause Mortgage Borrower to execute, acknowledge and deliver to Lender), an Officer's Certificate, stating that this Agreement and the other Loan Documents (or, as applicable, the Mortgage Loan Documents) are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents or, as applicable, the Mortgage Loan Documents are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Note (or, as applicable, the Mortgage Note and each Component) and containing such other information with respect to Borrower, Mortgage Borrower, the Property, the Mortgage Loan and the Loan as Lender shall reasonably request. Lender shall, from time to time, upon thirty (30) days' prior written request from Borrower, execute, acknowledge and deliver to Borrower, a certificate signed by an officer of Lender, stating that this Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents are in full force and effect as modified and setting forth such modifications). The estoppel certificate from Borrower shall also state either that, to Borrower's knowledge, no Default exists hereunder or, if any Default shall exist hereunder, specify such Default and the steps being taken to cure such Default and the estoppel certificate from Lender shall state whether Lender has delivered notice of a Default or an Event of Default.

5.1.18 Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.5.

5.1.19 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property, (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 No Further Encumbrances. Subject to Section 8.3, Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and the Collateral and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use or development of the Property, except for (a) Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents or the Mortgage Loan Documents, (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) the Subleases entered into in accordance with Section 8.8 of the Mortgage Loan Agreement.

5.1.21 Article 8 "Opt In" Language. Each organizational document of Mortgage Borrower and Borrower shall be modified to include, the language set forth on Exhibit B.

5.1.22 Mortgage Loan Covenants.

(a) Borrower hereby covenants that it shall cause Mortgage Borrower in a timely manner, to fully keep, perform and comply with (or cause to be kept, performed and complied with) each any every covenant, term and provision set forth in the Mortgage Loan Agreement, the Security Instrument and the other Mortgage Loan Documents, which are hereby incorporated by reference as if fully set forth herein, notwithstanding any waiver or future amendment of such covenants by Mortgage Lender (other than a Permitted Mortgage Loan Amendment). Borrower acknowledges that the obligation to comply with such covenants is separate from, and may be enforced independently from, the obligations of Mortgage Borrower under the Mortgage Loan Documents. For the avoidance of doubt, any rights given to Mortgage Lender in any such incorporated provision, including, without limitation, any consent or approval right or any rights to receive notices thereunder (other than any notices which are required to be delivered by insurance carriers to Mortgage Lender), are also given to Lender.

(b) Borrower shall not, and shall cause Mortgage Borrower not to, (i) amend or modify (by agreement on the part of Mortgage Borrower or Borrower) or (ii) affirmatively permit the modification or amendment of (by operation of law or otherwise) the Mortgage Loan Documents in effect as of the Closing Date except for those amendments or modifications ("Permitted Mortgage Loan Amendments") that (i) are required under the Mortgage Loan Documents or that Mortgage Borrower is required to consent to thereunder pursuant to the express terms of the Mortgage Loan Documents, (ii) do not constitute a Prohibited Mortgage Loan Amendment, or (iii) are otherwise consented to by Lender. As used herein, a "Prohibited Mortgage Loan Amendment" shall mean an amendment or modification to the Mortgage Loan Documents that (1) increases the principal amount of the Mortgage Loan (exclusive of protective advances), (2) increases the interest rate payable under the Mortgage Loan, (3) provides for the payment of any contingent interest, additional interest, additional fees, increases the amount of or adds additional reserve payments or increases the amount of or adds additional escrows, or

otherwise increases in any material respect any monetary obligations of Borrower under the Mortgage Loan Documents, (4) converts or exchanges the Mortgage Loan into or for any other indebtedness, (5) releases Guarantor under the Recourse Guaranty or the Environmental Indemnity (as such terms are defined in the Mortgage Loan Agreement) or any other guaranties or indemnities that may from time to time be executed and delivered with respect of the Mortgage Loan except in connection with an assumption of the Mortgage Loan pursuant to the terms of the Mortgage Loan Agreement and acceptance of a replacement guarantor and/or a replacement Indemnitor, as applicable, in accordance therewith, (6) amends or modifies the provisions limiting transfers of interests in Mortgage Borrower, the Property, Guarantor, or any Affiliate of any Borrower or Guarantor, (7) subordinates the Mortgage Loan to any other indebtedness, (8) adds or modifies any cure periods under the Mortgage Loan Documents, (9) shortens or extends the maturity date of the Mortgage Loan beyond the initially scheduled maturity date (except in connection with any workout or other surrender, compromise, release, renewal, or indulgence relating to the Mortgage Loan), (10) modifies any provisions of the Mortgage Loan Documents related to the funding of escrows, cash management or the manner, timing, priority, amounts, conditions of release or method of application of payments or reserves under the Mortgage Loan Documents, (11) materially decreases or materially modifies any insurance requirements under the Mortgage Loan Documents (including any deductibles, limits, qualifications of insurers or terrorism insurance requirements), (12) consents to a strike price with respect to any new or extended interest rate cap agreement entered into in connection with the extended term of the Mortgage Loan higher than the strike price provided for in the Mortgage Loan Documents in effect on the date hereof, (13) extends the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increases the amount of any such prepayment fee, premium or yield maintenance charge or imposes any new prepayment fee, premium or yield maintenance charge, (14) releases its lien on any material portion of the collateral originally granted under the Mortgage Loan Documents (except as may be required or permitted in accordance with the terms of the Mortgage Loan Documents as they exist on the date hereof), (15) provides for Mortgage Lender's acquisition of a direct or indirect equity interest in Mortgage Borrower, (16) imposes any financial covenants or negative covenants on Mortgage Borrower (or if such covenants exist, imposes more restrictive financial covenants or negative covenants on Mortgage Borrower), (17) cross-defaults the Mortgage Loan with any other indebtedness or modifies or amends any default provision including the definition of "Default" or "Event of Default", (18) amends or modifies the release prices or financial thresholds for releases in connection with the release of an Individual Property, (19) amends or modifies any provision of Section 2.3.7 of the Mortgage Loan Agreement, or (20) amends or modifies any provision of the Mortgage Loan Documents that restrict amendments, modifications, terminations or releases of the Master Lease, the Master Lease Guaranty or the Master Lease Guarantor. Any amendment or modification to the Mortgage Loan Documents in violation of this Section 5.1.22(b) shall be ineffective as between Borrower and Lender, and, if not cured by Borrower within thirty (30) days after written notice from Lender shall constitute an Event of Default hereunder, unless Lender consents thereto in writing in its sole discretion.

(c) In the event the Mortgage Loan shall at any time be repaid, or the Liens securing the Mortgage Loan at any time be released in full, then unless and until the Note shall have been repaid in full and all obligations of Borrower to Lender hereunder and under the other Loan Documents shall have been satisfied, then Borrower shall nevertheless comply or cause

Mortgage Borrower to comply with each of the terms and provisions of the Mortgage Loan Documents (other than payment of principal, interest and premium (if any)) and the Mortgage Loan Documents shall nevertheless be deemed to remain in full force and effect as between Borrower and Lender with Lender being deemed in such context to possess exclusively all of the rights and remedies of Mortgage Lender thereunder including without limitation, all rights of consent and approval, rights to receive and control the disposition of casualty insurance proceeds and condemnation awards, and the right to collect rents through a lockbox and make waterfall distributions (but expressly excluding any rights and remedies relating to payment of the indebtedness under the Mortgage Loan Documents and evidenced by the Mortgage Note and Borrower shall nevertheless comply or cause Mortgage Borrower to comply with each of the terms and provisions of the Mortgage Loan Documents (and any Permitted Mortgage Loan Amendments or amendment or modification consented to in writing by Lender) (other than the payment of principal, interest and premium, if any). Borrower shall, and shall cause Mortgage Borrower to, execute any and all documents reasonably requested by Lender for the implementation or furtherance of the foregoing provided that the same shall be at Lender's sole cost and expense. Borrower shall deliver to Lender copies of any and all modifications to the Mortgage Loan Documents within five (5) Business Days after execution thereof.

(d) Borrower covenants and agrees to cause Mortgage Borrower to deliver any and all financial information delivered or required to be delivered to Mortgage Lender pursuant to the terms of the Mortgage Loan Documents to be delivered simultaneously to Lender.

5.1.23 Impositions. Borrower shall cause Mortgage Borrower to pay all Impositions, to timely pay all claims for labor, material or supplies that if unpaid or unbonded might by law become a lien or charge upon any of its property (including the Property), and to keep the Property and the Collateral free from any Lien (other than the lien of the Loan Documents, the Mortgage Loan Documents and the Permitted Encumbrances), and shall in any event cause the prompt, full and unconditional discharge of all Liens (other than Permitted Encumbrances) imposed upon the Property or the Collateral or any portion thereof within forty-five (45) days after receiving written notice (whether from Lender, the lienholder or any other Person) of the filing thereof; subject in each case to Mortgage Borrower's or Master Lessee's right to contest the same as permitted in but subject to the conditions set forth in the Mortgage Loan Agreement so long as no Event of Default has occurred and is continuing. In the event that Mortgage Borrower elects to commence any contest or similar proceeding with respect to any such Imposition, Lien or other claim described herein, Borrower shall provide prompt written notice thereof to Lender together with such evidence as Lender may reasonably require showing Mortgage Borrower's satisfaction of the requirements set forth in Section 7.3 of the Mortgage Loan Agreement to Mortgage Borrower conducting such contest. Notwithstanding the foregoing, Borrower shall cause Mortgage Borrower, promptly to pay any contested Imposition, Lien or claim and the payment thereof shall not be deferred, if Lender or Mortgage Borrower may be subject to criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Mortgage Borrower, then Borrower shall cause Mortgage Borrower, to deliver to Lender reasonable evidence of payment of such contested Imposition or Lien.

5.2 Negative Covenants. From the Closing Date until payment and performance in full of all obligations of Borrower under the Loan Documents (other than contingent obligations for which a claim has not been made) or the earlier release of the Lien of this Agreement or the Pledge in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do (and will not permit Mortgage Borrower to do, as applicable), or permit to be done, directly or indirectly, any of the following:

5.2.1 Debt. Without the prior written consent of Lender, such consent to be made in Lender's sole determination, Borrower shall not incur, create, assume or be liable with respect to any additional Debt (including, but not limited to, any secondary or junior financing or any preferred equity investment), or create or permit to be created or to remain, any Lien on, or conditional sale or other title retention agreement with respect to the Collateral or any part thereof or income therefrom, other than the Debt created pursuant to the Loan Documents, Permitted Debt or any other Debt permitted pursuant to the terms of the Loan Documents (it being acknowledged and agreed that any refinancing of such Debt in connection with an assignment and restatement of the Mortgage Loan Documents shall be in violation of this Section 5.2.1);

5.2.2 Encumbrances. Other than in connection with or as permitted under the Loan Documents or the Mortgage Loan Documents, neither of Borrower or Mortgage Borrower shall (a) create or incur or suffer to be created or incurred or to exist any lien, security title, encumbrance, mortgage, pledge, negative pledge, charge, restriction or other security interest of any kind upon any of its property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom; (b) transfer any of its property or assets or the income or profits therefrom for the purpose of subjecting the same to the payment of Debt or performance of any other obligation in priority to payment of its general creditors; (c) acquire, or agree or have an option to acquire, any property or assets upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (d) suffer to exist for a period of more than 30 days after the same shall have been incurred any Debt or claim or demand against it that if unpaid might by law or upon bankruptcy or insolvency, or otherwise, be given any priority whatsoever over its general creditors; (e) sell, assign, pledge or otherwise transfer any accounts, contract rights, general intangibles, chattel paper or instruments, with or without recourse (other than endorsements of checks and negotiable instruments in the ordinary course); or (f) incur or maintain any obligation to any holder of Debt which prohibits the creation or maintenance of any lien securing the Obligations;

5.2.3 Partition. Except as otherwise provided herein, partition any Individual Property;

5.2.4 Transfer of Property. Transfer any Property, or any portion thereof or any interest therein, except in each case (including in connection with a Property Release) as may be permitted hereby or in the other Loan Documents;

5.2.5 Bankruptcy. File or solicit the filing of an involuntary bankruptcy petition against Mortgage Borrower, Borrower, PRP, PropCo, HoldCo, Guarantor, Master Lessee, Master Lease Guarantor or any SPE Component Entity;

5.2.6 ERISA. Engage in any activity that would subject Borrower to material liability under ERISA or qualify it as an " employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.7 Distributions. From and after the occurrence and during the continuance of an Event of Default, make any distributions to or for the benefit of any of its partners or members or its or their Affiliates. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender. Borrower shall not cause or permit Mortgage Borrower to distribute to Borrower any property other than cash, except for any Individual Property or Individual Properties (or portions thereof) released from the Lien of the Security Instrument in accordance with the terms of the Mortgage Loan Documents;

5.2.8 Modify REAs. Without the prior consent of Lender, which shall not be unreasonably withheld, delayed or conditioned, Borrower shall not cause Mortgage Borrower to execute modifications to the REAs, except as would not reasonably be expected to have a Material Adverse Effect;

5.2.9 [Reserved];

5.2.10 Zoning Reclassification. Without the prior written consent of Lender (which in the case of clause (a) shall not be unreasonably withheld), permit Mortgage Borrower to (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.11 Change of Principal Place of Business. Change its principal place of business and chief executive office set forth on the first page of this Agreement without first giving Lender thirty (30) days' prior written notice (but in any event, within the period required pursuant to the UCC) and there shall have been taken such action, reasonably satisfactory to Lender, as may be necessary to maintain fully the effect, perfection and priority of the security interest of Lender hereunder in the Account Collateral at all times;

5.2.12 Debt Cancellation. Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business and except for termination of a Sublease as permitted by Section 8.8 of the Mortgage Loan Agreement;

5.2.13 Misapplication of Funds. Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Collateral Account, as applicable, as required by Section 3.1 or the Pledge, misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.5;

5.2.14 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws . Permit (i) any of Borrower, Guarantor or any Person who Controls Borrower or Guarantor to be identified on the OFAC List or otherwise qualified as a Prohibited Person, or (ii) Borrower or Guarantor to be in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time;

5.2.15 Affiliate Transactions. Any contracts or agreements relating to the Property in any manner between or among any Loan Party and any other Loan Party or their respective direct or indirect partners, members, shareholders or Affiliates (collectively, the " Affiliate Agreements") shall provide that such agreement is terminable by Mortgage Borrower or Lender immediately upon notice, without the payment of any fee, penalty, premium or liability for future or accrued liabilities or obligations, if an Event of Default shall have occurred and be continuing. Following an Event of Default, if requested by Lender in writing, Borrower shall, or shall cause the applicable Loan Party to, terminate any existing Affiliate Agreement specified by Lender within five (5) days after delivery of Lender's request without payment of any penalty, premium, termination fee or any other amount which might be due and payable under such Affiliate Agreement. If such Affiliate Agreement is not terminated in accordance with the immediately preceding sentence, Lender shall have the right, and Borrower hereby irrevocably authorizes Lender and irrevocably appoints Lender as Borrower's attorney-in-fact coupled with an interest, at Lender's sole option, to terminate such Affiliate Agreement on behalf of and in the name of the applicable Loan Party, and Borrower hereby releases and waives any claims against Lender arising out of Lender's exercise of such authority. Borrower shall not, and shall not permit Mortgage Borrower to, make any payments under any Affiliate Agreement after the occurrence and during the continuance of an Event of Default;

5.2.16 Limitation on Securities Issuances. Borrower shall cause Mortgage Borrower to not issue any limited liability company interests, partnership interests, capital stock interests or other securities other than those that have been issued as of the date hereof;

5.2.17 Acquisition of the Mortgage Loan.

(a) No Loan Party nor any Affiliate of any Loan Party or any Person acting at any such Person's request or direction, shall acquire or agree to acquire the lender's interest in the Mortgage Loan, or any portion thereof or any interest therein, or any direct or indirect ownership interest in the holder of the Mortgage Loan, via purchase, transfer, exchange or otherwise, and any breach or attempted breach of this provision shall constitute an Event of Default hereunder. If, solely by operation of applicable subrogation law, Borrower shall have failed to comply with the foregoing, then Borrower: (i) shall immediately notify Lender of such failure; (ii) shall cause any and all such prohibited parties acquiring any interest in the Mortgage Loan Documents: (A) not to enforce the Mortgage Loan Documents; and (B) upon the request of Lender, to the extent any of such prohibited parties has or have the power or authority to do so, to promptly: (1) cancel the promissory note evidencing the Mortgage Loan, (2) reconvey and release the Lien securing the Mortgage Loan and any other collateral under the Mortgage Loan Documents, and (3) discontinue and terminate any enforcement proceeding(s) under the Mortgage Loan Documents.

(b) Lender shall have the right at any time to acquire all or any portion of the Mortgage Loan or any interest in any holder of, or participant in, the Mortgage Loan without notice or consent of Borrower or any other Loan Party, in which event Lender (if it is the holder of all of the Mortgage Loan) shall have and may exercise all rights of Mortgage Lender thereunder, including the right, in accordance with and subject to the terms of the Mortgage Loan, (i) to declare that the Mortgage Loan is in default, (ii) to accelerate the Mortgage Loan indebtedness and (iii) to pursue all remedies against any obligor under the Mortgage Loan Documents.

5.2.18 Material Agreements.

(a) Borrower shall not, and shall not permit Mortgage Borrower to, enter into any Material Agreement without the consent of Lender not to be unreasonably withheld, conditioned or delayed, unless Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender a recognition agreement from the service or material provider under such Material Agreement providing for such Person's agreement to the termination of such Material Agreement without penalty a premium on no more than thirty (30) days' notice.

(b) Except as specifically set forth herein, Borrower will not, and will not permit or cause Mortgage Borrower to, amend or modify (but Borrower and Mortgage Borrower may rescind or terminate so long as such action will not have a Material Adverse Effect), any Material Agreement for which Lender's consent had been obtained if the same would reasonably likely have a material adverse effect on Lender, unless Lender's approval (such approval not to be unreasonably withheld conditioned or delayed), is obtained therefor.

5.3 Single Purpose Entity/Separateness. Until the Indebtedness has been paid in full, Borrower represents, warrants and covenants as follows:

(a) Borrower has not and will not:

(i) engage in any business or activity other than the ownership of the Ownership Interests and activities related thereto;

(ii) acquire or own any assets other than (A) the Ownership Interests and (B) such incidental personal property as may be necessary for the ownership thereof;

(iii) merge into or consolidate with any Person, or, to the fullest extent permitted by law, dissolve, wind-up, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

(v) own any subsidiary other than Mortgage Borrower, or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person, or permit Master Lessee, any Affiliate of either of them or any constituent party independent access to its bank accounts;

(vii) incur any Debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Permitted Debt of Borrower;

(viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Borrower's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separate identity of Borrower from such Affiliate and that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) Borrower's assets, liabilities and net worth shall also be listed on Borrower's own separate balance sheet;

(ix) except for capital contributions or capital distributions permitted under the terms and conditions of Borrower's organizational documents and properly reflected on its books and records, enter into any transaction, contract or agreement with any general partner, member, shareholder, principal, guarantor of the obligations of Borrower, Master Lessee or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties (it being agreed and acknowledged that the Asset Management Agreement is on terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties);

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets to secure the obligations of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person;

(xiii) fail to (A) file its own tax returns separate from those of any other Person, except to the extent that Borrower is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable Legal Requirements, and (B) pay any taxes required to be paid under applicable Legal Requirements; provided, however, that Borrower shall not have any obligation to reimburse its equityholders or their Affiliates for any taxes that such equityholders or their Affiliates may incur as a result of any profits or losses of Borrower;

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to own its assets or conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided, however, that the foregoing shall not require any equity owner to make any additional capital contributions to Borrower);

(xvi) if it is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the managers of Borrower, including without limitation, each Independent Manager, take any Material Action or other action that is reasonably likely to cause such entity to become insolvent;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses and to use separate stationery, invoices and checks;

(xviii) fail to pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds, and Borrower represents that it is, as of the Closing Date, solvent and intends to be solvent;

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable;

(xx) violate or cause to be violated the assumptions made with respect to Borrower and its principals in any Non-Consolidation Opinion delivered to Lender in connection with the Loan;

(xxi) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(xxii) fail to maintain and use separate stationery, invoices and checks bearing its own name; or

(xxiii) have any of its obligations guaranteed by Master Lessee or any Affiliate of Borrower or Master Lessee except as contemplated by the Loan Documents.

(b) If Borrower is a partnership or limited liability company, each general partner in the case of a partnership, or the managing member in the case of a limited liability company (each an "SPE Component Entity") of Borrower, as applicable, shall be a corporation or a limited liability company whose sole asset is its interest in Borrower, provided that if such SPE Component Entity is a limited liability company, each of its managing members shall also be a SPE Component Entity. Each SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in Section 5.3(a)(iii)—(vi) and (viii)—(xxi), as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in Borrower; (iii) will not acquire or own any assets other than its partnership, membership, or other equity interest in

Borrower; (iv) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (v) will cause Borrower to comply with the provisions of this Section 5.3 and Section 5.4. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation or limited liability company agreement, as applicable, are substantially similar to those of such SPE Component Entity and, if an opinion letter pertaining to substantive consolidation was required at closing, deliver a new opinion letter acceptable to Lender with respect to the new SPE Component Entity and its equity owners. Notwithstanding the foregoing, to the extent Borrower is a single member Delaware limited liability company, so long as Borrower maintains such formation status and complies with the requirements set forth in subsections (c) and (d) below, no SPE Component Entity shall be required.

(c) In the event Borrower is a single-member Delaware limited liability company, the limited liability company agreement of Borrower (the " LLC Agreement") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower (" Member") to cease to be the member of Borrower (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower, in either case in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Manager of Borrower (" Special Member") shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower, automatically be admitted to Borrower and shall continue Borrower without dissolution and (ii) Special Member may not resign from Borrower or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Manager. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of a substitute Member, (ii) Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of Borrower assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "Act"), Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower, (iv) Special Member, in its capacity as Special Member, may not bind Borrower, and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower, including, without limitation, the merger, consolidation or conversion of Borrower; provided, however, that such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Manager, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower as Special Member, Special Member shall not be a member of Borrower.

(d) In the event Borrower is a single-member Delaware limited liability company, the LLC Agreement shall provide that upon the occurrence of any event that causes the Member to cease to be a member of Borrower, to the fullest extent permitted by law, the personal

representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower, agree in writing (i) to continue Borrower and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of Member of Borrower in Borrower. Any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower.

(e) The organizational documents of Borrower and each SPE Component Entity shall provide an express acknowledgment that Lender is an intended third-party beneficiary of the "special purpose" provisions of such organizational documents.

(f) Notwithstanding anything to the contrary contained in this Section 5.3 or Article VIII, in connection with and contemporaneously with a refinancing in full of the Loan, the Mortgage Loan and the Second Mezzanine Loan, Borrower may (i) amend its organizational documents and/or (ii) form one or more new direct or indirect wholly-owned Subsidiaries and transfer the Collateral to such direct or indirect wholly-owned Subsidiaries subject to escrow and other customary closing arrangements reasonably acceptable to Lender.

(g) Borrower shall cause Mortgage Borrower to satisfy and comply in all respects with the provisions of Sections 5.3 and 5.4 of the Mortgage Loan Agreement.

5.4 Independent Manager. The organizational documents of Borrower shall include the following provisions: (a) at all times there shall be, and Borrower shall cause there to be, at least two Independent Managers; (b) the board of managers of Borrower shall not take any action which, under the terms of any certificate of formation or limited liability company agreement, requires unanimous vote of the board of managers of Borrower unless at the time of such action there shall be at least two members of the board of managers who are Independent Managers; (c) Borrower shall not, without the unanimous written consent of its board of managers including the Independent Managers, take any Material Action or any action that is reasonably likely to cause Borrower to become insolvent, and when voting with respect to such matters, the Independent Managers shall consider only the interests of Borrower, including its creditors; and (d) no Independent Manager of Borrower may be removed or replaced unless Borrower provides Lender with not less than three (3) Business Days' prior written notice of (i) any proposed removal of an Independent Manager, together with a statement as to the reasons for such removal, and (ii) the identity of the proposed replacement Independent Manager, together with a certification that such replacement satisfies the requirements set forth in the organizational documents for an Independent Manager. Without limiting the generality of the foregoing, such documents shall expressly provide that, to the greatest extent permitted by law, except for duties to Borrower (including duties to Borrower's equity holders solely to the extent of their respective economic interests in Borrower and to Borrower's creditors as set forth in the immediately

preceding sentence), such Independent Managers shall not owe any fiduciary duties to, and shall not consider, in acting or otherwise voting on any matter for which their approval is required, the interests of (A) any SPE Component Entity or Borrower's other equity holders, (B) other Affiliates of Borrower or Master Lessee, or (C) any group of Affiliates of which Borrower is a part; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (y) shall have accepted his or her appointment as an Independent Manager by a written instrument, which may be a counterpart signature page to the LLC Agreement, and (z) shall have executed a counterpart to the LLC Agreement. No Independent Manager may be removed other than for Cause. "Cause" means, with respect to an Independent Manager, (1) acts or omissions by such Independent Manager that constitute willful disregard of such Independent Manager's duties as set forth in Borrower's organizational documents, (2) that such Independent Manager has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Manager, (3) that such Independent Manager is unable to perform his or her duties as Independent Manager due to death, disability or incapacity, (4) that such Independent Manager no longer meets the definition of Independent Manager or (5) an increased change in the fees charged by the Independent Manager that is not reasonably acceptable to Borrower.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

6.1 Insurance Coverage Requirements.

(a) Borrower will cause Mortgage Borrower, at its expense, to procure and maintain the insurance policies required by the Mortgage Loan Documents. Each commercial general liability or umbrella liability policy with respect to the Property shall name Lender as an additional insured and shall contain a cross liability/severability endorsement in form and substance acceptable to Lender.

(b) In the event of any loss or damage to the Property, Borrower shall give prompt written notice to the insurance carrier and Lender. Lender acknowledges that Mortgage Borrower's rights to any insurance proceeds are subject to the terms of the Mortgage Loan Agreement. Subject to Section 6.1(f) below, Borrower may not and shall not permit Mortgage Borrower to settle, adjust or compromise any claim under such insurance policies without the prior written consent of Lender which shall not be unreasonably withheld, delayed or denied; provided, further, that Borrower may permit Mortgage Borrower to make proof of loss and adjust and compromise any claim under casualty insurance policies which does not exceed forty percent (40%) of the designated Combined Allocated Loan Amount applicable to the affected Individual Property so long as no Event of Default has occurred and is continuing. Any excess Proceeds relating to such claim shall be applied as provided in Section 2.3.2. Borrower shall, upon Borrower's receiving written notice of same, provide written notice to Lender that any of the insurance policies required under this Section 6.1 are cancelled or terminated or are going to be cancelled or terminated. Borrower shall provide Lender with evidence of all such insurance required hereunder simultaneously with Mortgage Borrower's provision of such evidence to Mortgage Lender.

(c) Subject to Section 6.1(f) below, in the event that Mortgage Borrower is permitted or required pursuant to the terms of the Mortgage Loan Agreement to reconstruct, restore or repair the Property following a casualty to any portion of the Property, Borrower shall cause Mortgage Borrower to promptly and diligently repair and restore the Property in the manner and within the time periods required by the Mortgage Loan Agreement, the Master Lease and any other agreements affecting the Property. Subject to Section 6.1(f) below, in the event that Mortgage Borrower is permitted pursuant to terms of the Mortgage Loan Agreement to elect to not reconstruct, restore or repair the Property following a casualty to any portion of the Property, Borrower shall not permit Mortgage Borrower to elect not to reconstruct, restore or repair the Property without the prior written consent of Lender.

(d) Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Individual Properties or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required to be maintained by Mortgage Borrower on or with respect to any part of the Property pursuant to Section 6.1 of the Mortgage Loan Agreement.

(e) Lender hereby confirms and acknowledges that Borrower has delivered to Lender certificates of insurance with respect to Master Lessee's insurance program, in amount, form and content so as to satisfy the requirements of this Section 6.1 in all material respects as of the Closing Date, and that any renewals or modifications that comply with Section 6.1.11 of the Mortgage Loan Agreement and are otherwise not, in substance, materially different from the approved program in place on the Closing Date shall be deemed to be in compliance.

(f) Notwithstanding this Section 6.1 and Section 6.2 below, so long as (i) the Master Lease is in full force and effect, (ii) no Master Lease Default has occurred and is continuing and (iii) the terms and provisions of the Master Lease pertaining to the subject matter addressed in Sections 6.1(b) and (c) and 6.2 have not been amended in violation of the terms hereof, then to the extent that the terms and provisions of the Master Lease pertaining to the subject matters addressed in Sections 6.1(b) and (c) and 6.2 are inconsistent with the terms and provisions set forth in Sections 6.1(b) and (c) and 6.2, respectively, the terms and provisions of the Master Lease shall control.

6.2 Condemnation. In the event that all or any portion of the Property shall be damaged or taken through any Taking, or any such Taking or condemnation shall be threatened, Borrower shall give prompt written notice to Lender. Lender acknowledges that Mortgage Borrower's rights to any condemnation award in respect of any Taking are subject to the terms of the Mortgage Loan Agreement. Notwithstanding the foregoing, and subject to Section 6.1(f) above, Borrower may not and shall not permit Mortgage Borrower to settle or compromise any claim, action or proceeding relating to such Taking without the prior written consent of Lender, which shall not be unreasonably withheld, delayed or denied; provided, further, that Borrower may permit Mortgage Borrower to settle, adjust and compromise any such claim, action or proceeding which does not exceed forty percent (40%) of the designated Combined Allocated Loan Amount applicable to the affected Individual Property so long as no Monetary Default or Event of Default has occurred and is continuing. Any excess Proceeds shall be paid and applied as provided in Section 2.3.2. In the event that Mortgage Borrower is permitted or required

pursuant to the terms of the Mortgage Loan Agreement to reconstruct, restore or repair the Property following a Taking of any Individual Property (or any portion thereof), Borrower shall cause Mortgage Borrower to promptly and diligently repair and restore such Individual Property in the manner and within the time periods required by the Mortgage Loan Agreement, the Master Lease and any other agreements affecting such Individual Property. In the event that Mortgage Borrower is permitted pursuant to the terms of the Mortgage Loan Agreement to elect not to reconstruct, restore or repair the Individual Property following a Taking of any portion of such Individual Property, Borrower shall not permit Mortgage Borrower to elect not to reconstruct, restore or repair such Individual Property without the prior written consent of Lender.

6.3 Certificates.

(a) Certificates of insurance with respect to all replacement policies shall be delivered to Lender prior to the expiration date of any of the insurance policies required to be maintained hereunder, and upon demand by Lender, replacement insurance policies shall be delivered to Lender within 120 days of the expiration of the insurance policies required to maintained hereunder. If Borrower fails to (or fails to cause Mortgage Borrower to) maintain and deliver to Lender the certificates of insurance and certified copies or originals required by this Agreement, upon five (5) Business Days' prior notice to Borrower, Lender may procure such insurance, and all costs thereof (and interest thereon at the Default Rate) shall be added to the Indebtedness. Lender shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, with respect to such matters.

(b) Concurrently with the delivery of each replacement policy or a binding commitment for the same pursuant to clause (a) above, Borrower shall deliver (or cause Mortgage Borrower to deliver) to Lender a letter from a reputable and experienced insurance broker or from the insurer, stating that the insurance obtained by Borrower or Mortgage Borrower through such broker or from such insurer pursuant to Section 6.1 of the Mortgage Loan Agreement, as applicable, meets the minimum requirements of Section 6.1 of the Mortgage Loan Agreement, that all insurance premiums then due thereon have been paid in full to the applicable insurers and that such insurance policies are in full force and effect (or if such letter shall not be available after Borrower shall have used its reasonable efforts to provide the same, Borrower shall deliver (or cause Mortgage Borrower to deliver) to Lender an Officer's Certificate containing the information to be provided in such report), and Borrower shall deliver (or cause Mortgage Borrower to deliver) to Lender an Officer's Certificate stating that such insurance otherwise complies in all material respects with the requirements of Section 6.1 of the Mortgage Loan Agreement.

6.4 Restoration. Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.2.4 of the Mortgage Loan Agreement and to otherwise comply in all respects with Section 6.2.4 of the Mortgage Loan Agreement in connection with a restoration of any Individual Property after a Taking.

VII. RESERVED

VIII. TRANSFERS, INDEBTEDNESS AND OTHER FUNDAMENTAL MATTERS

8.1 General Restriction on Transfers, Indebtedness and Other Fundamental Matters.

(a) Unless otherwise expressly permitted under the provisions of this Article VIII, Borrower shall not cause, suffer or permit, and in no event shall there be permitted to occur, regardless of whether Borrower shall have or have not caused, suffered to permitted the same to occur:

(i) any Transfer of any Individual Property or any part thereof or any legal or beneficial interest therein, other than Permitted Encumbrances or a Property Release thereof permitted under, and satisfying the provisions of, Section 2.3.6 and the other provisions of this Agreement;

(ii) any Transfer of an Equity Interest in any Restricted Party;

(iii) unless and until the Guarantor Net Worth Requirements are imposed upon Guarantor or the Qualifying Replacement Guarantor, as applicable, pursuant to Section 8.5, any distribution or transfer by Guarantor of any of its assets to any Person, including its direct or indirect parent entities or their Affiliates unless as of the date of such distribution the Master Lease Guarantor Total Leverage Ratio is less than 3.50:1.00 (as certified by an Officer's Certificate and certificate of Guarantor provided to Lender, together with the related background financial statements and calculations in reasonable detail, delivered to Lender within five Business Days after such distribution or transfer); provided, however, that the foregoing restrictions shall not apply to the following distributions and transfers, which shall be expressly permitted pursuant to this Section 8.1(a)(iii):

(A) following a Qualifying IPO of an Upper Tier Entity (other than Guarantor), distributions of assets to such Upper Tier Entity for payment by such Upper Tier Entity of reasonable out-of-pocket costs and expenses incurred by such Upper Tier Entity in connection with consummating such Qualifying IPO and ongoing compliance by such Upper Tier Entity with federal and state securities laws and regulations, SEC rules and regulations and the Sarbanes–Oxley Act of 2002 (as amended from time to time and any successor statute thereto);

(B) distributions of assets to Holdings for payment by Holdings of its franchise taxes and for payment by Holdings of Income Taxes that are attributable to the income of Holdings to the extent such income is attributable to the operations of Holdings, Guarantor and/or its direct or indirect Subsidiaries (but not any Subsidiary of Holdings that is not also a Subsidiary of Guarantor);

(C) distributions of assets to a direct or indirect parent of Guarantor for payment of the operating expenses (including administrative, legal, accounting and similar expenses provided by third parties) incurred by such parent in the ordinary course of business to the extent such operating expenses are directly related to the ownership of the direct or indirect Equity Interests in Guarantor and/or to the operations of Guarantor and/or its direct or indirect Subsidiaries;

(D) transfers of assets to Guarantor's direct or indirect Subsidiaries; and

(E) distribution of the proceeds of the Guarantor Subsequent Intercompany Loans to its parent entity;

(iv) any failure by Guarantor to satisfy the Guarantor Asset Covenant, unless the Guarantor Asset Covenant is expressly terminated pursuant to the provisions of Section 8.5 as a result of the imposition of the Guarantor Net Worth Requirements;

(v) in the event the Guarantor Net Worth Requirements are imposed upon Guarantor or the Qualifying Replacement Guarantor, as applicable, pursuant to Section 8.5, any failure by Guarantor or the Qualifying Replacement Guarantor, as applicable, to satisfy the Guarantor Net Worth Requirements;

(vi) any failure, prior to a Qualifying IPO, of the Minimum Ownership/Control Requirements set forth in clause (A) of the definition thereof set forth in Section 8.4 to continue to be satisfied;

(vii) any failure, subsequent to a Qualifying IPO of Master Lease Guarantor, of the Minimum Ownership/Control Requirements set forth in clause (B) of the definition thereof set forth in Section 8.4 to continue to be satisfied;

(viii) in the event a Qualifying IPO permitted under Section 8.4 occurs, any Post-IPO Change of Control;

(ix) any of Borrower, Mortgage Borrower, Second Mezzanine Borrower, any SPE Component Entity, PRP, PropCo, HoldCo, Guarantor or any Intermediate Entity incurring any Debt, other than the Permitted Debt of such Person; or

(x) any failure of Master Lease Guarantor to satisfy the Master Lease Guarantor Asset Covenants.

(b) Notwithstanding anything to the contrary set forth in this Article VIII or any other provision of this Agreement, (i) PropCo shall at all times own 100% of the direct Equity Interests in, and Control, PRP, (ii) PRP shall at all times own 100% of the direct Equity Interests in, and Control, Second Mezzanine Borrower, (iii) Second Mezzanine Borrower shall at all times own 100% of the direct Equity Interests in, and Control, Borrower (other than as a result of a foreclosure or transfer in lieu thereof of the Second Mezzanine Loan), and (iv) Borrower shall at all times own 100% of the direct Equity Interests in, and Control, Mortgage Borrower (other than as a result of a foreclosure or transfer in lieu thereof of the Loan) (the foregoing (i)-(iv), the " Base PropCo Ownership Requirements").

(c) Nothing in this Section 8.1 shall prohibit (i) any action or event occurring following receipt by Borrower of written consent of Lender approving such action or event, provided that Borrower pays to Lender a commercially reasonable fee in connection with such action or event (which fee shall in all events be reasonable in relation to the Assumption Fee payable pursuant to Section 8.7 hereof), or (ii) the grant of a Lien by Master Lessee, Master Lease Guarantor, any direct or indirect Subsidiary of Master Lease Guarantor or any Tenant on the Excluded Personal Property.

8.2 Sale of Building Equipment. Borrower may cause Mortgage Borrower, without the consent of Lender, to sell or dispose of Building Equipment which is being replaced or which is no longer necessary in connection with the operation of the Property free from the Lien of the Security Instrument, provided that such sale or disposal will not have a Material Adverse Effect and will not result in a reduction or abatement of, or right of offset against, the Rents payable under the Master Lease or any Sublease, in either case, as a result thereof, and provided further that any new Building Equipment acquired by Mortgage Borrower (and not so disposed of) shall be subject to the Lien of the Security Instrument.

8.3 Immaterial Transfers and Easements, etc. Borrower may cause Mortgage Borrower, without the consent of Lender, to (i) make immaterial Transfers of portions of the Property to Governmental Authorities for dedication or public use (subject to the provisions of Section 6.2), or immaterial Transfers of portions of the Property to third parties for the purpose of erecting and operating additional structures whose use is integrated with the use of the Property, and (ii) grant easements, licenses, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such Transfer, conveyance or encumbrance set forth in the foregoing clauses (i) and (ii) shall have a Material Adverse Effect.

8.4 Permitted Equity Transfers. Notwithstanding anything herein to the contrary, but subject to Section 8.1(b), the following Transfers shall not require the prior written consent of Lender:

(a) the pledge of the Equity Interests in Master Lease Guarantor or any of its Subsidiaries pursuant to the terms of the Master Lease Guarantor Facility or a foreclosure (or transfer in lieu of thereof) of such Equity Interests in Master Lease Guarantor or any of its Subsidiaries resulting from the exercise of remedies as set forth in the Master Lease Guarantor Facility (an "Opco Equity Foreclosure");

(b) a Transfer (but not a pledge or encumbrance) by (i) Guarantor or any then-existing Intermediate HoldCo Entity of 100% (and not less than 100%) of its direct Equity Interests in HoldCo or any then-existing Intermediate HoldCo Entity to a new Intermediate HoldCo Entity, provided that the Base Transfer Conditions have been satisfied, or (ii) HoldCo or any then-existing Intermediate PropCo Entity of 100% (and not less than 100%) of its direct Equity Interests in PropCo or any then-existing Intermediate PropCo to a new Intermediate PropCo Entity, provided that the Base Transfer Conditions have been satisfied;

(c) a Transfer of direct or indirect Equity Interests in any Sponsor;

(d) a Qualifying IPO of any IPO Entity, or any other Transfer (but not a pledge or encumbrance) of the direct or indirect Equity Interests in Guarantor, Master Lease Guarantor, HoldCo, any Intermediate Entity or PropCo (such Person in which such Equity Interests are transferred by means other than a Qualifying IPO, a "Related Holding Entity"), provided that the following conditions have been satisfied:

(i) the Base Transfer Conditions have been satisfied;

(ii) with respect to (A) any such Transfer other than a Qualifying IPO, subsequent to such Transfer, (1) Permitted Holders or in the case of a Transfer to a Permitted Transferee, the related Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), directly or indirectly own no less than fifty-one percent (51%) of the Equity Interests in, and Control, the Related Holding Entity (and, through ownership of the Related Holding Entity, in each direct or indirect Subsidiary of the Related Holding Entity) and (2) Permitted Holders or in the case of a Transfer to a Permitted Transferee, the related Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), directly or indirectly own no less than fifty-one percent (51%) of the Equity Interests in, and Control, PropCo, PRP, Mortgage Borrower, Borrower and Second Mezzanine Borrower, and (B) any Qualifying IPO of the Master Lease Guarantor, Permitted Holders or in the case of a prior Transfer to a Permitted Transferee, the related Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), directly or indirectly own no less than fifty-one percent (51%) of the Equity Interests in, and Control, PropCo, PRP, Mortgage Borrower, Borrower and Second Mezzanine Borrower (the foregoing requirements of (A) and (B) above, as applicable, the " Minimum Ownership/Control Requirements"), and (C) any Qualifying IPO, following such Qualifying IPO, the Post-IPO Control Requirements shall be satisfied; and

(iii) if subsequent to any Qualifying IPO or any other Transfer, the Guarantor Asset Covenant would no longer be satisfied, then as an additional condition to completing any such Qualifying IPO or other such Transfer, the Guarantor Net Worth Requirements must be satisfied in accordance with Section 8.5; or

(e) upon and subsequent to a Qualifying IPO of any IPO Entity, Transfers (whether direct or indirect and whether in open market transactions or otherwise) of the shares in such IPO Entity, provided that no Post-IPO Change of Control occurs; or

(f) a Transfer (but not a pledge or encumbrance) of direct or indirect Equity Interests in any Permitted Transferee, provided that (i) subsequent to such Transfer, such Person shall continue to satisfy the criteria for a Permitted Transferee set forth in the definition thereof, and (ii) if such Permitted Transferee holds a direct Equity Interest in any Lower Tier Entity and such Transfer shall cause any transferee, together with its Affiliates, to acquire indirect Equity Interests in Borrower aggregating more than forty-nine percent (49%), or to increase its indirect Equity Interests in Borrower from an amount that is less than forty-nine percent (49%) to an amount that is greater than forty-nine percent (49%), an Additional Non-Consolidation Opinion is provided to Lender as a condition to such Transfer; or

(g) upon and subsequent to a Qualifying IPO of an Upper Tier Entity, Transfers of direct or indirect Equity Interests in such Upper Tier Entity, provided that no Post-IPO Change of Control occurs; or

(h) the pledge of any direct or indirect Equity Interest in Borrower or Mortgage Borrower pursuant to the Mezzanine Loan Documents and the exercise of, and any Transfer that results from the exercise of, any rights or remedies that any Mezzanine Lender may have under the Mezzanine Loan Documents (but, for clarification, this Section 8.4(h) shall not permit an assignment in lieu of foreclosure).

Borrower shall be responsible for the payment of and shall pay or reimburse Lender for all of Lender's reasonable out-of-pocket fees, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, actually incurred by Lender in connection with the review, negotiation and implementation of the provisions and documentation provided for in this Section 8.4.

8.5 Guarantor Net Worth; Qualifying Replacement Guarantor. If the Guarantor Asset Covenant would no longer be satisfied subsequent to any Qualifying IPO or any other Transfer, or if the Guarantor Asset Covenant would no longer be satisfied as a result of any proposed transaction or for any other reason (other than as a result of an Opco Foreclosure), then:

(a) either (i) Guarantor shall continue to Control PropCo, PRP, Mortgage Borrower, Borrower and Second Mezzanine Borrower and shall have and maintain a Net Worth of not less than $200,000,000 (the "Minimum Net Worth") and demonstrate its Net Worth to Lender's reasonable satisfaction, with such reasonable supporting evidence as Lender may reasonably require, and shall confirm in writing to Lender that the covenants respecting the ongoing maintenance by Guarantor of the Minimum Net Worth set forth in Section 9 of the Recourse Guaranty (the " Net Worth Covenants") have been triggered and are in full force and effect as on-going covenants of Guarantor, in which event, the Guarantor Asset Covenant shall no longer be in force or effect, as provided in Section 9 of the Recourse Guaranty, as a result of the Net Worth Covenants having been triggered in lieu thereof, or (ii) a Qualifying Replacement Guarantor having a Net Worth of not less than the Minimum Net Worth shall demonstrate its Net Worth to Lender's reasonable satisfaction, with such reasonable supporting evidence as Lender may reasonably require, and (A) such Qualifying Replacement Guarantor shall execute and deliver to Lender (x) a guaranty of recourse obligations in the same form as the Recourse Guaranty delivered to Lender by Guarantor on the Closing Date, modified such that the Net Worth Covenants are in full force and effect as on-going covenants of the Qualifying Replacement Guarantor, that the Guarantor Asset Covenant is not a covenant of the Qualifying Replacement Guarantor and, if the Qualifying Replacement Guarantor is not an Affiliate of the Guarantor being replaced, that the Qualifying Replacement Guarantor's liability is limited to circumstances, conditions, actions and events first occurring after the date on which the Replacement Guaranty is delivered (the "Replacement Guaranty"), and (y) an environmental indemnity agreement in the same form as the Environmental Indemnity delivered to Lender by Guarantor on the Closing Date, provided that if the Qualifying Replacement Guarantor is not an Affiliate of the Guarantor being replaced, such environmental indemnity agreement shall be modified such that the Qualifying Replacement Guarantor's liability is limited to circumstances, conditions, actions and events first occurring after the date on which the Replacement Indemnity is delivered (the

"Replacement Indemnity"), and (B) Borrower and the Qualifying Replacement Guarantor shall provide to Lender an Additional Non-Consolidation Opinion, together with customary legal opinions and organizational document and certificate deliveries respecting the existence, due formation and organization and good standing of the Qualifying Replacement Guarantor and the due authorization, execution and delivery, and enforceability of the Replacement Guaranty and Replacement Indemnity, in each case reasonably satisfactory to Lender and in form and substance in nature and scope provided by or on behalf of Guarantor in connection with its execution and delivery of the Recourse Guaranty and Environmental Indemnity (the foregoing requirements of clause (i) or clause (ii), as applicable, including the continued maintenance of the Minimum Net Worth by the Guarantor or Qualifying Replacement Guarantor, as applicable, the "Guarantor Net Worth Requirements"). Upon a Qualifying Replacement Guarantor satisfying the conditions under clause (ii) above, the then existing Guarantor shall be released under the Recourse Guaranty and the Environmental Indemnity with respect to circumstances, conditions, actions and events first occurring after the date on which the Replacement Guaranty and the Replacement Indemnity are delivered; and

(b) upon satisfaction of the conditions set forth in the foregoing paragraph (a), the Guarantor Asset Covenant shall no longer be in force or effect and the Guarantor Net Worth Requirements shall be in full force and effect in lieu thereof.

8.6 Deliveries to Lender. Borrower shall deliver to Lender (a) with respect to any Transfer to which the Base Transfer Conditions apply, not less than thirty (30) days prior to the closing of such Transfer, an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted by this Article VIII, together with any appraisal or other documents upon which such Officer's Certificate is based, (b) an Officer's Certificate promptly following the realization or foreclosure upon any pledge or encumbrance described in Section 8.4, and (c) copies of executed deeds or other similar closing documents within ten (10) Business Days after the closing of any Transfer described in clauses (a) or (b) above.

8.7 Loan Assumption. Provided no Event of Default is then continuing, Borrower shall have the one time right to cause Mortgage Borrower to Transfer (but not mortgage, hypothecate, pledge or otherwise encumber or grant a security interest in) the fee simple title to all (but not fewer than all) of the Individual Properties only if after giving effect to the proposed transaction, the Individual Properties will be owned by one or more Single Purpose Entities (collectively, "Transferee Mortgage Borrower"), which Transferee Mortgage Borrower shall be wholly owned and Controlled by a Permitted Transferee (" Transferee Borrower"). Any such transfer to a Transferee Mortgage Borrower and assumption of the Loan shall be conditioned upon Lender's reasonable approval, which may be conditioned upon among other things, (i) the delivery of financial information, including, without limitation, audited financial statements, for Transferee Mortgage Borrower, Transferee Borrower and the direct and indirect owners of Transferee Borrower, (ii) the delivery of evidence that each of Transferee Mortgage Borrower and Transferee Borrower is a Single Purpose Entity, and that none of Transferee Mortgage Borrower, Transferee Borrower nor any Person that Controls Transferee Mortgage Borrower or Transferee Borrower is a Disqualified Transferee, (iii) the execution and delivery by Transferee Borrower of an assumption agreement in form and substance acceptable to Lender, assuming all of Borrower's obligations under the Loan Documents, (iv) the execution and delivery by Transferee Borrower of a replacement pledge and security agreement in substantially the same

form as the Pledge, (v) the delivery of a UCC policy issued by a national title company acceptable to Lender and in form and substance acceptable to Lender insuring Lender's first priority interest in 100% of the equity of the Transferee Mortgage Borrower, (vi) the management of the Property by a Qualified Manager or by a property manager reasonably acceptable to Lender; (vii) the satisfaction of the Guarantor Net Worth Requirements, (viii) the execution and delivery of all documentation reasonably requested by Lender, (ix) the delivery of Opinions of Counsel requested by Lender, including, without limitation, an Additional Non-Consolidation Opinion with respect to Transferee Mortgage Borrower, Transferee Borrower and other entities identified by Lender and opinions with respect to the valid formation, due authority and good standing of Transferee Mortgage Borrower, Transferee Borrower, Qualifying Replacement Guarantor and any additional pledgors, and the continued enforceability of the Loan Documents and any other matters requested by Lender, (x) a new owner's title insurance policy or policies on a form customarily used in the applicable state where each Property is located at the time of the Transfer, insuring no less than the fair market value of each Property and issued to the new mortgage borrower (including the mezzanine endorsement thereto in favor of Lender to the extent available), subject only to the Permitted Encumbrances, shall be delivered to Lender, (xi) satisfaction of all requirements of the Mortgage Loan Documents, the Loan Documents and the Second Mezzanine Loan Documents respecting such Transfer and assumption, and confirmation of Second Mezzanine Lender, Lender and Mortgage Lender that such requirements have been satisfied, (xii) the payment of all of Lender's reasonable out-of-pocket fees, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, actually incurred by Lender in connection with such assumption, and (xiii) payment to Lender of the Assumption Fee (in addition to the payments required under the foregoing clause (xii)).

8.8 Subleases.

8.8.1 New Subleases and Sublease Modifications. Borrower represents and warrants that each Individual Property is currently leased to Master Lessee pursuant to the Master Lease, is operated as one or more Restaurant Locations under a Concept or a Third-Party Brand, and is occupied and operated pursuant to a Concept Sublease, an RLP Sublease or an Unaffiliated Sublease, and may also be subject to the Specified Prior Subleases.

8.8.2 Leasing Conditions. Borrower shall not permit Mortgage Borrower to permit Master Lessee to sublease all or any portion of any Individual Property except in accordance with Section 8.8.2 of the Mortgage Loan Agreement; provided, that, any New Sublease or Sublease Modification that requires Mortgage Lender's consent shall be delivered to Lender for approval, not to be unreasonably withheld, conditioned or delayed, not less than ten (10) Business Days prior to the effective date of such New Sublease or Sublease Modification. If Lender fails to respond to a request for Lender's consent pursuant to this Section 8.8.2 within ten (10) Business Days of Lender's receipt of Borrower's request therefor, Borrower may deliver to Lender a second request in an envelope or under cover of a letter marked "URGENT" and including a legend in bold typeface that Lender's failure to grant or deny the requested consent within ten (10) Business Days of the receipt thereof will result in the requested consent being deemed to have been granted. If Lender fails to respond to such second request within ten (10) Business Days of its receipt thereof, Lender's consent shall be deemed granted.

8.8.3 Delivery of New Sublease or Sublease Modification. Upon the execution of any New Sublease or Sublease Modification, as applicable, Borrower shall cause Mortgage Borrower to deliver to Lender an executed copy of the Sublease. In addition, Borrower shall, from time to time, at the advance written request of Lender, but not more than one (1) time per calendar year unless an Event of Default has occurred and is continuing, cause Mortgage Borrower to deliver to Lender a list of (a) each and every Sublease then affecting all or any part of the Property, and (b) all sublicenses or other grants of possessory interests in any portion of the Property to which Mortgage Borrower has given its consent or of which Mortgage Borrower otherwise has knowledge, said list to be certified by Mortgage Borrower as true, complete and correct in all material respects.

8.8.4 Reserved.

8.8.5 Security Deposits. All security or other deposits of Tenants of the Property (collectively, the "Security Deposits") shall be treated as trust funds and shall not be commingled with any other funds of Mortgage Borrower, and such deposits shall be deposited, upon receipt of the same by Mortgage Borrower, in a separate trust account maintained by Mortgage Borrower expressly for such purpose. Within ten (10) Business Days after written request by Lender, Borrower shall cause Mortgage Borrower to furnish to Lender reasonably satisfactory evidence of compliance with this Section 8.8.5, together with a statement of all lease securities deposited with Mortgage Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.8.6 No Default Under Subleases. Borrower shall or shall cause Mortgage Borrower to, or to cause Master Lessee to (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Mortgage Borrower or Master Lessee under the Subleases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Lender, any right to request from the Tenant under any Sublease a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Mortgage Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Sublease).

8.8.7 Reserved.

8.8.8 Reserved.

8.8.9 Reserved.

8.8.10 Reserved.

8.8.11 Leaseable Building Pads.

(a) Each of the Individual Properties described as containing a "Leaseable Building Pad" on Schedule X of the Mortgage Loan Agreement contains an unimproved building pad and unimproved land as preliminarily described on such Schedule X (each, a " Leaseable Building Pad"), but, to Borrower's knowledge, such Leaseable Building Pad cannot be subdivided from

such Individual Property in accordance with Section 2.3.6(b) of the Mortgage Loan Agreement. Borrower shall be permitted to cause Mortgage Borrower to cause each Leaseable Building Pad to be removed from the premises demised under the Master Lease and terminate the Master Lease with respect to such Leaseable Building Pad and ground lease such Leaseable Building Pad in accordance with, and subject to satisfaction of (a) each of the conditions set forth in Section 8.8.11(a) of the Mortgage Loan Agreement as if independently set forth herein, (b) Lender shall have reasonably determined that the demise of such Leaseable Building Pad will not materially diminish the value of or impair in any material respect, or unreasonably interfere with the use or operation in any material respect of, such Individual Property, and (c) Borrower shall have delivered to Lender an Officer's Certificate (i) certifying that all of the conditions set forth in Section 8.8.11(a) of the Mortgage Loan Agreement have been complied with by Mortgage Borrower and that the demise of such Leaseable Building Pad will not materially diminish the value of or impair in any material respect, or unreasonably interfere with the use or operation in any material respect of, such Individual Property and (ii) attaching copies of each of the deliveries made to or approved by Mortgage Lender pursuant to Section 8.8.11(a) of the Mortgage Loan Agreement (including a copy of the ground lease pursuant to which such Leaseable Building Pad has been demised).

(b) In addition, and notwithstanding anything herein to the contrary, Borrower shall be permitted to permit Mortgage Borrower to subject any Individual Parcel containing a Leaseable Building Pad to a condominium form of ownership and, thereafter to obtain the release of such Leaseable Building Pad as an Outparcel under the Mortgage Loan Agreement and hereunder, as provided in Section 8.8.11(c) of the Mortgage Loan Agreement, subject to satisfaction of each of the following: (a) each of the conditions set forth in, Section 8.8.11(c) of the Mortgage Loan Agreement as if independently set forth herein, (b) Borrower shall have provided Lender with endorsements to the Title Policy (Owner) reasonably required by Lender in connection with the creation of such condominium, which shall be reasonably acceptable to Lender and (c) Borrower shall have delivered to Lender an Officer's Certificate (i) certifying that all of the conditions set forth in Section 8.8.11(c) of the Mortgage Loan Agreement have been complied with by Mortgage Borrower and that the creation of the proposed Condominium Units shall not materially diminish the value of or impair in any material respect, or unreasonably interfere with the use or operation in any material respect of, such Individual Property, and (ii) attaching copies of each of the deliveries made to or approved by Mortgage Lender pursuant to Section 8.8.11(c) of the Mortgage Loan Agreement (including a copy of the Condominium Declaration).

(c) In the event that Lender fails to respond within ten (10) Business Days of receipt of any request for Lender's approval or consent pursuant to this Section 8.11, Borrower may deliver to Lender a second request in an envelope or under cover of a letter marked "URGENT" and including a legend in bold typeface that Lender's failure to grant or deny the requested consent within ten (10) Business Days of the receipt thereof will result in the requested consent being deemed to have been granted. If Lender fails to respond to such second request within ten (10) Business Days of its receipt thereof, Lender's consent to such request shall be deemed granted.

IX. RESERVED

X. RESERVED

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

11.1 Books and Records. Borrower shall keep and maintain or cause Mortgage Borrower or cause Asset Manager to keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Note, the Collateral, the Property and the business and affairs of Mortgage Borrower and Borrower relating to the Property and the Collateral which shall reflect all items of income and expense in connection with the operation of the Property and the Collateral and in connection with any services, equipment or furnishings provided by Mortgage Borrower and/or Borrower in connection with the operation of the Property and the Collateral, in accordance with GAAP and, to the extent required pursuant to the Mortgage Loan Agreement, the requirements of Regulation AB. Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine such books and records relating to the operation of the Property and the Collateral and to make such copies or extracts thereof as Lender may reasonably require.

11.2 Financial Statements.

11.2.1 Monthly Reports. Commencing with the month ending April 30, 2012, not later than thirty (30) days following the end of such month and each calendar month thereafter, Borrower shall, or shall cause Mortgage Borrower to, or to cause Master Lessee or Asset Manager to, deliver to Lender the following with respect to such month and each subsequent calendar month:

(A) Monthly income statements (including sales) and determinations of Portfolio Four-Wall EBITDAR in respect of each Individual Property (except that for Individual Properties where a Restaurant Location is being operated as a Third-Party Brand, such information will only be required to the extent it is available to Borrower or any Affiliate of Borrower) for such month, for the corresponding month of the previous Fiscal Year and for the Fiscal Year to date and for the corresponding period of the prior Fiscal Year; and

(B) internally prepared, unaudited financial statements of Borrower and Mortgage Borrower for such month and, to the extent available, the Fiscal Year to date, which financial statements shall include, to the extent available, a comparison with the results for the corresponding month of the prior Fiscal Year and for the corresponding period of the prior Fiscal Year; and

(C) internally prepared, unaudited financial statements of Master Lease Guarantor for such month and the Fiscal Year to date, which financial statements shall include a comparison with the results for the corresponding month of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; and

(D) commencing with the first Annual Budget required to be delivered hereunder, monthly budget performance reports with respect to the Master Lease Annual Budget and the Asset Manager Annual Budget showing a comparison of performance of Mortgage Borrower, Borrower and the Property to the Annual Budget for such month and the Fiscal Year to date, which budget performance reports shall include, to the extent an Annual Budget was delivered in respect of the prior Fiscal Year, a comparison with the results for the corresponding month of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; and

(E) a calculation of the Lease Coverage Ratio, Master Lease Variable Additional Rent and Master Lease Scheduled Additional Rent for such month or as of the end of such month, as applicable.

Such statements and reports for each month shall be accompanied by an Officer's Certificate (or, in the case of income statements and calculations of Portfolio Four-Wall EBITDAR, a Master Lessee Officer's Certificate) certifying to the best of the signer's knowledge, that (A) such statements fairly represent the financial condition and results of operations of Mortgage Borrower, Borrower or the Property, as applicable, (B) that as of the date of such Officer's Certificate, no Event of Default exists under this Agreement, the Note or any other Loan Document or no Mortgage Event of Default exists under the Mortgage Loan Agreement, the Mortgage Note, or any other Mortgage Loan Document, as applicable, or, if so, specifying the nature and status of each such Event of Default or Mortgage Event of Default, as applicable, and the action then being taken or proposed to be taken to remedy such Event of Default or Mortgage Event of Default, as applicable, (C) that as of the date of each Officer's Certificate, no litigation exists involving Mortgage Borrower, Borrower, Master Lessee or any Individual Property or Individual Properties in which the amount involved not covered by insurance is greater than $500,000, or, if so, specifying such litigation and the actions being taking in relation thereto and (D) the amount by which actual operating expenses were greater than or less than the operating expenses anticipated in the applicable Annual Budget. Such financial statements shall contain such other information as shall be reasonably requested by Lender for purposes of calculations to be made by Lender pursuant to the terms hereof. Notwithstanding the foregoing, Borrower shall, or shall cause Mortgage Borrower to, or to cause Master Lessee or Asset Manager to, deliver promptly to Lender reports detailing any non-recurring charges of Mortgage Borrower, Borrower or Master Lessee including, among other things, any charges assessed under any Operating Agreement.

11.2.2 Quarterly Reports. Commencing with the Fiscal Quarter ending June 30, 2012, not later than sixty (60) days following the end of such Fiscal Quarter and not later forty-five (45) days following the end of each subsequent Fiscal Quarter, Borrower shall, or shall cause Mortgage Borrower to, or to cause Master Lessee or Asset Manager to, deliver to Lender the following:

(A) quarterly income statements (including sales) and determinations of Portfolio Four-Wall EBITDAR in respect of each Individual Property (except that for Individual Properties where a Restaurant Location is being operated as a Third-Party Brand, such information will only be required to the extent it is available to Borrower or any Affiliate of Borrower) for the corresponding quarter of the previous Fiscal Year and for the Fiscal Year to date and for the corresponding period of the prior Fiscal Year; and

(B) internally prepared, unaudited financial statements of Mortgage Borrower and Borrower for such quarter and, to the extent available, the Fiscal Year to date, which financial statements shall include, to the extent available, a comparison with the results for the corresponding quarter of the prior Fiscal Year and for the corresponding period of the prior Fiscal Year; and

(C) internally prepared, unaudited financial statements of Master Lease Guarantor for such quarter and the Fiscal Year to date, which financial statements shall include a comparison with the results for the corresponding quarter of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; provided that such financial statements of the Master Lease Guarantor shall be required only in respect the first three (3) Fiscal Quarters of each Fiscal Year; and

(D) commencing with the first Annual Budget required to be delivered hereunder, quarterly budget performance reports with respect to the Master Lease Annual Budget and the Asset Manager Annual Budget showing a comparison of performance of Mortgage Borrower, Borrower and the Property to the Annual Budget for such quarter and the Fiscal Year to date, which budget performance reports shall include, to the extent an Annual Budget was delivered in respect of the prior Fiscal Year, a comparison with the results for the corresponding quarter of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; and

(E) a calculation of the Lease Coverage Ratio, Master Lease Variable Additional Rent and Master Lease Scheduled Additional Rent for such quarter or as of the end of such quarter, as applicable.

Such statements and reports for each quarter shall be accompanied by an Officer's Certificate (or, in the case of income statements and calculations of Portfolio Four-Wall EBITDAR, a Master Lessee Officer's Certificate) certifying to the best of the signer's knowledge, that (A) such statements fairly represent the financial condition and results of operations of Mortgage Borrower, Borrower or the Property, as applicable, (B) that as of the date of such Officer's Certificate, no Event of Default exists under this Agreement, the Note or any other Loan Document or no Mortgage Event of Default exists under the Mortgage Loan Agreement, the Mortgage Note, or any other Mortgage Loan Document, as applicable, or, if so, specifying the nature and status of each such Event of Default or Mortgage Event of Default, as applicable, and the action then being taken or proposed to be taken to remedy such Event of Default or Mortgage Event of Default, as applicable, (C) that as of the date of each Officer's Certificate, no litigation exists involving Mortgage Borrower, Borrower, Master Lessee or any Individual Property or Individual Properties in which the amount involved not covered by insurance is greater than $500,000, or, if so, specifying such litigation and the actions being taking in relation thereto and (D) the amount by which actual operating expenses were greater than or less than the operating expenses anticipated in the applicable Annual Budget. Such financial statements shall contain such other information as shall be reasonably requested by Lender for purposes of calculations to be made by Lender pursuant to the terms hereof.

11.2.3 Annual Reports. Not later than one-hundred twenty (120) days after the end of each Fiscal Year of Borrower's operations (commencing with the Fiscal Year ending on December 31, 2012), Borrower shall, or shall cause Mortgage Borrower to, or to cause Master Lessee or Asset Manager to, deliver to Lender:

(A) An income statement (including sales) and determination of Portfolio Four-Wall EBITDAR in respect of each Individual Property (except that for Individual Properties where a Restaurant Location is being operated as a Third-Party Brand, such information will only be required to the extent it is available to Borrower or any Affiliate of Borrower) for such Fiscal Year and for the prior Fiscal Year; and

(B) audited financial statements for Borrower, Mortgage Borrower and audited financial statements for Master Lease Guarantor for such Fiscal Year certified by an Independent Accountant in accordance with GAAP and the requirements of Regulation AB, each accompanied by an opinion of the applicable Person's auditors, which report and opinion shall be prepared in accordance with generally accepted auditing standards; and

(C) an unaudited, internally prepared statement of Borrower's and Mortgage Borrower's net income for the Fiscal Year and for the fourth fiscal quarter thereof stating in comparative form the figures for the previous Fiscal Year (for each Fiscal Year after Fiscal Year 2013) and the fourth fiscal quarter of the previous Fiscal Year (for each Fiscal Year after Fiscal Year 2012); and

(D) a calculation of the Lease Coverage Ratio, Master Lease Variable Additional Rent and Master Lease Scheduled Additional Rent for such Fiscal Year.

Such annual financial statements and reports shall also be accompanied by an Officer's Certificate (or in the case of income statements and calculations of Portfolio Four-Wall EBITDAR with respect to the Property, a Master Lessee Officer's Certificate) in the form required pursuant to Section 11.2.1.

Notwithstanding the foregoing, the obligations in Section 11.2.2(C) and 11.2.3(B) with respect to delivery of Master Lease Guarantor financial statements may be satisfied by furnishing (A) the applicable financial statements of Guarantor (or any direct or indirect parent of Guarantor) or (B) Master Lease Guarantor's or Guarantor's (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of the preceding clauses (A) and (B), (i) to the extent such information relates to Guarantor (or a parent thereof), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Guarantor (or such parent), on the one hand, and the information relating to Master Lease Guarantor on a stand-alone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 11.2.3(B), such materials are accompanied by a report and opinion of such Person's auditors, which report and opinion shall be prepared in accordance with generally accepted auditing standards.

11.2.4 Disclosure Restrictions. Notwithstanding anything to the contrary contained in this Article XI, unless such information is otherwise disclosed publicly by Borrower, Borrower shall not be required to deliver financial information hereunder to Lender to the limited extent and only during any such period that any applicable federal or state securities laws or regulations promulgated thereunder (a) expressly prohibit such delivery or (b) permit such delivery to be made to Lender only when also disclosed publicly.

11.2.5 Capital Expenditures Summaries. Borrower shall, or shall cause Mortgage Borrower to, or to cause Master Lessee to, within ninety (90) days after the end of each calendar year during the term of the Note, deliver to Lender an annual summary of any and all capital expenditures made at the Property during the prior twelve (12) month period.

11.2.6 Master Lease. Without duplication of any other provision of this Agreement or any other Loan Documents, Borrower shall, or shall cause Mortgage Borrower to, or to cause Master Lessee to, deliver to Lender, within ten (10) Business Days of the receipt thereof by Borrower or Mortgage Borrower, as applicable, a copy of all reports prepared by Master Lessee pursuant to the Master Lease, including, without limitation, the Master Lease Annual Budget and any inspection reports.

11.2.7 Annual Budget; Operating Agreement Annual Budgets .

(a) Borrower shall or shall cause Mortgage Borrower to, or cause Master Lessee or Asset Manager to deliver to Lender the Annual Budget not more than ninety (90) days after the end of each Fiscal Year for Lender's review but not approval; provided, that, upon the occurrence and during the continuation of an Event of Default, the Annual Budget (other than the Master Lease Annual Budget) shall be subject to the review and approval of Lender, not to be unreasonably withheld, conditioned or delayed, to the same extent as Mortgage Lender as provided in Section 11.2.7(a) of the Mortgage Loan Agreement, and Lender shall have the same right to exercise any right of approval that Mortgage Borrower may have to approve the Master Lease Annual Budget under the Master Lease, subject to any constraints in the Master Lease, in its sole and absolute discretion. Borrower shall or shall cause Mortgage Borrower to, or cause Master Lessee, to deliver to Lender the annual budget and any modifications thereto under any Operating Agreement for Lender's review, but not approval, prior to Mortgage Borrower's or Master Lessee's approval of any such annual budget or modification; provided, that, upon the occurrence and during the continuation of an Event of Default or if there is a Master Lease Tenant Default, Lender shall have the right to exercise any right of approval that Mortgage Borrower may have to approve the annual budgets and any amendments thereto under any Operating Agreements subject to any constraints in the Operating Agreement in question, in its sole and absolute discretion.

(b) In the event that Lender fails to respond within ten (10) Business Days of receipt of any request for Lender's approval or consent pursuant to this Section 11.2.7, Borrower may deliver to Lender a second request in an envelope or under cover of a letter marked "URGENT" and including a legend in bold typeface that Lender's failure to grant or deny the requested consent within ten (10) Business Days of the receipt thereof will result in the requested consent being deemed to have been granted. If Lender fails to respond to such second request within ten (10) Business Days of its receipt thereof, Lender's consent to such request shall be deemed granted.

11.2.8 Other Information. Borrower shall cause Mortgage Borrower to, promptly after written request by Lender, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to the Collateral, Borrower, Property, Mortgage Borrower, Master Lessee, Master Lease Guarantor or Guarantor.

11.2.9 Confidentiality.

(a) Lender agrees to (i) use all sales reports and other financial performance and financial results information pertaining to any Individual Property delivered to Lender on or after the date hereof, and any other proprietary information delivered to Lender on or after the date hereof pursuant to this Agreement (provided that any such other proprietary information is clearly marked by Mortgage Borrower as confidential or, if provided by the Master Lessee or its Affiliates under the Master Lease, marked by Master Lessee as confidential) (collectively, "Proprietary Information") solely for purposes of its ownership of its interest in the Loan and shall not use (or permit its Affiliates to use) such information obtained in its capacity as lender in a manner to compete with Mortgage Borrower or Master Lessee or Master Lease Guarantor in the business of the ownership and operation of restaurant properties similar to the Property and (ii) keep confidential all Proprietary Information.

(b) Notwithstanding the terms of Section 11.2.9(a), but subject (to the extent applicable) to Sections 11.2.9(d) and 11.2.9(e), Lender shall be permitted to disclose any Proprietary Information:

(i) to its employees, directors, agents, attorneys, accountants and other professional advisors or those of any of its Affiliates solely for the purposes described in Section 11.2.9(a);

(ii) upon the request or demand of any Governmental Authority (including without limitation, any governmental agency, regulatory authority or self-regulatory authority (including, without limitation, bank and securities examiners) having or claiming to have authority to regulate or oversee any aspect of Lender's business or that of its Affiliates in connection with the exercise of such authority or claimed authority) or as may otherwise be required pursuant to any Legal Requirement;

(iii) if requested or required to do so in connection with any litigation or similar proceeding; provided, however, prior to any Person disclosing Proprietary Information pursuant to clause (ii) above or this clause (iii), such Person shall use commercially reasonable efforts to (i) if legally permitted to do so, give Borrower or Master Lessee as much prior notice thereof as is reasonably possible so that Borrower or Master Lessee may seek such protective orders or other confidentiality protection as it, in its sole discretion, may elect, and (ii) cooperate with Borrower (or Master Lessee), at Borrower's cost and expense, in protecting the confidential nature of the Proprietary Information which must be so disclosed, and the disclosure permitted by such clause shall be only to the extent required);

(iv) to any Rating Agency, underwriter or NRSRO, provided (I) each Rating Agency or underwriter to which such information is disclosed has executed its usual and customary confidentiality agreement and (II) any NRSRO desiring access to any secured website containing such information shall, as a condition to its access to, have either furnished to the Securities and Exchange Commission the certification required under Rule 17g-5(e) of the Exchange Act or be required to agree to (or "click through") such website's confidentiality provisions;

(v) to any actual or prospective investor, participant, assignee or transferee of any beneficial interest in the Loan and to any actual or prospective investor or transferee of any direct or indirect interest in the Property , in each case subject to a written agreement to comply with the provisions of this Section 11.2.9;

(vi) that has been publicly disclosed;

(vii) that was already known to Lender or any of its Affiliates prior to Borrower's disclosure to Lender (except as a result of a breach of a confidentiality requirement which breach was known to Lender or such Affiliate);

(viii) that is independently developed, discovered or arrived at by Lender or any of its Affiliates without reference to the Proprietary Information; or

(ix) in connection with the exercise of any remedy hereunder or under any other Loan Document.

(c) [Reserved].

(d) Notwithstanding the reporting requirements of Sections 11.2.1(A), 11.2.2(A) and 11.2.3(A), neither Borrower nor Master Lessee shall be required to provide any Store-Level Information to any holder of an interest in the Loan that is a Tenant Competitor, provided that the foregoing provisions of this Section 11.2.9(d) shall not limit any other holder of an interest in the Loan from receiving Store-Level Information. Further, Lender may not disclose any Store Level Information to any Tenant Competitor.

(e) Borrower shall not be required to disclose, and Lender may not disclose any Store-Level Information to any holders of interests in or other beneficiaries of any CDO, trust used in connection with a Securitization or other Securitization vehicle involving the Loan. Lender may disclose, and permit the disclosure of, Store-Level Information to a trustee, servicer, manager or other fiduciary of any CDO, trust created in connection with a Securitization or other Securitization vehicle involving the Loan on the express condition that no Store-Level Information may be disclosed to any holders of interests in or other beneficiaries of such trust, CDO or other vehicle and provided that the recipient of Store-Level Information executes and delivers a confidentiality agreement in favor of Borrower, Mortgage Borrower and Master Lessee affording such parties the protections and agreements set forth in this Section 11.2.9 generally and with respect to Store-Level Information.

(f) With respect to Proprietary Information provided to Lender directly or indirectly by or on behalf of Master Lessee, it is agreed and acknowledged by Lender that (i) Master Lessee is a third-party beneficiary of this Section 11.2.9 and (ii) the provisions of this Section 11.2.9 shall survive (including, without limitation, for the benefit of Master Lessee) the repayment of the Loan, any foreclosure of the lien securing the Loan, any assignment of the Collateral in lieu thereof, or the exercise of any other remedies by Lender.

(g) Not more than once in any twelve-month period, Borrower may propose one or more additions to Schedule IV, provided such additions must be Persons directly engaged in the business of owning, operating or franchising full-service restaurants. Lender shall have the right to approve such proposed additions, such approval not to be unreasonably withheld, delayed or conditioned. Borrower's proposed additions and request for such approval shall contain a legend in capitalized bold letters on the top of the first page stating: **"THIS IS A REQUEST FOR LENDER'S APPROVAL OF ONE OR MORE PROPOSED "TENANT COMPETITORS" PURSUANT TO SECTION 11.2.9(g) OF THAT CERTAIN FIRST MEZZANINE LOAN AGREEMENT, DATED AS OF MARCH 27, 2012, BETWEEN NEW PRP MEZZ 1, LLC, AS BORROWER, AND GERMAN AMERICAN CAPITAL CORPORATION AND BANK OF AMERICA, N.A., AS LENDER. LENDER'S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS."** If Lender fails to grant, or if Lender expressly declines to grant, such approval within such ten (10) Business Day period, Borrower shall send a second request to Lender, with a copy of the first request, and bearing a legend in capitalized bold letters on the top of the first page stating: **"THIS IS A SECOND REQUEST FOR LENDER'S APPROVAL AS DESCRIBED IN THE ATTACHED. LENDER'S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS. LENDER'S FAILURE TO RESPOND WITHIN SUCH TIME PERIOD SHALL RESULT IN LENDER'S APPROVAL BEING DEEMED TO HAVE BEEN GRANTED."**If Lender fails to grant, or if Lender expressly declines to grant, such approval to such request within such ten (10) Business Day period, Lender's approval shall be deemed to have been granted.

XII. ENVIRONMENTAL MATTERS

12.1 Representations. Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Lender (the "Environmental Reports"), (i) neither Borrower nor Mortgage Borrower has engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to Borrower's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to Borrower's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower or Mortgage Borrower; and (v) to Borrower's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower or Mortgage Borrower.

12.2 Compliance with Environmental Laws. Subject to Mortgage Borrower's right to contest under Section 7.3 of the Mortgage Loan Agreement, Borrower covenants and agrees with Lender that it shall, and shall cause Mortgage Borrower to, comply with all Environmental Laws. If at any time prior to the repayment in full of the Obligations, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an "Environmental Event"), Borrower shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Borrower has knowledge of the occurrence of an Environmental Event, Borrower shall deliver to Lender an Officer's Certificate (an "Environmental Certificate") explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Borrower shall promptly provide Lender with copies of all notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower in connection with any Environmental Law. For purposes of this paragraph, the term " notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Borrower with such Environmental Laws.

12.3 Environmental Reports. Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. Borrower grants (and shall cause Mortgage Borrower to grant) Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Borrower to Lender upon demand and shall be secured by the Lien of the this Agreement and the Pledge. Lender shall not unreasonably interfere with (and shall cause Mortgage Borrower not to unreasonably interfere with), and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Mortgage Borrower's, Master Lessee's, any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3, Lender shall not be deemed to be exercising any control over the operations of Mortgage Borrower or Borrower or the handling of any environmental matter or hazardous wastes or substances of Mortgage Borrower or Borrower for purposes of incurring or being subject to liability therefor.

12.4 Environmental Indemnification. Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or out-of-pocket expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified

Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any Release, Threat of Release or the presence of any Hazardous Materials affecting the Property; and (d) the presence at, in, on or under, or the Release or Threat of Release at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Borrower. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from any Indemnified Party's gross negligence or willful misconduct.

12.5 Recourse Nature of Certain Indemnifications. Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document, the indemnification provided in Section 12.4 shall be fully recourse to Borrower and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the this Agreement and the Pledge and/or the conveyance of title to the Collateral to Lender or any purchaser or designee in connection with a foreclosure of this Agreement and the Pledge or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. COOPERATION.

14.1 Secondary Market Transactions. Borrower hereby agrees to cooperate with Lender, at no cost, expense or liability to Borrower, Guarantor or any of their respective Affiliates, to sell, assign, participate or otherwise transfer its beneficial interest in the Loan, the Note, the Loan Documents and/or Lender's rights, title, obligations and interests therein to any Person (including to a Securitization vehicle) pursuant to Section 15.1 (such sale, assignment, participation or other transfer, a "Secondary Market Transaction"). For clarity, such cooperation shall not require Borrower to (i) make or re-make any representations or warranties, (ii) provide any updated or new opinions of counsel, (iii) agree to any additional or larger reserves, (iv) cooperate or assist Lender or any other Person with a securitization of, the creation of CDOs secured by, or a participation or financing through an "owner trust" of, the Loan (or any interest therein) (each, a "Securitization") (other than Borrower's cooperation in the transfer of the Loan itself into the Securitization vehicle on the terms set forth in this Section 14.1), (v) undertake any action requested under this Section 14.1 that would interfere with the ordinary course day-to-day operation of Borrower, Guarantor or any of their respective Affiliates in any material respect or (vi) agree to any amendments, modifications or supplementations of the Loan Documents that would increase

Borrower's monetary obligations (or potential liability therefor) or increase in any respect Borrower's obligations or liabilities or decrease Borrower's rights (other than, in each case, to a de minimis degree); provided, that Borrower, at Lender's request, will execute and deliver "component" notes, so long as:

(a) the aggregate principal amount of such component notes shall equal the outstanding principal balance of the Loan immediately prior to the creation of such component notes,

(b) the weighted average interest rate of all such component notes shall on the date created and at all times thereafter equal the interest rate which was applicable to the Loan immediately prior to the creation of such component notes (i.e., under this clause (b) and the immediately following clause (c), the component notes may not effectuate a loan structure that could result in "rate creep"),

(c) the debt service payments on all such component notes shall on the date created and at all times thereafter equal the debt service payment which was due under the Loan immediately prior to the creation of such component notes,

(d) the other terms and provisions of each of the component notes shall be identical in substance and substantially similar in form to the Loan Documents, and

(e) the maturity date of any such component note shall be the same as the Scheduled Maturity Date of the Note immediately prior to the issuance of such component notes,

except that in the case of clauses (b), (c) and (d) above, after an Event of Default, an increase in the weighted average interest rate of one or more component notes may result after certain applications of principal to the Obligations have been made and applied in accordance with the terms of this Agreement.

Lender shall reimburse Borrower for all invoiced costs and expenses reasonably incurred by or on behalf of Borrower in connection with Borrower's complying with requests made under this Section 14.1, regardless whether the proposed Secondary Market Transaction is effected.

XV. ASSIGNMENTS AND PARTICIPATIONS

15.1 Assignments and Participations. In addition to any other rights of Lender hereunder, the Loan, the Note, the Loan Documents and/or Lender's rights, title, obligations and interests therein may be sold, assigned, participated or otherwise transferred by Lender and any of its successors and assigns to any Person at any time in its sole and absolute discretion, in whole or in part, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise without notice to or consent from Borrower or any other Person(provided that it is agreed that neither the Loan nor any interest therein may be sold to (i) a natural person unless such person satisfies the requirements of an "accredited investor" under Regulation D of the Securities Act (except that, for purposes of this clause (i), the $1,000,000, $200,000 and $300,000 figures set forth in Rule 501(6) and (7) shall each be multiplied by 10), and (ii) a Tenant Competitor. Upon any such assignment, all references to Lender in this Loan Agreement and in any Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of Lender in all respects. Except as expressly permitted herein, Borrower may not assign its rights, title, interests or obligations under this Loan Agreement or under any of the Loan Documents.

15.2 Register. Servicer (or in the case of assignments to participants, the applicable Lender), as non-fiduciary agent of Borrower, shall maintain a record within the meaning of U.S. Treasury Regulation 5f.103-1(c) that identifies each owner (including successors, assignees and participants) of an interest in the Loan, including the name and address of the owner, and each owner's rights to principal and stated interest (the " Register") and shall record all Secondary Market Transactions in the Register. The parties intend for the Loan to be in registered form for tax purposes and to the extent of any conflict with this Section 15.2, this Section 15.2 shall be construed in accordance with that intent.

XVI. ADDITIONAL RIGHTS; COSTS

16.1 Certain Additional Rights of Lender. Notwithstanding anything to the contrary which may be contained in this Agreement, Lender shall have:

(i) the right, upon not less than fifteen (15) Business Days' prior written notice to Borrower, to request and to hold a meeting, no more often than once during each fiscal year of Borrower, and only in conjunction with Mortgage Lender and/or Second Mezzanine Lender that wishes any such meeting, at Borrower's office in Tampa, Florida, with the president and chief operating officer or the executive vice president and chief financial officer of Borrower, to discuss such significant business activities and business and financial developments of Borrower as are specified by Lender in writing in the request for such meeting;

(ii) the right, in accordance with the terms of Section 11.1, to examine the books and records of Borrower;

(iii) the right, in accordance with the terms of Section 11.2, to receive such financial data and information set forth therein;

(iv) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property or the ownership of the Collateral);

(v) the right, in accordance with the Pledge, during the continuance of an Event of Default, to vote Borrower's interests in Mortgage Borrower;

(vi) the right, in accordance with this Agreement and the Pledge, including, without limitation, the provisions of Article VIII, to restrict the Transfer of interests in Mortgage Borrower, it being understood that no such restrictions can be made on such Transfers to the extent such Transfers are permitted by the terms of this Agreement or the Pledge.

The rights described above may be exercised by Lender until the Principal Amount and all other Obligations hereunder have been repaid in full.

16.2 Costs. Lender shall reimburse Borrower for all reasonable out-of-pocket expenses incurred by Borrower in connection with Borrower's compliance with the provisions of Section 16.1 unless Borrower would otherwise have incurred such costs pursuant to any other provision of this Agreement or the other Loan Documents.

16.3 Retention of Servicer. Lender reserves the right to retain the Servicer; provided that Borrower shall have reasonable approval rights over the initial designation of the Servicer as of the Closing Date (but will not have any approval rights over any replacements or substitutions of the Servicer occurring after the Closing Date). Borrower hereby approves Situs Asset Management LLC as the initial Servicer as of the date hereof. Borrower shall pay any reasonable costs and expenses of the Servicer and any reasonable third party costs and expenses of the Servicer, any customary special servicing fees and customary work-out fees and reasonable attorney's fees and disbursements, in connection with a prepayment, release of the Property, assumption or modification of the Loan, or following an Event of Default, special servicing or work-out of the Loan or enforcement of the Loan Documents. In addition, Borrower shall pay an annual servicing fee to the Servicer equal to 2.5 basis points of the Principal Amount outstanding from time to time, which fee shall be paid in monthly installments for the period from the first day of each Interest Period through last day of each Interest Period and payable on or prior to each Payment Date, with each such monthly installment equal to 2.5 basis points of the outstanding Principal Amount from time to time multiplied by a fraction, the denominator of which shall be three hundred sixty (360) and the numerator of which shall be the actual number of days in the relevant Interest Period.

16.4 Reserve Accounts. If Mortgage Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement, or if the Mortgage Loan is refinanced or paid off in full (without a prepayment of the Loan), then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement to be transferred to and deposited with Lender. Lender shall maintain such reserve accounts in substantially the same manner as the applicable reserve under the Mortgage Loan Agreement and upon Lender's request, Borrower shall execute such amendments to the Loan Documents necessary to reflect Lender's holding such reserves in the manner described herein.

XVII. DEFAULTS

17.1 Event of Default.

(a) Each of the following events shall constitute an event of default hereunder (an " Event of Default"):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date, (B) any regularly scheduled monthly payment of principal or interest due hereunder is not paid in full on the applicable Payment Date, (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Yield Maintenance Premium is not paid when due, (E) any deposit to the Collateral Account is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D) and/or (E) of this subsection (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document, with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(ii) the occurrence of any Mortgage Event of Default; or any other event shall occur or condition shall exist, if the effect of such event or condition is to accelerate or permit Mortgage Lender to accelerate the maturity of any portion of the Mortgage Loan;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect or if Borrower fails to deliver to Lender evidence of the insurance required by Section 6.1 at the times required in such Section 6.1 with such failure continuing for five (5) Business Days after Lender delivers written notice thereof to Borrower, provided, that Borrower shall not be deemed to be in default hereunder in the event funds sufficient for a required payment of the premiums required to keep the insurance policies in full force and effect are held in the Insurance Reserve Account and Mortgage Lender or Mortgage Cash Management Bank fails to timely make payment from such Sub-Account as contemplated by the Mortgage Loan Agreement unless due to the negligence or willful misconduct of Mortgage Borrower;

(iv) if (a) any Transfer prohibited by Article VIII occurs, or (b) Mortgage Borrower files a declaration of condominium with respect to the Property other than the Condominium Properties;

(v) if any representation or warranty made by Borrower herein (including any representation or warranty of Mortgage Borrower that is incorporated herein by reference pursuant to Section 4.1.44 hereof and made by Borrower hereunder) or by Borrower or any Affiliate of Borrower in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided, however, that if (A) any representation or warranty made by Borrower relating to Section 4.1.24 of the Mortgage Loan Agreement shall have been false or misleading in any material respect as of the date the representation or warranty was made, the same shall not constitute an Event of Default unless such incorrect, false or misleading statement is not cured within thirty (30) days after receipt by Borrower of notice from Lender in writing of such breach or a longer period of time not to exceed thirty (30) additional days if Borrower has commenced to cure but cannot cure within the initial thirty (30) day period, and (B) if any other representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the best of Borrower's knowledge, false or misleading in any material respect when made, then same shall not constitute an Event of Default unless Borrower has not cured same within ten (10) days after receipt by Borrower of notice from Lender in writing of such breach;

(vi) if Borrower, Mortgage Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity or Borrower, Mortgage Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower, Mortgage Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity, as applicable, attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if any of the assumptions contained in the Non-Consolidation Opinion, in any Additional Non-Consolidation Opinion or in any other non-consolidation opinion delivered to Lender in connection with the Loan, or in any other non-consolidation opinion delivered subsequent to the closing of the Loan, is untrue in any material respect;

(x) if any of the assumptions contained in the True Lease Opinion (other than any assumption that relies upon factual information provided by Cushman & Wakefield or any other third party) is untrue in any material respect;

(xi) if Borrower shall fail to comply in any material respect with any covenants set forth in 5.3 or 5.4;

(xii) except as provided in subsection (xi) above, if Borrower shall fail to comply with any covenants set forth in Article V (other than Section 5.1.1) or Article XI with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xiii) intentionally omitted;

(xiv) if this Agreement or any other Loan Document or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Guarantor, or any Lien securing the Indebtedness shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender);

(xv) except as expressly permitted pursuant to the Loan Documents or the Mortgage Loan Documents, if Borrower allows Mortgage Borrower to grant any easement, covenant or restriction (other than the Permitted Encumbrances) over the Property;

(xvi) if Borrower allows Mortgage Borrower or Mortgage Borrower to allow Master Lessee to permit any event within its control to occur that would cause any REA to terminate without notice or action by any party thereto or would entitle any party to terminate any REA and the term thereof by giving notice to Mortgage Borrower or Master Lessee; or any REA shall be surrendered, terminated or canceled for any reason or under any circumstance whatsoever except as provided for in such REA; or any material term of any REA shall be modified or supplemented (other than in accordance with its terms) and such modification or supplementation is reasonably likely to have a Material Adverse Effect; or Borrower shall fail or shall permit Master Lessee to fail to exercise its option to renew or extend the term of any REA or shall fail or neglect to pursue diligently all actions necessary to exercise such renewal rights pursuant to such REA except as provided for in such REA, in all of the foregoing cases, where such surrender, termination, cancellation, modification, supplement or failure to renew or extend is not cured within ten (10) Business Days after receipt by Borrower of notice from Lender in writing;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document not specified in subsections (i) to (xvi) above, for thirty (30) days after notice from Lender; provided, however, that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in subsections (a)(vi), (vii) or (viii) above in respect of Borrower) Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action that Lender deems advisable to protect and enforce its rights against Borrower and the Collateral, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Borrower under the Loan Documents, (ii) collecting interest on the Principal Amount at the Default Rate whether or not Lender elects to accelerate the Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents against Borrower and the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above in respect of Borrower, the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Lender of its right to pursue any other remedies available to it under this Agreement, the Pledge or any other Loan Document. Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Lender in the Loan Documents.

(c) Upon the occurrence of a Mortgage Event of Default, Borrower shall cause Mortgage Borrower to deliver to Lender within five (5) Business Days after the first to occur of (i) receipt by Mortgage Borrower of notice of such Mortgage Event of Default from Mortgage Lender or (ii) the date Mortgage Borrower obtains actual knowledge of the occurrence of such Mortgage Event of Default, a detailed description of the actions to be taken by Mortgage Borrower to cure such Mortgage Event of Default and the dates by which each such action shall occur. Such schedule shall be subject to the approval of Lender. Borrower shall cause Mortgage Borrower to take all such actions as are necessary to cure such Mortgage Event of Default by the date approved by Lender and shall deliver to Lender not less frequently than weekly thereafter written updates concerning the status of Mortgage Borrower's efforts to cure such Mortgage Event of Default. Lender shall have the right, but not the obligation, to pay any sums or to take any action which Lender deems necessary or advisable to cure any default or alleged default under the Mortgage Loan Documents (whether or not Mortgage Borrower is undertaking efforts to cure such default), and such payment or such action is hereby authorized by Borrower, and any sum so paid and any expense incurred by Lender in taking any such action shall be evidenced by this Agreement and secured by this Agreement and the Pledge and shall be immediately due and payable by Borrower to Lender with interest at the Default Rate until paid. Borrower shall cause Mortgage Borrower to permit Lender to enter upon the Property for the purpose of curing any default or alleged default under the Mortgage Loan Documents or hereunder. Borrower hereby transfers and assigns any excess proceeds arising from any foreclosure or sale under power pursuant to the Mortgage Loan Documents or any instrument evidencing the indebtedness secured thereby, and Borrower hereby authorizes and directs the holder or holders of the Mortgage Loan Documents to pay such excess proceeds directly to Lender up to the amount of the Obligations. In the event that Lender cures any Mortgage Loan Event of Default, any such cure by Lender shall not waive or be deemed to have cured such Mortgage Loan Event of Default and shall constitute an immediate Event of Default under this Agreement without any notice, grace or cure period otherwise applicable under this Agreement.

17.2 Remedies.

(a) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Pledge has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, take any action to cure such Event of Default. Lender may appear in, defend, or bring any action or proceeding to protect its interests in the Collateral or to foreclose its security interest under this Agreement and the Pledge or under any of the other Loan Documents or collect the Indebtedness.

(c) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral, Lender may:

(i) without notice to Borrower, except as required by law, and subject to Section 3.1.10, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Account Collateral against the Obligations, operating expenses and/or capital expenditures for the Property or any part thereof;

(ii) in Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(d) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Collateral for the satisfaction of any of the Indebtedness, and Lender may seek satisfaction out of the Collateral or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Lender shall have the right from time to time to partially foreclose this Agreement and the Pledge in any manner and for any amounts secured by this Agreement or the Pledge then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Lender may foreclose this Agreement and the Pledge to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Agreement and the Pledge to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Agreement or the Pledge as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to this Agreement and the Pledge to secure payment of sums secured by this Agreement and the Pledge and not previously recovered.

17.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement and the Pledge shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or Guarantor shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or Guarantor or to impair any remedy, right or power consequent thereon.

17.4 Costs of Collection. In the event that after an Event of Default: (i) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents; or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge or any of the Loan Documents; then Borrower shall pay to Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate (collectively, "Enforcement Costs").

17.5 Distribution of Collateral Proceeds. In the event that, following the occurrence and during the continuance of any Event of Default, any monies are received in connection with the enforcement of any of the Loan Documents, or otherwise with respect to the realization upon any of the Collateral, such monies shall be distributed for application as follows:

(a) First, to the payment of, or (as the case may be) the reimbursement of, Lender for or in respect of all reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been incurred or sustained by Lender to protect or preserve the Collateral or in connection with the collection of such monies by Lender (including without limitation, Enforcement Costs), for the exercise, protection or enforcement by Lender of all or any of the rights, remedies, powers and privileges of Lender under this Agreement or any of the other Loan Documents or in respect of the Collateral or in support of any provision of adequate indemnity to Lender against any taxes or liens which by law shall have, or may have, priority over the rights of Lender to such monies;

(b) Second, to all other Obligations in such order or preference as Lender shall determine in its sole discretion;

(c) Third, the excess, if any, shall be deposited in the Second Mezzanine Collateral Account for distribution or application under the Second Mezzanine Loan Documents, or if the Second Mezzanine Loan has been repaid, shall be distributed to Borrower.

XVIII. SPECIAL PROVISIONS

18.1 Exculpation.

18.1.1 Exculpated Parties. Except as set forth in this Section 18.1, the Recourse Guaranty and/or the Environmental Indemnity, no personal liability shall be asserted, sought or obtained by Lender or enforceable against (i) Borrower, (ii) any Affiliate of Borrower, (iii) any Person owning, directly or indirectly, any legal or beneficial interest in Borrower or any Affiliate of Borrower or (iv) any direct or indirect partner, member, principal, officer, Controlling Person, beneficiary, trustee, advisor, shareholder, employee, agent, Affiliate or director of any Persons described in clauses (i) through (iii) above (collectively, the "Exculpated Parties") and none of the Exculpated Parties shall have any personal liability (whether by suit deficiency judgment or otherwise) in respect of the Obligations, this Agreement, the Pledge, the Note, the Collateral or any other Loan Document, or the making, issuance or transfer thereof, all such liability, if any, being expressly waived by Lender. The foregoing limitation shall not in any way limit or affect Lender's right to any of the following and Lender shall not be deemed to have waived any of the following:

(a) Foreclosure of the lien of this Agreement and the Pledge in accordance with the terms and provisions set forth herein and in the Pledge;

(b) Action against any other security at any time given to secure the payment of the Note and the other Obligations;

(c) Exercise of any other remedy set forth in this Agreement or in any other Loan Document which is not inconsistent with the terms of this Section 18.1;

(d) Any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Agreement and the Pledge or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents; or

(e) The liability of any given Exculpated Party with respect to any separate written guaranty or agreement given by any such Exculpated Party in connection with the Loan (including, without limitation, the Recourse Guaranty and the Environmental Indemnity).

18.1.2 Loss Carveouts From Non-Recourse Limitations. Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents to the contrary, there shall at no time be any limitation on Borrower's or Guarantor's liability for the payment, in accordance with the terms of this Agreement, the Note, the Pledge and the other Loan Documents, to Lender of any Losses incurred by or on behalf of Lender by reason of:

(a) any fraudulent acts, willful misconduct or intentional misrepresentations by Mortgage Borrower, Borrower or Guarantor;

(b) Proceeds which Mortgage Borrower, Borrower or Guarantor has received and to which Lender is entitled pursuant to the terms of this Agreement or any of the Loan Documents to the extent the same have not been applied toward payment of the Indebtedness or otherwise applied in a manner permitted by the Loan Documents, or not used for or in connection with the repair or replacement of the Property in accordance with the provisions of the Mortgage Loan Agreement;

(c) any misappropriation of Rents or security deposits by Mortgage Borrower, Borrower or Guarantor;

(d) Borrower's failure to cause Mortgage Borrower to instruct Master Lessee to deposit all Master Lease Rent directly into the Holding Account as and to the extent required under Section 3.1.9 of the Mortgage Loan Agreement, or, if Borrower or any Affiliate of Borrower receives any Rents, then Borrower's failure to deposit or cause to be deposited such amounts into the Holding Account in accordance with Section 3.1.9 of the Mortgage Loan Agreement;

(e) any Rents collected by Mortgage Borrower, Borrower or Guarantor (other than Rents sent to the Holding Account pursuant to the Mortgage Loan Agreement or paid directly to Mortgage Lender pursuant to any notice of direction delivered to tenants of the Property) and not applied to payment of the Mortgage Obligations, the Obligations or used to pay normal and verifiable operating expenses of the Property or otherwise applied in a manner permitted under the Loan Documents or the Mortgage Loan Documents;

(f) any physical damage to the Property caused by the willful misconduct of Mortgage Borrower, Borrower or Guarantor or by affirmative physical actions taken by Mortgage Borrower, Borrower or Guarantor constituting arson or waste;

(g) Borrower's or Mortgage Borrower's failure to return all Personal Property owned by Mortgage Borrower (or to reimburse Lender for the value thereof), which is wrongfully and in violation of the Mortgage Loan Documents taken from the Property by or on behalf of Mortgage Borrower or Borrower;

(h) Borrower's failure to comply with any of the provisions of Article XII;

(i) a breach by Borrower or any SPE Component Entity (if any) of any of the covenants set forth in Sections 5.3 or 5.4 hereof (other than any Excluded SPE Breach);

(j) Borrower's failure to cause Mortgage Borrower to deliver to Mortgage Lender the net sales proceeds of a Transfer of an Individual Property described in Section 5.1.9(b) of the Mortgage Loan Agreement together with any shortfall necessary to pay and/or defease in full the Release Price or Combined Release Price, as applicable, for such Individual Property, in accordance with the provisions of Section 5.1.9(b) of the Mortgage Loan Agreement (and, to the extent applicable, defease a portion of the Loan as required pursuant to Section 2.3.6 of the Mortgage Loan Agreement);

(k) Borrower's failure to pay Taxes (except to the extent that (A) Lender has exercised its rights under Section 3.1.7, sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms hereof in the event the Mortgage Loan has been fully repaid and there exists no impediment to Lender's utilization thereof or (B) there is insufficient cash flow from the operation of the Property);

(l) Borrower's setting forth of any claim, counterclaim and/or defense in response to a proceeding instituted by Lender (whether judicial or otherwise) for the foreclosure of the Pledge or other enforcement action following an Event of Default which is found by a court of competent jurisdiction to have been raised by Borrower in bad faith; or

(m) any Involuntary Lien, except to the extent that there is insufficient cash flow from the operation of the Property to pay the Person holding such Involuntary Lien;

(n) a breach by Borrower of Section 5.2.7 hereof; or

(o) reasonable attorney's fees and expenses actually incurred by Lender in connection with any successful suit filed on account of any of the foregoing clauses (a) through (n) above.

18.1.3 Full Recourse Carveouts From Non-Recourse Limitations . Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents to the contrary, the agreement of Lender not to pursue recourse liability as set forth in Section 18.1.1 above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Indebtedness shall be fully recourse to Borrower and Guarantor on a joint and several basis in the event (i) of a breach by Borrower of any of the covenants set forth in Sections 5.3 or 5.4 hereof (other than any Excluded SPE Breach), and as a result thereof, Borrower is substantively consolidated with any other Person; (ii) a voluntary Transfer by Mortgage Borrower of Mortgage Borrower's interest in any Individual Property or any portion thereof in violation of Article VIII hereof or a Transfer by Borrower of its interest in the Collateral or any portion thereof in violation of Article VIII hereof, (iii) any voluntary Transfer of an Equity Interest in any Restricted Party in violation of Article VIII hereof, (iv) Borrower or Mortgage Borrower filing a voluntary petition under the Bankruptcy Code or any federal or state bankruptcy or insolvency law, (v) Borrower or Mortgage Borrower or any Affiliate, officer, director, or representative which Controls, directly or indirectly, Borrower or Mortgage Borrower, files, or joins in the filing of, an involuntary petition against Borrower and/or Mortgage Borrower under any Creditors Rights Laws, or solicits or causes to be solicited , or colludes with, petitioning creditors for any involuntary petition against Borrower and/or Mortgage Borrower from any Person; (vi) Borrower files an answer consenting to or joining in, or otherwise acquiesces to, any involuntary petition filed against it, by any other Person under any Creditors Rights Laws, provided that Borrower will be deemed to have acquiesced to an involuntary bankruptcy petition only if Borrower did not contest such petition notwithstanding that (A) Borrower had sufficient funds available for use to contest such petition, (B) there was a good faith basis to contest such petition and (C) contesting such petition would not violate the fiduciary duties owed to Borrower by the Persons that Control Borrower (which fiduciary duties shall not consider, to the maximum extent permissible by applicable law, the interests of any equity owners of Borrower or any other Affiliate of Borrower; provided, however, that if applicable law requires that such fiduciary duties consider the interests of the equity owners of Borrower, such interests shall be considered only to the extent of such equity owners' respective economic interest in Borrower); (vii) Mortgage Borrower files an answer consenting to or joining in, or otherwise acquiesces to, any involuntary petition filed against it, by any other Person under any Creditors Rights Laws, provided that Mortgage Borrower will be deemed to have acquiesced to an involuntary bankruptcy petition only if Mortgage Borrower did not contest such petition notwithstanding that (A) Mortgage Borrower had sufficient funds to contest such

petition, (B) there was a good faith basis to contest such petition and (C) contesting such petition would not violate the fiduciary duties owed to Mortgage Borrower by the Persons that Control Mortgage Borrower (which fiduciary duties shall not consider, to the maximum extent permissible by applicable law, the interests of any equity owners of Mortgage Borrower or any other Affiliate of Mortgage Borrower; provided, however, that if applicable law requires that such fiduciary duties consider the interests of the equity owners of Mortgage Borrower, such interests shall be considered only to the extent of such equity owners' respective economic interest in Mortgage Borrower); (viii) any Affiliate, officer, director, or representative which Controls Borrower or Mortgage Borrower consents to or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or Mortgage Borrower or any portion of any Individual Property or the Collateral (except at the written request of Lender); (ix) Borrower or Mortgage Borrower incurs indebtedness for borrowed money in violation of the Loan Documents; or (x) Borrower or Mortgage Borrower fails to obtain Lender's prior written consent to any voluntary Lien encumbering all or any portion of the Property, the Collateral or any direct or indirect equity interests in Borrower, if such consent is required by the Loan Documents.

18.1.4 Limitation of Liability of Borrower.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or any Affiliate of Borrower, of the direct Equity Interests in Mortgage Borrower, Borrower, any SPE Component Entity or Second Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Borrower or any Affiliate of Borrower) shall hold any direct or indirect Equity Interests in, or Control, Mortgage Borrower (Mortgage Borrower in such case may be referred to as "Divested Borrower");

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Borrower shall not have any liability for any obligations under Section 18.1.2 or Section 18.1.3 (collectively, the "Recourse Obligations") (i) to the extent arising from: (A) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Borrower or any Affiliate of Borrower, (B) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (C) any action taken by any successor owner of such Divested Property, (D) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (E) any action taken by any receiver for such Receivership Property during the Receivership Period, or (F) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (ii) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Borrower or any Affiliate of Borrower); provided that Borrower shall remain liable hereunder for any Recourse Obligations to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the "Controlling Mezzanine Lender"), Borrower shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

XIX. MISCELLANEOUS

19.1 Survival. This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Indebtedness is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the successors and assigns of Lender. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents shall be joint and several.

19.2 Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

19.3 Governing Law.

(A) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CT CORPORATION SYSTEM
111 8TH AVENUE
NEW YORK, NEW YORK 10011

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY

RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

19.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

19.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

19.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) for notices other than notices of the occurrence of a Default or an Event of Default only, telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance—Servicing 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Telecopy No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Borrower:	New PRP Mezz 1, LLC 2202 North West Shore Blvd., Suite 470C Tampa, FL 33607 Attention: Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Dave Humphrey Telecopy No.: (617) 652-3112 Confirmation No.: (617) 516-2112
With a copy to:	Ropes and Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199-3600 Attention: Richard E. Gordet, Esq. Telecopy No.: (617) 951-7491 Confirmation No.: (617) 235-0480

With a copy to: Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

19.7 TRIAL BY JURY. BORROWER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE PLEDGE, THE NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE PLEDGE, THE NOTE OR ANY OTHER LOAN DOCUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

19.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

19.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

19.10 Preferences. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to 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 payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

19.11 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

19.12 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements), except as may be otherwise expressly provided in this Agreement or the Loan Documents, incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender pursuant to this Agreement); (ii) Lender's ongoing performance of and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters as required herein or under the other Loan Documents; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the Pledge; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Collateral, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Collateral or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.11;

provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Collateral Account subject to the provisions of Section 3.1.10(a).

(b) Subject to the non-recourse provisions of Section 18.1, Borrower shall protect, indemnify and save harmless Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the " Indemnified Parties") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties or the Collateral or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the acceptance by Lender or its designee of a transfer-in-lieu of foreclosure with respect to the Collateral, or (ii) an Indemnified Party or its designee taking possession or control of the Collateral or (iii) the foreclosure of the Pledge, except to the extent caused by the actual willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Collateral): (1) ownership of Borrower's interest in Mortgage Borrower, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Property or any Appurtenances thereto, (3) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender, any claim the insurance as to which is inadequate, and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents or any failure on the part of Borrower to perform or comply or to cause Mortgage Borrower to perform or comply with any of the terms of any Operating Agreement within the applicable notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 of the Mortgage Loan Agreement, (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Subleases or the Master Lease, or (9) the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties or Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by the Pledge. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower shall at Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's reasonable expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by

Lender promptly after Lender has been notified of such counsel); provided, however, that nothing herein shall compromise the right of Lender (or any Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Lender and Borrower that would make such separate representation advisable; provided further that if Lender shall have appointed separate counsel pursuant to the foregoing, Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Lender a conflict or potential conflict exists between such Indemnified Party and Lender. So long as Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Lender and the Indemnified Parties shall not be entitled to settle such action, suit or proceeding without Borrower's consent which shall not be unreasonably withheld or delayed, and claim the benefit of this Section with respect to such action, suit or proceeding and Lender agrees that it will not settle any such action, suit or proceeding without the consent of Borrower; provided, however, that if Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, and Lender has provided Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified under this Section 19.12 without notice to and reasonable consent of Borrower.

19.13 Exhibits and Schedules Incorporated. The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

19.14 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

19.15 Liability of Assignees of Lender. No assignee of Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document or any amendment or amendments hereto made at any time or times, heretofore or hereafter, any different than the liability of Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or the Collateral or to which the Property or the Collateral is now or hereafter subject any different than the liability of Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

19.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

19.17 Publicity. Each party shall endeavor to permit the other to review the initial press release relating to the Loan in order to provide the other with a reasonable opportunity to comment thereon.

19.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's members and others with interests in Borrower and of the Collateral, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Collateral for the collection of the Indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the Indebtedness out of the net proceeds of the Collateral in preference to every other claimant whatsoever.

19.19 Waiver of Counterclaim and other Actions. Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, the Note, the Pledge or any Loan Document, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement, the Note, the Pledge or any Loan Document and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

19.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

19.21 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents and unless specifically set forth in a writing contemporaneous herewith the terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

19.22 Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, to the extent Lender or any Person who Controls Lender is a "venture capital operating company" within the meaning of 29 C.F.R. Section 2510.3-101, Lender shall have:

(a) upon not less than fifteen (15) Business Days' prior written notice to Borrower, the right to request and to hold a meeting at mutually agreeable times, and not more than four (4) times during any calendar year to consult with an officer of Borrower that is familiar with the financial condition of Borrower and Mortgage Borrower and the operation of the Individual Properties and is otherwise reasonably acceptable to Lender regarding such significant business activities and business and financial developments of Borrower as are specified by Lender in writing in the request for such meeting; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances; and provided further that neither Borrower nor its designated representative shall be under any obligation to follow or implement any advice or recommendations of Lender. The rights of Lender provided in this Agreement are expressly limited to consultation, and shall not include any other rights or obligations, including without limitation, any right or obligation to supervise or conduct any aspect of Borrower's business or operations; and

(b) the right, in accordance with the terms of Section 11.1 of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice, provided that any such examination shall be conducted so as not to unreasonably interfere with the business of Borrower, Mortgage Borrower or any Tenants or other occupants of any Individual Property.

19.23 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

19.24 Direction of Mortgage Borrower with Respect to the Property. Borrower and Lender acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower to act or to refrain from acting in any manner, or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower or the Property, or (iii) other similar effect, such clause or provisions, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower's capacity as the direct or indirect sole member of Mortgage Borrower (which Mortgage Borrower, in turn, is the fee owner of the Property) but not directly with respect to Mortgage Borrower or the Property or in any other manner which would violate any of the covenants contained in Section 5.3 hereof or other similar covenants contained in Borrower's organizational documents.

19.25 Mortgage Loan Estoppels. Borrower shall (or shall cause Mortgage Borrower to), from time to time, use reasonable efforts to obtain from Mortgage Lender such certificates of estoppel with respect to compliance by Mortgage Borrower with the terms of the Mortgage Loan Documents as may be reasonably requested by Lender. In the event or to the extent that Mortgage Lender is not legally obligated to deliver such certificates of estoppel and is unwilling to deliver the same, or is legally obligated to deliver such certificates of estoppel but breaches such obligation, then Borrower shall not be in breach of this provision so long as Borrower furnishes to Lender an estoppel executed by Borrower and Mortgage Borrower expressly representing to Lender the information requested by Lender regarding compliance by Mortgage Borrower with the terms of the Mortgage Loan Documents. Borrower hereby indemnifies Lender from and against all liabilities, obligations, losses, damages, penalties, assessments, actions, or causes of action, judgments, suits, claims, demands, costs, expenses (including attorneys' and other professional fees, whether or not suit is brought and settlement costs) and disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Lender based in whole or in part upon any fact, event, condition, or circumstances relating to the Mortgage Loan which was misrepresented in, or which warrants disclosure and was omitted from such estoppel executed by Borrower and Mortgage Borrower.

19.26 Intercreditor Agreement.

(a) Lender, Mortgage Lender and Second Mezzanine Lender are parties to a certain Intercreditor Agreement dated as of the date hereof (the "Intercreditor Agreement") memorializing their relative rights and obligations with respect to the Loan, the Mortgage Loan, the Second Mezzanine Loan, Borrower, Mortgage Borrower, Second Mezzanine Borrower, the Collateral, the "Collateral" as defined in the Second Mezzanine Loan Agreement and the Property. Borrower on behalf of itself and Mortgage Borrower hereby acknowledges and agrees that (i) such Intercreditor Agreement is intended solely for the benefit of Lender, Mortgage Lender and Second Mezzanine Lender and (ii) Borrower, Mortgage Borrower and First Mezzanine Borrower are not intended third-party beneficiaries of any of the provisions therein and shall not be entitled to rely on any of the provisions contained therein. Lender, Mortgage Lender and Second Mezzanine Lender shall have no obligation to disclose to Borrower the contents of the Intercreditor Agreement. Borrower's obligations hereunder are independent of such Intercreditor Agreement and remain unmodified by the terms and provisions thereof.

(b) In the event Lender is required pursuant to the terms of the Intercreditor Agreement to pay over to Mortgage Lender any payment or distribution of assets, whether in cash, property or securities which otherwise would have been applied to the Indebtedness, including, without limitation, any proceeds of the Property previously received by Lender on account of the Loan, then Borrower agrees that (i) any amount so paid shall be reinstated and shall continue to be owing pursuant to the Loan Documents as part of the Obligations, and (ii) to the extent that any amounts so paid cannot, by operation of law, be reinstated as set forth in clause (i) above, Borrower will indemnify Lender for such amounts; provided, however, that such reinstatement or indemnity will only apply to the extent that such amounts paid over to Mortgage Lender are applied to the payment or performance of the Mortgage Loan in accordance with the Mortgage Loan Documents.

19.27 Discussions with Mortgage Lender. In connection with the exercise of its rights set forth in the Loan Documents, Lender shall have the right at any time to discuss the Property, the Mortgage Loan, the Loan or any other matter directly with Mortgage Lender or Mortgage Lender's consultants, agents or representatives without notice to or permission from Borrower or any other Loan Party, nor shall Lender have any obligation to disclose such discussions or the contents thereof with Borrower or any other Loan Party.

19.28 Independent Approval Rights. If any action, proposed action or other decision is consented to or approved by Mortgage Lender, such consent or approval shall not be binding or controlling on Lender. Borrower hereby acknowledges and agrees that (i) the risks of Mortgage Lender in making the Mortgage Loan are different from the risks of Lender in making the Loan, (ii) in determining whether to grant, deny, withhold or condition any requested consent or approval Mortgage Lender and Lender may reasonably reach different conclusions, and (iii) Lender has an absolute independent right to grant, deny, withhold or condition any requested consent or approval based on its own point of view.

19.29 Co-Lenders/Agent.

(a) Each Lender shall elect one Lender to act as administrative agent (together with any successor administrative agent, the " Agent") for itself and the other Lenders (collectively, "Co-Lenders") pursuant to this Section 19.29. Agent shall hold, release and otherwise deal with, subject to and in accordance with the terms of any co-lender agreement from time to time in effect among the Co-Lenders (the " Co-Lender Agreement") all collateral for the Loan. Agent may resign as Agent of the Co-Lenders, in its sole discretion, or if required to by the Co-Lenders in accordance with the term of the Co-Lending Agreement, in each case without the consent of Borrower. Upon any such resignation, a successor Agent shall be determined pursuant to the terms of the Co-Lending Agreement. The term Agent shall mean any successor Agent. Notwithstanding anything to the contrary contained in this Section 19.29, Agent has the right to delegate any of its rights granted under this Section 19.29 to the servicer under any servicing agreement or custodian under any custodial agreement entered into pursuant to any Co-Lender Agreement.

(b) The liabilities of each of the Co-Lenders shall be several and not joint, and no Co-Lender shall be responsible for the obligations of the other Co-Lenders. Lender and each Co-Lender shall be liable to Borrower only for their respective proportionate shares of the Loan.

(c) Borrower acknowledges that the Co-Lending Agreement may contain provisions which require that amendments, waivers, extensions, modifications, and other decisions with respect to the Loan Documents shall require the approval of all or a number of the Co-Lenders holding in the aggregate a specified percentage of the Loan or any one or more Co-Lenders that are specifically affected by such amendment, waiver, extension, modification or other decision.

(d) All acts of and communications by the Agent, as agent for Lender, shall be deemed legally conclusive and binding on Lender; and Borrower or any third party (including any court) shall be entitled to rely on any and all communications or acts of the Agent with respect to the exercise of any rights or the granting of any consent, waiver or approval on behalf of Lender in all circumstances where an action by Lender is required or permitted pursuant to this Agreement or the provisions of any other Loan Document or by applicable Legal Requirements without the right or necessity of making any inquiry of any individual Lender as to the authority of the Agent with respect to such matter.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

NEW PRP MEZZ 1, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

[Lender's signature appears on following page]

LENDER:

GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation

By: /s/ J. Robert Brown
Name: J. Robert Brown
Title: Vice President

By: /s/ Mary Brundage
Name: Mary Brundage
Title: Director

BANK OF AMERICA, N.A., a national banking association

By: /s/ David S. Fallick
Name: David S. Fallick
Title: Managing Director

EXHIBIT A

Borrower Organizational Structure

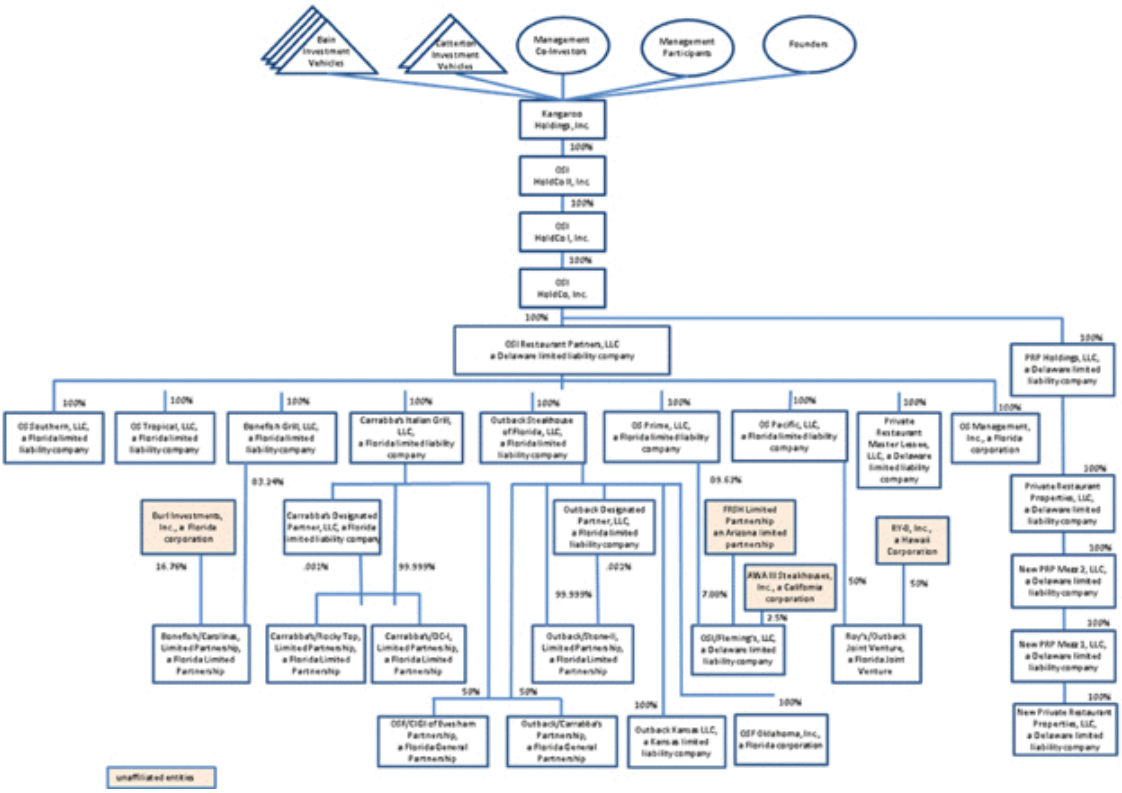

Exhibit A

EXHIBIT B

Article 8 "Opt In" Language

Certification of Limited Liability Company Interests.

Shares. The name and address of, and the percentage of limited liability company interests held by the Member are set forth on **Schedule B** hereto, as the same may be amended from time to time. Each limited liability company interest in the Company shall constitute a "security" within the meaning of, and shall be governed by, (i) Article 8 (including Section 8-102(a)(15)) of the Uniform Commercial Code as in effect from time to time in the State of Delaware (the "DEUCC") and (ii) the corresponding provisions of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the DEUCC, such provision of Article 8 of the DEUCC shall be controlling.

Share Certificates.

A Member's limited liability company interest in the Company shall be represented by a Share Certificate substantially in the form of **Exhibit I** hereto (a "Share Certificate") issued to such Member by the Company. All of a Member's Shares, in the aggregate, represent such Member's entire limited liability company interest in the Company. The Member hereby agrees that its interest in the Company and in its Shares shall for all purposes be personal property. A Member has no interest in specific Company property.

Upon the issuance of Shares to any Member in accordance with the provisions of this Agreement, without any further act, vote or approval of the Member, any Officer or any other Person, the Company, and the Member or any Officer on behalf of the Company, shall issue one or more Share Certificates in the name of such Member. Each such Share Certificate shall be denominated in terms of the percentage of Shares evidenced by such Share Certificate and shall be signed by the Member or an Officer on behalf of the Company. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in New Private Restaurant Properties, LLC and shall be a security for purposes of Article 8 of the Uniform Commercial Code of the State of Delaware and the Uniform Commercial Code of any other jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

Without any further act, vote or approval of the Member, any Officer or any other Person, the Company shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the Company:

makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Share Certificate has been lost, stolen or destroyed;

requests the issuance of a new Share Certificate before the Company has notice that such previously issued Share Certificate has been acquired by a protected purchaser;

if requested by the Company, delivers to the Company a bond, in form and substance satisfactory to the Company, with such surety or sureties as the Company may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

satisfies any other reasonable requirements imposed by the Company.

Subject to the restrictions set forth in the Loan Documents, upon a Member's Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the Company for cancellation (executed by such Transferee on the reverse side thereof), and the Company shall thereupon issue a new Share Certificate to such Transferee for the percentage of Shares being Transferred and, if applicable, cause to be issued to such Member a new Share Certificate for that percentage of Shares that were represented by the canceled Share Certificate and that are not being Transferred. The Company shall maintain books for the purpose of registering the transfer of limited liability company interests. Notwithstanding any provision of this Agreement to the contrary, a Transfer of Shares requires delivery of an endorsed Share Certificate.

Free Transferability. Except as limited by the Basic Documents (for so long as the Loan is outstanding and subject to Section 21), to the fullest extent permitted by the Act, any Member may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the Basic Documents (for so long as the Loan is outstanding and subject to Sections 21 and 23), the Transferee of any Shares shall be admitted to the Company as a substitute member of the Company on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the Company of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a substitute member on the books and records of the Company; provided, however, that if the Member Transfers all of its Shares pursuant to this Agreement, such admission shall be deemed

effective immediately prior to the Transfer, and immediately following such admission the transferor Member shall cease to be a member of the Company. Any Transfer of any Shares in accordance with the provisions of this Agreement shall be effective upon registration of such Transfer in the books and records of the Company.

Exhibit B

Mezzanine Loan Agreement
(First Mezzanine)

SCHEDULE I

Amortization Schedule

(see attached)

Month of Payment Date	Year	Principal
May	2012	$ 78,136.01
June	2012	$ 56,841 .56
July	2012	$ 79,148.34
August	2012	$ 57,895.49
September	2012	$ 58,344.18
October	2012	$ 80,613.75
November	2012	$ 59,421.10
December	2012	$ 81,664.01
January	2013	$ 60,514.51
February	2013	$ 60,983.50
March	2013	$126,650.95
April	2013	$ 62,437.66
May	2013	$ 84,605.89
June	2013	$ 63,577.25
July	2013	$ 85,717.27
August	2013	$ 64,734.28
September	2013	$ 65,235.97
October	2013	$ 87,334.92
November	2013	$ 66,418.40
December	2013	$ 88,488.07
January	2014	$ 67,618.92
February	2014	$ 68,142.97
March	2014	$ 133,167.68
April	2014	$ 69,703.13
May	2014	$ 91,691.48
June	2014	$ 70,953.94
July	2014	$ 92,911.32
August	2014	$ 72,223.89
September	2014	$ 72,783.63
October	2014	$ 94,695.71
November	2014	$ 74,081 .59
December	2014	$ 95,961.54
January	2015	$ 75,399.43
February	2015	$ 75,983.77
March	2015	$ 140,304.58
April	2015	$ 77,660.01
May	2015	$ 99,451 .36
June	2015	$ 79,032.62
July	2015	$ 100,789.99
August	2015	$ 80,426.25
September	2015	$ 81,049.55
October	2015	$ 102,756.98
November	2015	$ 82,474.05
December	2015	$ 104,146.22

January	2016	$ 83,920.36
February	2016	$ 84,570.74
March	2016	$ 127,155.83
April	2016	$ 86,211.62
May	2016	$ 107,791.25
June	2016	$ 87,715.14
July	2016	$ 109,257.55
August	2016	$ 89,241 .68
September	2016	$ 89,933.30
October	2016	$ 111,420.79
November	2016	$ 91,493.80
December	2016	$ 112,942.65
January	2017	$ 93,078.18
February	2017	$ 93,799.54
March	2017	$ 156,520.95
April	2017	$82,502,772.90

SCHEDULE II

Litigation; Condemnation; Work Stoppages

1. Litigation

None.

2. Condemnation

Store Number	Address	Condemnation
3458	8280 Valley Boulevard Blowing Rock, NC 28605	Right of way easement and ongoing litigation to release right of way area to the State.
8705	1101 Seminole Trail Charlottesville, VA 22901	Notice of right of way taking and construction easement received.

3. Work Stoppages

None.

SCHEDULE III

Allocated Loan Amounts and Combined Allocated Loan Amounts

Unit #	Property Name	Allocated Senior Mezzanine Loan Amount	Combined Loan Amount
311	OSI Restaurant Portfolio-Outback Steakhouse	$ 343,632	$ 1,961,372
312	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
314	OSI Restaurant Portfolio-Outback Steakhouse	$ 330,157	$ 1,884,456
316	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
317	OSI Restaurant Portfolio-Outback Steakhouse	$ 307,248	$ 1,753,698
323	OSI Restaurant Portfolio-Outback Steakhouse	$ 361,151	$ 2,061,364
325	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
326	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
453	OSI Restaurant Portfolio-Outback Steakhouse	$ 295,120	$ 1,684,473
455	OSI Restaurant Portfolio-Outback Steakhouse	$ 249,302	$ 1,422,957
601	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 256,040	$ 1,461,415
602	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 249,302	$ 1,422,957
605	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 245,259	$ 1,399,882
606	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 273,558	$ 1,561,406
611	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$ 1,692,165
612	OSI Restaurant Portfolio-Outback Steakhouse	$ 234,479	$ 1,338,348
613	OSI Restaurant Portfolio-Outback Steakhouse	$ 243,912	$ 1,392,190
614	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
615	OSI Restaurant Portfolio-Outback Steakhouse	$ 281,644	$ 1,607,556
616	OSI Restaurant Portfolio-Outback Steakhouse	$ 273,558	$ 1,561,406
617	OSI Restaurant Portfolio-Outback Steakhouse	$ 312,638	$ 1,784,464
619	OSI Restaurant Portfolio-Outback Steakhouse	$ 243,912	$ 1,392,190
628	OSI Restaurant Portfolio-Outback Steakhouse	$ 221,003	$ 1,261,432
1001	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 471,652	$ 2,692,080
1002	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 592,934	$ 3,384,329
1006	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 242,564	$ 1,384,498
1008	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 431,225	$ 2,461,330
1022	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747
1023	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1024	OSI Restaurant Portfolio-Outback Steakhouse	$ 458,177	$ 2,615,163
1025	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1026	OSI Restaurant Portfolio-Outback Steakhouse	$ 458,177	$ 2,615,163
1027	OSI Restaurant Portfolio-Outback Steakhouse	$ 552,507	$ 3,153,579
1028	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1029	OSI Restaurant Portfolio-Outback Steakhouse	$ 512,080	$ 2,922,830
1030	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1031	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$ 1,845,998
1033	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1034	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
1035	OSI Restaurant Portfolio-Outback Steakhouse	$ 512,080	$ 2,922,830
1036	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747

1060	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1061	OSI Restaurant Portfolio-Outback Steakhouse	$ 404,273	$ 2,307,497
1063	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
1101	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 433,920	$ 2,476,714
1102	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 382,712	$ 2,184,431
1108	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 382,712	$ 2,184,431
1116	OSI Restaurant Portfolio-Outback Steakhouse	$ 378,669	$ 2,161,356
1119	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,066	$ 2,015,214
1120	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
1121	OSI Restaurant Portfolio-Outback Steakhouse	$ 320,724	$ 1,830,614
1122	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
1123	OSI Restaurant Portfolio-Outback Steakhouse	$ 313,986	$ 1,792,156
1124	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
1125	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1133	OSI Restaurant Portfolio-Outback Steakhouse	$ 313,986	$ 1,792,156
1134	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
1135	OSI Restaurant Portfolio-Outback Steakhouse	$ 284,339	$ 1,622,940
1137	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1201	OSI Restaurant Portfolio-Bonefish Grill	$ 316,681	$ 1,807,539
1264	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$ 1,845,998
1410	OSI Restaurant Portfolio-Outback Steakhouse	$ 282,991	$ 1,615,248
1411	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
1412	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$1,692,165
1414	OSI Restaurant Portfolio-Outback Steakhouse	$ 336,895	$ 1,922,914
1416	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1418	OSI Restaurant Portfolio-Outback Steakhouse	$ 282,991	$ 1,615,248
1419	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
1424	OSI Restaurant Portfolio-Outback Steakhouse	$ 270,863	$ 1,546,023
1450	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1452	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1453	OSI Restaurant Portfolio-Outback Steakhouse	$ 242,564	$ 1,384,498
1516	OSI Restaurant Portfolio-Outback Steakhouse	$ 331,504	$ 1,892,148
1518	OSI Restaurant Portfolio-Outback Steakhouse	$ 303,205	$ 1,730,623
1519	OSI Restaurant Portfolio-Outback Steakhouse	$ 346,328	$1,976,756
1520	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1521	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1522	OSI Restaurant Portfolio-Outback Steakhouse	$ 249,302	$ 1,422,957
1550	OSI Restaurant Portfolio-Outback Steakhouse	$ 384,060	$ 2,192,122
1611	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1614	OSI Restaurant Portfolio-Outback Steakhouse	$ 226,393	$ 1,292,198
1715	OSI Restaurant Portfolio-Outback Steakhouse	$ 331,504	$ 1,892,148
1716	OSI Restaurant Portfolio-Outback Steakhouse	$ 246,607	$ 1,407,573
1813	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,739	$ 2,019,060
1851	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
1901	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,937	$ 1,945,989
1912	OSI Restaurant Portfolio-Outback Steakhouse	$ 371,932	$ 2,122,897
1914	OSI Restaurant Portfolio-Outback Steakhouse	$ 324,766	$ 1,853,689
1921	OSI Restaurant Portfolio-Outback Steakhouse	$ 369,236	$ 2,107,514
1941	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1951	OSI Restaurant Portfolio-Outback Steakhouse	$ 396,188	$ 2,261,347

1961	OSI Restaurant Portfolio-Outback Steakhouse	$ 413,707	$ 2,361,339
1971	OSI Restaurant Portfolio-Outback Steakhouse	$ 394,840	$ 2,253,655
2001	OSI Restaurant Portfolio-Fleming's Prime Steakhouse and Wine Bar	$ 687,265	$ 3,922,745
2014	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
2015	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
2017	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
2134	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
2139	OSI Restaurant Portfolio-Outback Steakhouse	$525,556	$ 2,999,746
2315	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
2319	OSI Restaurant Portfolio-Outback Steakhouse	$ 272,211	$ 1,553,715
2320	OSI Restaurant Portfolio-Outback Steakhouse	$ 305,900	$ 1,746,006
2321	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
2325	OSI Restaurant Portfolio-Outback Steakhouse	$ 278,949	$ 1,592,173
2326	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
2411	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$1,692,165
2415	OSI Restaurant Portfolio-Outback Steakhouse	$ 276,254	$ 1,576,790
2420	OSI Restaurant Portfolio-Outback Steakhouse	$ 229,088	$ 1,307,582
2619	OSI Restaurant Portfolio-Outback Steakhouse	$ 278,949	$ 1,592,173
3002	OSI Restaurant Portfolio-Roy's Restaurant	$ 485,128	$2,768,996
3101	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 313,312	$ 1,788,310
3102	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 316,681	$ 1,807,539
3110	OSI Restaurant Portfolio-Outback Steakhouse	$ 326,788	$ 1,865,227
3114	OSI Restaurant Portfolio-Outback Steakhouse	$ 486,476	$ 2,776,688
3116	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$1,692,165
3117	OSI Restaurant Portfolio-Outback Steakhouse	$ 287,034	$ 1,638,323
3120	OSI Restaurant Portfolio-Outback Steakhouse	$ 287,034	$ 1,638,323
3122	OSI Restaurant Portfolio-Outback Steakhouse	$ 326,788	$ 1,865,227
3211	OSI Restaurant Portfolio-Outback Steakhouse	$ 273,558	$ 1,561,406
3212	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,937	$ 1,945,989
3213	OSI Restaurant Portfolio-Outback Steakhouse	$ 355,761	$ 2,030,597
3214	OSI Restaurant Portfolio-Outback Steakhouse	$ 388,103	$ 2,215,197
3215	OSI Restaurant Portfolio-Outback Steakhouse	$ 204,832	$ 1,169,132
3217	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,937	$ 1,945,989
3220	OSI Restaurant Portfolio-Outback Steakhouse	$ 745,211	$ 4,253,486
3357	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
3402	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 316,681	$ 1,807,539
3403	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 304,553	$ 1,738,314
3420	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 274,906	$ 1,569,098
3444	OSI Restaurant Portfolio-Outback Steakhouse	$ 381,365	$ 2,176,739
3446	OSI Restaurant Portfolio-Outback Steakhouse	$ 402,926	$ 2,299,805
3447	OSI Restaurant Portfolio-Outback Steakhouse	$ 398,883	$ 2,276,730
3448	OSI Restaurant Portfolio-Outback Steakhouse	$ 389,450	$ 2,222,889
3450	OSI Restaurant Portfolio-Outback Steakhouse	$ 276,254	$ 1,576,790
3451	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,066	$ 2,015,214
3452	OSI Restaurant Portfolio-Outback Steakhouse	$ 382,712	$ 2,184,431
3453	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747
3454	OSI Restaurant Portfolio-Outback Steakhouse	$ 334,199	$ 1,907,531
3455	OSI Restaurant Portfolio-Outback Steakhouse	$ 315,333	$ 1,799,848
3458	OSI Restaurant Portfolio-Outback Steakhouse	$ 238,521	$ 1,361,423
3460	OSI Restaurant Portfolio-Outback Steakhouse	$ 327,462	$ 1,869,073

3461	OSI Restaurant Portfolio-Outback Steakhouse	$ 305,900	$ 1,746,006
3462	OSI Restaurant Portfolio-Outback Steakhouse	$ 262,778	$ 1,499,873
3463	OSI Restaurant Portfolio-Outback Steakhouse	$ 362,499	$2,069,056
3464	OSI Restaurant Portfolio-Outback Steakhouse	$ 335,547	$ 1,915,223
3621	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
3633	OSI Restaurant Portfolio-Outback Steakhouse	$ 373,279	$ 2,130,589
3635	OSI Restaurant Portfolio-Outback Steakhouse	$ 366,541	$ 2,092,131
3636	OSI Restaurant Portfolio-Outback Steakhouse	$ 272,211	$1,553,715
3640	OSI Restaurant Portfolio-Outback Steakhouse	$ 361,151	$ 2,061,364
3658	OSI Restaurant Portfolio-Outback Steakhouse	$ 286,360	$ 1,634,477
3662	OSI Restaurant Portfolio-Outback Steakhouse	$ 266,147	$ 1,519,102
3663	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,264	$ 1,942,143
3713	OSI Restaurant Portfolio-Outback Steakhouse	$ 388,103	$2,215,197
3715	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,066	$ 2,015,214
3716	OSI Restaurant Portfolio-Outback Steakhouse	$ 256,040	$ 1,461,415
3915	OSI Restaurant Portfolio-Outback Steakhouse	$ 303,205	$ 1,730,623
3917	OSI Restaurant Portfolio-Outback Steakhouse	$ 332,852	$1,899,839
3951	OSI Restaurant Portfolio-Outback Steakhouse	$ 336,895	$ 1,922,914
3952	OSI Restaurant Portfolio-Outback Steakhouse	$ 195,399	$ 1,115,290
4117	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
4118	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747
4119	OSI Restaurant Portfolio-Outback Steakhouse	$ 382,712	$ 2,184,431
4120	OSI Restaurant Portfolio-Outback Steakhouse	$ 401,578	$ 2,292,114
4121	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
4122	OSI Restaurant Portfolio-Outback Steakhouse	$ 287,034	$ 1,638,323
4123	OSI Restaurant Portfolio-Outback Steakhouse	$ 392,145	$ 2,238,272
4124	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$1,999,831
4127	OSI Restaurant Portfolio-Outback Steakhouse	$ 366,541	$ 2,092,131
4210	OSI Restaurant Portfolio-Outback Steakhouse	$ 261,430	$ 1,492,181
4314	OSI Restaurant Portfolio-Outback Steakhouse	$ 402,926	$2,299,805
4318	OSI Restaurant Portfolio-Outback Steakhouse	$ 304,553	$ 1,738,314
4319	OSI Restaurant Portfolio-Outback Steakhouse	$ 375,974	$ 2,145,972
4320	OSI Restaurant Portfolio-Outback Steakhouse	$ 389,450	$ 2,222,889
4324	OSI Restaurant Portfolio-Outback Steakhouse	$ 253,345	$ 1,446,031
4350	OSI Restaurant Portfolio-Outback Steakhouse	$ 355,761	$ 2,030,597
4401	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 533,641	$ 3,045,896
4403	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 301,858	$ 1,722,931
4404	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 456,829	$ 2,607,472
4405	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 365,194	$ 2,084,439
4406	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 402,926	$2,299,805
4407	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 512,080	$ 2,922,830
4416	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$1,845,998
4417	OSI Restaurant Portfolio-Outback Steakhouse	$ 242,564	$ 1,384,498
4418	OSI Restaurant Portfolio-Outback Steakhouse	$ 256,040	$ 1,461,415
4422	OSI Restaurant Portfolio-Outback Steakhouse	$ 301,858	$ 1,722,931
4423	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
4424	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
4426	OSI Restaurant Portfolio-Outback Steakhouse	$ 242,564	$ 1,384,498
4429	OSI Restaurant Portfolio-Outback Steakhouse	$ 354,413	$ 2,022,906
4454	OSI Restaurant Portfolio-Outback Steakhouse	$ 268,168	$ 1,530,640

4455	OSI Restaurant Portfolio-Outback Steakhouse	$ 284,339	$ 1,622,940
4456	OSI Restaurant Portfolio-Outback Steakhouse	$ 216,960	$ 1,238,357
4457	OSI Restaurant Portfolio-Outback Steakhouse	$ 305,900	$ 1,746,006
4458	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
4459	OSI Restaurant Portfolio-Outback Steakhouse	$ 324,766	$ 1,853,689
4461	OSI Restaurant Portfolio-Outback Steakhouse	$ 319,376	$ 1,822,923
4462	OSI Restaurant Portfolio-Outback Steakhouse	$ 512,080	$ 2,922,830
4463	OSI Restaurant Portfolio-Outback Steakhouse	$ 415,054	$ 2,369,030
4464	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
4466	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
4467	OSI Restaurant Portfolio-Outback Steakhouse	$ 297,815	$1,699,856
4468	OSI Restaurant Portfolio-Outback Steakhouse	$ 265,473	$ 1,515,256
4469	OSI Restaurant Portfolio-Outback Steakhouse	$ 274,906	$ 1,569,098
4470	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
4473	OSI Restaurant Portfolio-Outback Steakhouse	$ 295,120	$ 1,684,473
4474	OSI Restaurant Portfolio-Outback Steakhouse	$ 261,430	$ 1,492,181
4475	OSI Restaurant Portfolio-Outback Steakhouse	$ 253,345	$ 1,446,031
4476	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
4478	OSI Restaurant Portfolio-Outback Steakhouse	$ 274,906	$ 1,569,098
4510	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$ 1,845,998
4511	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
4716	OSI Restaurant Portfolio-Outback Steakhouse	$ 498,604	$ 2,845,913
4724	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
4728	OSI Restaurant Portfolio-Outback Steakhouse	$ 336,895	$ 1,922,914
4756	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
4758	OSI Restaurant Portfolio-Outback Steakhouse	$ 374,627	$ 2,138,281
4762	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
4801	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 322,071	$ 1,838,306
4810	OSI Restaurant Portfolio-Outback Steakhouse	$ 278,949	$ 1,592,173
4813	OSI Restaurant Portfolio-Outback Steakhouse	$ 282,991	$ 1,615,248
4910	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
4961	OSI Restaurant Portfolio-Outback Steakhouse	$ 249,302	$ 1,422,957
5010	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
5113	OSI Restaurant Portfolio-Outback Steakhouse	$ 322,071	$ 1,838,306
5301	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 330,157	$ 1,884,456
5302	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 303,205	$ 1,730,623
5303	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
5501	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 374,627	$ 2,138,281
5502	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 381,365	$ 2,176,739
5505	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 265,473	$ 1,515,256
5506	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 339,590	$ 1,938,298
6006	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 350,370	$ 1,999,831
6007	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 363,846	$ 2,076,747
6013	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
6015	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 458,177	$ 2,615,163
6020	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 539,031	$ 3,076,663
6021	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 417,749	$ 2,384,414
6029	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 350,370	$ 1,999,831
6035	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
6048	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 363,846	$ 2,076,747

6052	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 336,895	$ 1,922,914
6116	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 254,692	$ 1,453,723
6302	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 229,088	$ 1,307,582
6402	OSI Restaurant Portfolio-Roy's Restaurant	$ 303,205	$ 1,730,623
6502	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 382,712	$ 2,184,431
6903	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 276,254	$ 1,576,790
7101	OSI Restaurant Portfolio-Carrabba's Italian Grill	$525,556	$2,999,746
8001	OSI Restaurant Portfolio-Lee Roy Selmon's	$ 727,692	$ 4,153,495
8002	OSI Restaurant Portfolio-Lee Roy Selmon's	$ 377,322	$ 2,153,664
8109	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 276,254	$ 1,576,790
8302	OSI Restaurant Portfolio-Sterling's Bistro	$ 80,855	$ 461,499
8609	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 596,977	$ 3,407,404
8705	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 282,991	$ 1,615,248
8908	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
9301	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 406,969	$ 2,322,880
9407	OSI Restaurant Portfolio-Bonefish Grill	$ 258,735	$ 1,476,798
9410	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 401,578	$ 2,292,114
9414	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 278,949	$ 1,592,173
9704	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 336,895	$ 1,922,914
9802	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 278,949	$ 1,592,173

SCHEDULE IV

Specified Tenant Competitors Schedule

1 DineEquity Inc.
2 Brinker International Inc.
3 Darden Restaurants Inc.
4 Denny's Corp
5 Cracker Barrel Old Country Store Inc.
6 T.G.I. Friday's Casual Dining Carlson Restaurants Worldwide Inc.
7 Buffalo Wild Wings Inc.
8 Golden Corral Buffet Investors Management Corp.
9 The Cheesecake Factory Inc.
10 Ruby Tuesday Inc.
11 Texas Roadhouse Inc.
12 Red Robin Gourmet Burgers Inc
13 Bob Evans Farms Inc.
14 P.F. Chang's China Bistro Inc.
15 Hooters Casual Dining Chanticleer Holdings Inc.
16 Steak & Shake
17 Western Sizzlin'
18 California Pizza Kitchen Inc.
19 Romano's Macaroni Grill Casual Dining Golden Gate Capital
20 Logan's Roadhouse Casual Dining Kelso & Co./LRI Holdings
21 O'Charley's Inc.
22 BJ's Restaurants Inc.
23 Landry's Inc.
24 Apple American Group - Applebees
25 B.J.'s Restaurants, Inc.
26 Pappas Restaurant Group
27 Hooters of America, Inc.
28 Lettuce Entertain You Enterprises
29 Ruth's Hospitality
30 Bravo Brio Restaurant Group
31 Sullivan's Steakhouse
32 Del Frisco's Steakhouse
33 Lone Star Steakhouse
34 Texas Land & Cattle Steakhouse
35 Smokey Bones Bar & Fire Grill
36 Bar Louie

Exhibit 10.12

MEZZANINE LOAN AND SECURITY AGREEMENT (SECOND MEZZANINE)

Dated as of March 27, 2012

Between

NEW PRP MEZZ 2, LLC

as Borrower

and

GERMAN AMERICAN CAPITAL CORPORATION

and

BANK OF AMERICA, N.A.

collectively, as Lender

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EXHIBITS AND SCHEDULES

MEZZANINE LOAN AND SECURITY AGREEMENT (SECOND MEZZANINE)

THIS MEZZANINE LOAN AND SECURITY AGREEMENT (SECOND MEZZANINE) dated as of March 27, 2012 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), between NEW PRP MEZZ 2, LLC, a Delaware limited liability company ("Borrower"), having an office at 2202 North West Shore Blvd., Suite 470C, Tampa, Florida 33607, GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a "Co-Lender", and, collectively, "Lender").

RECITALS:

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 Definitions. For all purposes of this Agreement:

"Account Collateral" shall have the meaning set forth in Section 3.1.2.

"Act" shall have the meaning set forth in Section 5.3(c).

"Additional Non-Consolidation Opinion" shall mean a non-consolidation opinion, from the counsel that delivered the Non-Consolidation Opinion or other outside counsel to Borrower reasonably acceptable to Lender, that is in form and substance reasonably satisfactory to Lender, and is required to be delivered subsequent to the Closing Date pursuant to, and in connection with, the Loan Documents.

"Affiliate" shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person. An Affiliate of a Person includes, without limitation, (i) any officer or director of such Person, and (ii) any Affiliate of the foregoing; provided, however, that no Sponsor Portfolio Company shall be deemed to be an Affiliate of Sponsors. Notwithstanding the above, for purposes of this definition, references to an Affiliate of Borrower, Mortgage Borrower or First Mezzanine Borrower shall not include Master Lease Guarantor or its subsidiaries, and references to an Affiliate of Master Lease Guarantor or its subsidiaries shall not include PropCo or its subsidiaries.

"Affiliate Agreements" shall have the meaning set forth in Section 5.2.15.

"Agreement" shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Allocated Loan Amount" shall mean, with respect to each Individual Property, the designated "Allocated Loan Amount" applicable to the Restaurant Location that is located on such Individual Property, as set forth on Schedule III attached hereto; provided, however, that with respect to any Individual Property on which two or more Restaurant Locations are located, the Allocated Loan Amount for such Individual Property shall equal the sum of the Allocated Loan Amounts for all Restaurant Locations located thereon, as set forth on Schedule III attached hereto.

"Applicable Interest" shall mean (a) if such prepayment or repayment is made on a Payment Date, then interest on the Principal Amount through the end of the Interest Period ending immediately prior to such Payment Date, or (b) if such prepayment or repayment is made on any day other than a Payment Date, then interest on the Principal Amount through the end of the Interest Period ending immediately prior to the immediately succeeding Payment Date, notwithstanding that such Interest Period extends beyond such prepayment date or repayment date and calculated as if the Principal Amount has not been prepaid or repaid on such prepayment date or repayment date.

"Applicable Interest (Mortgage)" shall have the meaning ascribed to the term "Applicable Interest" in the Mortgage Loan Agreement.

"Asset Manager" shall mean OS Management, Inc., a Florida corporation.

"Assumption Fee" shall mean a fee in the amount of $43,800.

"Bankruptcy Code" shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"Base PropCo Ownership Requirements" shall have the meaning set forth in Section 8.1(b).

"Base Transfer Conditions" shall mean, with respect to any Transfer for which the Base Transfer Conditions are required to be satisfied pursuant to the terms of this Agreement, the following conditions to such Transfer: (a) Lender shall receive no less than thirty (30) days prior written notice of such Transfer (provided that such notice may be given within thirty (30) days after such Transfer in the event of transfers among Permitted Holders that do not require delivery of an Additional Non-consolidation Opinion under clause (c) below); (b) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing; (c) in the case of a Transfer to an Intermediate Entity, or if such Transfer shall otherwise cause any transferee, together with its Affiliates, to acquire indirect Equity Interests in Borrower aggregating more than forty-nine percent (49%), or to increase its indirect Equity Interests in Borrower from an amount that is less than forty-nine percent (49%) to an amount that is greater than forty-nine percent (49%), then Borrower shall deliver to Lender an Additional Non-Consolidation Opinion, (d) the Base PropCo Ownership Requirements shall continue to be satisfied subsequent to such

Transfer, (e) Borrower shall continue at all times to be a Special Purpose Entity; and (f) if such Transfer, together with all prior Transfers occurring after the Closing Date, results in a Transfer of more than forty-nine percent (49%) of the indirect Equity Interests in Borrower, then Borrower shall pay to Lender the Assumption Fee; provided, however, that no Assumption Fee shall be owed in the case of a Qualifying IPO or if immediately following such Transfer, Permitted Holders (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders) continue to own no less than fifty-one percent (51%) of the indirect Equity Interests in Borrower.

"Borrower" shall have the meaning set forth in the first paragraph of this Agreement.

"Borrower Group" means Borrower and all other Single Purpose Entities which are taxable as domestic corporations for federal income tax purposes (or which would be taxable as domestic corporations in the case of Borrower and each other Single Purpose Entity created or organized in or under the laws of the United States of America or any state that is a disregarded entity for federal income tax purposes if each such entity had timely made an election to be treated as an association for federal income tax purposes effective on the date of such entity's formation).

"Borrower's Account" shall mean an account or accounts maintained by Borrower for its own account at such bank and with such account number as may be designated in writing by Borrower to Lender and Cash Management Bank from time to time.

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York or Pittsburgh, Pennsylvania or in the state in which Servicer or the special servicer is located, are not open for business. When used with respect to a Floating Rate Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"Cash" shall mean the legal tender of the United States of America.

"Cash and Cash Equivalents" shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Government Obligations.

"Cash Management Bank" shall mean any Eligible Institution acting as Cash Management Bank, or other financial institution selected by Lender.

"Cause" shall have the meaning set forth in Section 5.4.

"Close Affiliate" shall mean with respect to any Person (the "First Person") any other Person (each, a "Second Person") which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, beneficial and/or equitable interest in both the First Person and the Second Person.

"Close Subsidiary" of a Person shall mean a Subsidiary of such Person, no less than 75% of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by Legal Requirements) are owned by such Person and/or by one or more wholly-owned Subsidiaries of such Person.

"Closing Date" shall mean the date of this Agreement set forth in the first paragraph hereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral" shall mean collectively (i) all of the Pledged Collateral and all proceeds thereof, (ii) all Distributions, (iii) any stock certificates or other certificates, membership interest certificates or instruments evidencing any of the foregoing property described in clauses (i) and (ii) above, (iv) the Account Collateral and (v) all other rights appurtenant to the property described in clauses (i) through (iv) above.

"Collateral Account" shall have the meaning set forth in Section 3.1.1.

"Combined Allocated Loan Amount" shall mean, with respect to each Individual Property, the designated "Combined Allocated Loan Amount" applicable to the Restaurant Location that is located on such Individual Property, as set forth on Schedule III attached hereto; provided, however, that with respect to any Individual Property on which two or more Restaurant Locations are located, the Combined Allocated Loan Amount for such Individual Property shall equal the sum of the Combined Allocated Loan Amounts for all Restaurant Locations located thereon, as set forth on Schedule III attached hereto.

"Combined Release Price" shall mean with respect to each Individual Property, the product of the designated Combined Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage; provided, however, that with respect to any Individual Property transferred to any Affiliate of Mortgage Borrower, Guarantor, Master Lessee or Master Lease Guarantor, the Combined Release Price for such Individual Property shall be the greater of (a) the product of the designated Combined Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage, and (b) the Fair Market Value of such Individual Property at the time of such transfer.

"Contemplated Transactions" shall mean, collectively, (i) the transfers of the Individual Properties to Mortgage Borrower, (ii) the leasing of the Individual Properties from Mortgage Borrower to Master Lessee pursuant to the Master Lease, and (iii) the execution and delivery of the Mortgage Loan Documents, the Loan Documents, or the First Mezzanine Loan Documents, Mortgage Borrower's, Borrower's or First Mezzanine Borrower's performance thereunder, and the recordation of the Security Instrument.

"Continuing Directors" shall mean the directors of HoldCo on the Closing Date, and each other director of HoldCo if such other director's nomination for election to the board of directors of HoldCo (or Master Lease Guarantor after a Qualifying IPO of Master Lease Guarantor) is

recommended by a majority of the then Continuing Directors or such other director receives (i) the vote of one or more of the Permitted Holders or, (ii) following a Transfer to one or more Permitted Transferees permitted under this Agreement, the vote of one or more of such Permitted Transferees in such director's election by the stockholders of HoldCo (or Master Lease Guarantor after a Qualifying IPO of Master Lease Guarantor).

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise, and Control shall not be deemed absent solely because another member, partner or other Person shall have a veto with respect to major decisions and shall not be deemed absent solely because such other member, partner or other Person has been granted such veto right, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"Controlling Mezzanine Lender" shall have the meaning set forth in Section 18.1.4(b).

"Creditors Rights Laws" shall mean with respect to any Person any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, assignment for the benefit of creditors, composition or other relief with respect to its debts or debtors.

"DBRS" shall mean DBRS, Inc.

"Debt" shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person (to the extent such obligations or liabilities otherwise constitute "Debt" under another subclause of the definition of "Debt"); (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien (excluding Liens for Real Estate Impositions or Other Charges not yet due and payable) on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"Debt Service" shall mean, with respect to any particular period of time, scheduled interest and principal payments due and payable under the Loan Agreement and the Note.

"Default" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"Default Rate" shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) three percent (3%) above the Interest Rate.

"Defeasance Collateral" shall mean the Total Defeasance Collateral or the Partial Defeasance Collateral, as the context may require.

"Defeasance Collateral Account" shall have the meaning set forth in Section 2.4.3.

"Defeasance Date" shall mean the Total Defeasance Date or the Partial Defeasance Date, as the context may require.

"Defeasance Event" shall mean the Total Defeasance Event or the Partial Defeasance Event, as the context may require.

"Defeasance Security Agreement" shall mean a security agreement in form and substance that would be reasonably satisfactory to a prudent lender pursuant to which Borrower grants Lender a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

"Defeased Note" shall have the meaning set forth in Section 2.4.2(d).

"Disqualified Transferee" shall mean any Person that (i) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (ii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iii) as to which an involuntary petition has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law and which was not dismissed prior to the entry of an order for relief; (iv) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time consented to or acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; or (vi) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; provided, however, that any Person that would otherwise be a "Disqualified Transferee" by reason of any one or more of clauses (ii) through (vi) above, such Person shall not be a Disqualified Transferee if, at the time of determination, (A) such Person is solvent, such Person and such Person's property is not subject to a custodian, receiver, trustee or examiner, and neither such Person nor its debts or assets are subject to any federal or state bankruptcy or insolvency proceeding, and (B) such Person has been reasonably approved by Lender.

"Distributions" shall have the meaning set forth in the Pledge.

"Direct Control Remedies" shall have the meaning set forth in Section 18.1.4(b).

"Divested Borrower" shall have the meaning set forth in Section 18.1.4(a).

"Divested Property" shall have the meaning set forth in Section 18.1.4(a).

"Eligible Account" shall mean (i) a segregated trust account or accounts maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit such as or similar to Title 12 of the Code of Federal Regulations Section 9.10(b) which, in either case, has corporate trust powers, acting in its fiduciary capacity or (ii) a segregated account maintained at an Eligible Institution. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

"Eligible Institution" shall mean (a) a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations and commercial paper of which are rated at least "P1" by Moody's and R-1 (middle) by DBRS in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "A2" by Moody's and A (low) by DBRS), or (b) an insured depository institution that is the subject of a Rating Agency Confirmation (i) from the Rating Agency for which the minimum rating is not met with respect to any account listed in the clauses above or which is not expressly enumerated above, or (ii) from each Rating Agency, with respect to a depository institution other than one listed in the clauses above .

"Enforcement Costs" shall have the meaning set forth in Section 17.4.

"Environmental Certificate" shall have the meaning set forth in Section 12.2.1.

"Environmental Claim" shall mean any claim, action, cause of action, investigation or written notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based upon or resulting from (a) the presence, threatened presence, release or threatened release into the environment of any Hazardous Materials from or at the Property, or (b) the violation, or alleged violation, of any Environmental Law relating to the Property.

"Environmental Event" shall have the meaning set forth in Section 12.2.1.

"Environmental Indemnity" shall mean (a) those certain Environmental Indemnities, each dated the date hereof, one executed by PropCo, one executed by Guarantor and one executed by Master Lease Guarantor and Master Lessee, and each in favor of Lender, and (b) any Replacement Indemnity, in each case, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Environmental Law" shall have the meaning provided in the Environmental Indemnity.

"Environmental Reports" shall have the meaning set forth in Section 12.1.

"Equity Interests" means (i) any ownership, management or membership interests in any limited liability company, (ii) any general or limited partnership interest in any partnership, (iii) any common, preferred or other stock interest in any corporation, (iv) any share, participation, unit or other interest in the property or enterprise of an issuer that evidences ownership rights therein, (v) any ownership or beneficial interest in any trust or, (vi) any option, warrant or other right to convert into or otherwise receive any of the foregoing.

"ERISA" shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"Event of Default" shall have the meaning set forth in Section 17.1(a).

"Exchange Act" shall mean the Securities and Exchange Act of 1934, as amended.

"Excluded Licenses" shall mean the month to month parking licenses and sign leases and other minor licenses and leases in the name of the Master Lessee or its Affiliates, including those set forth on Schedule I of the Mortgage Loan Agreement, as the same may be amended, modified or replaced by Mortgage Borrower, Master Lessee or their respective Affiliates without Lender's or Mortgage Lender's consent except to the extent such amendment, modification or replacement would have a Material Adverse Effect.

"Excluded Personal Property" shall mean, collectively, (a) all of the Personal Property and Trade Fixtures of Master Lessee, Master Lease Guarantor, and its Affiliates, (b) any licenses or other intellectual property of Master Lessee, Master Lease Guarantor and its Affiliates, and any Tenants (including without limitation, relating to the Concepts or Third-Party Brands, or directly relating to the business of any Tenant under an Unaffiliated Sublease or Specified Prior Sublease), and (c) any Personal Property or Trade Fixtures owned by Tenants under Unaffiliated Subleases or Specified Prior Subleases; provided, that such Excluded Personal Property shall not include any capital improvements, replacements or alterations to any Individual Property that automatically become the landlord's property upon the expiration or termination of the Master Lease. Without limiting the generality of the foregoing, with respect to any Restaurant Location, Excluded Personal Property includes all items labeled as "Excluded Personal Property" on Schedule XIV of the Mortgage Loan Agreement, but expressly excludes all items labeled as "Fixtures" on Schedule XIV of the Mortgage Loan Agreement.

"Excluded SPE Breach" shall mean a breach by Borrower or any SPE Component Entity of (a) Section 5.3(a)(xv) or (b) Section 5.3(a)(xviii), provided that, such breach shall constitute an Excluded SPE Breach if and only if such breach arises from Borrower or any SPE Component Entity failing to pay its own liabilities or failing to be solvent (as opposed to a breach arising from Borrower or any SPE Component Entity paying its own liabilities from funds of another Person), and (c) Section 5.3(a)(vii); provided, that such breach shall constitute an Excluded SPE Breach if and only if such breach arises from the fact that there is insufficient cash flow from the operation of the Property to pay trade payables, operational debt, deferred purchase payments for services and indebtedness incurred by Borrower in the financing of equipment, personal property and Fixtures used on the Property incurred in the ordinary course of Borrower's business, not secured by Liens on the Property or the Collateral.

"Exculpated Parties" shall have the meaning set forth in Section 18.1.1.

"Excusable Delay" shall mean a delay solely due to acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower or any Senior Borrower, but Borrower's or any Senior Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower or such Senior Borrower, as applicable.

"Existing Intercompany Loans" shall have the meaning set forth in the definition of Guarantor Intercompany Loans herein.

"First Mezzanine Borrower" shall mean New PRP Mezz 1, LLC, a Delaware limited liability company.

"First Mezzanine Collateral" shall have the meaning ascribed to the term "Collateral" in the First Mezzanine Loan Agreement.

"First Mezzanine Collateral Account" shall have the meaning ascribed to the term "Collateral Account" in the First Mezzanine Loan Agreement.

"First Mezzanine Default" shall have the meaning ascribed to the term "Default" in the First Mezzanine Loan Agreement.

"First Mezzanine Event of Default" shall have the meaning ascribed to the term "Event of Default" in the First Mezzanine Loan Agreement.

"First Mezzanine Lender" shall mean German American Capital Corporation, a Maryland corporation, Bank of America, N.A., and each of their respective successors and/or assigns, as the holder of the First Mezzanine Loan.

"First Mezzanine Loan" shall mean that certain $87,600,000 mezzanine loan, made as of the date hereof, from First Mezzanine Lender to First Mezzanine Borrower.

"First Mezzanine Loan Agreement" shall mean that certain Mezzanine Loan and Security Agreement (First Mezzanine), dated as of the date hereof, between First Mezzanine Borrower, as borrower, and First Mezzanine Lender, as lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"First Mezzanine Loan Documents" shall have the meaning ascribed to the term "Loan Documents" in the First Mezzanine Loan Agreement.

"First Mezzanine Note" shall have the meaning ascribed to the term "Note" in the First Mezzanine Loan Agreement.

"First Mezzanine Obligations" shall have the meaning ascribed to the term "Obligations" in the First Mezzanine Loan Agreement.

"First Mezzanine Pledge" shall have the meaning ascribed to the term "Pledge" in the First Mezzanine Loan Agreement.

"Fiscal Quarter" shall mean each three month period ending March 31, June 30, September 30 and December 31.

"Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan or the portion of any such 12-month period falling within the term of the Loan in the event that such a 12-month period occurs partially before or after, or partially during, the term of the Loan.

"Fixed Rate Components (Mortgage)" shall have the meaning ascribed to the term "Fixed Rate Components" in the Mortgage Loan Agreement.

"Floating Rate Component (Mortgage)" shall have the meaning ascribed to the term "Floating Rate Component" in the Mortgage Loan Agreement.

"Foreclosure Divestment" shall have the meaning set forth in Section 18.1.4(a).

"Founders" shall mean (i) Christopher T. Sullivan, Robert D. Basham and J. Timothy Gannon, or in the event of any such Person's death such Person's estate; (ii) any trust Controlled by any of the Persons described in clause (i) (or in the event of the death or incompetency of any such Person, such Person's estate, executor, administrator or committee administering such estate) created for the benefit of any of the Persons described in clause (i) or any of (or any combination of) the spouses, ancestors, siblings, descendants (including children or grandchildren by adoption) and the descendants of any of the siblings of the Persons referred to in clause (i), or any trust for the benefit of such trust Controlled by any of the Persons described in clause (i) (or in the event of the death or incompetency of any such Person, such Person's estate, executor, administrator or committee administering such estate); or (iii) any entity that both (a) is Controlled by any of the Persons described in clause (i) (or in the event of the death or incompetency of any such Person, such Person's estate, executor, administrator or committee administering such estate) and (b) no less than fifty-one percent (51%) of the Equity Interests in which entity are owned by any of the Persons described in any of clauses (i) or (ii) above (any such entity described in this clause (iii), a " Founder Entity").

"Founder Entity" shall have the meaning in the definition of "Founders" above.

"GAAP" shall mean generally accepted accounting principles from time to time in effect and as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination; provided, however, that if Borrower or Master Lessee (with respect to reports to be generated by Master Lessee) notifies Lender that such Person requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Lender notifies Borrower and Master Lessee (with respect to reports to be generated by Master Lessee) that Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is

given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"Go Dark" shall mean, with respect to any Restaurant Location (a Restaurant Location that shall Go Dark is sometimes referred to herein as a " Go Dark Restaurant Location", (a) if the Restaurant Location is not open for business to the public for a period of thirty (30) consecutive days, unless such closure (i) is a result of a Taking of or casualty or other damage or injury to such Individual Property, so long as Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to (A) promptly and diligently pursue and complete repair or restoration of such Restaurant Location, or take other appropriate actions to resolve such closure, and (B) reopen such Restaurant Location to the public no later than two hundred seventy (270) days after the date of the initial closure, subject to an extension not to exceed an additional two hundred seventy (270) days in the event that such closure continues due to Excusable Delay, upon the expiration of which, such Restaurant Location shall be a Go Dark Restaurant Location; or (ii) subject to the proviso below, is temporary and is in connection with an Alteration permitted hereunder, so long as Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to (A) promptly and diligently pursue and complete such Alteration, and (B) reopen such Restaurant Location to the public no later than one hundred eighty (180) days after the date of the initial closure, subject to an extension not to exceed sixty (60) days in the event that such closure continues due to Excusable Delay, upon the expiration of which, such Restaurant Location shall be a Go Dark Restaurant Location; provided, however, that no greater than ten percent (10%) of all Restaurant Locations that remain subject to the Lien of the Security Instrument at the time of determination (rounded up to the nearest whole number, which number as of the Closing Date is 27 based on 261 Restaurant Locations being subject to the Lien of the Security Instrument as of the Closing Date) shall be permitted to be closed pursuant to this clause (a)(ii) at any one time; and (b) if the Restaurant Location is a Go Dark Purchase Option Property, if the Restaurant Location is not open for business to the public for any period of time, and such closure would constitute an event after which a purchase right, termination right, recapture right or option could be triggered (regardless of the applicability of the provisions of the foregoing clause (a) that would otherwise result in such Restaurant Location not being considered a Go Dark Restaurant Location).

"Go Dark Purchase Option Property" means any Restaurant Location having an Operating Agreement or other agreement of record (or off record and evidenced by a recorded memorandum) which contains a purchase right, termination right, recapture right or option that would be exercisable if such Restaurant Location is not open for business to the public for a period designated in such Operating Agreement or other agreement of record, including but not limited to the Restaurant Locations listed on Schedule VI to the Mortgage Loan Agreement which are specifically designated as having such a purchase right, termination right, recapture right or option.

"Go Dark Restaurant Location" has the meaning set forth in the definition of "Go Dark" above.

"Go Dark/Sublease Limit" shall mean, at any given time, fourteen percent (14%) of the Restaurant Locations that remain subject to the Lien of the Security Instrument at the time of determination (rounded up to the nearest whole number). As of the Closing Date, the Go Dark/Sublease Limit is equal to 37 Restaurant Locations based on 261 Restaurant Locations being subject to the Lien of the Security Instrument as of the Closing Date.

"Governmental Authority" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Guarantor" shall mean OSI HoldCo I, Inc., a Delaware corporation.

"Guarantor Asset Covenant" shall mean the covenant that Guarantor shall continue to own, directly or indirectly, 100% of the Equity Interests in Master Lease Guarantor.

"Guarantor Group" means, collectively, Guarantor and all other entities taxable as corporations for federal (or applicable state, local or foreign) Tax purposes which join with Guarantor (or any other entity which is (i) either (x) directly or indirectly Controlled by Guarantor or (y) a domestic corporation for federal tax purposes that owns, directly or indirectly through wholly owned domestic corporations, all of the Equity Interests in Guarantor and (ii) neither a member of the Borrower Group nor any Equity Interests in which are owned directly or indirectly by Borrower) in filing a consolidated federal income tax return (or any consolidated, combined, unitary or similar group tax return pursuant to state, local or foreign Tax law) for any taxable year with Guarantor (or such other entity) as the common parent of such group.

"Guarantor Group Tax" means, for any period, the actual consolidated federal income Tax liability and the actual applicable consolidated, combined, unitary or similar group Tax liability imposed under state, local or foreign Tax law of the Guarantor Group for such period. For avoidance of doubt, in no event shall the term "Tax liability" as used in this definition be construed to refer to a negative amount.

"Guarantor Intercompany Loans" means (i) the current outstanding loans from HoldCo to Guarantor in the original principal amount of $20,539,053 (the "Existing Intercompany Loans"), and (ii) future loans from HoldCo to Guarantor (the " Guarantor Subsequent Intercompany Loans"); provided that (A) the aggregate original principal amount of Existing Intercompany Loans and Guarantor Subsequent Intercompany Loans outstanding at any time shall not exceed $50,000,000 and (B) the Guarantor Subsequent Intercompany Loans shall be distributed to Guarantor's direct or indirect parent entities (which direct or indirect parent entities shall not include the Sponsors or any Founder Entity) to permit such direct or indirect parent to (1) make loans or other payments in connection with, or satisfy any funding or other contractual obligation with respect to, any employment, compensation or equity participation arrangement to any future, present or former employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which direct or indirect parent entities shall not include the Sponsors or any Founder Entity), (2) pay for the repurchase, retirement or other acquisition or retirement for value of, or any tax withholding or other obligation with respect to, Equity Interests of Guarantor or of any parent of Guarantor (which parent shall not include the

Sponsors or any Founder Entity) held by any future, present or former employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which parent shall not include the Sponsors or any Founder Entity) or (3) pay principal or interest on promissory notes that were issued to any future, present or former employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which parent shall not include the Sponsors or any Founder Entity) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests held by such Persons, in each case, pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, consultant or director of Guarantor or any direct or indirect parent of Guarantor (which direct or indirect parent shall not include the Sponsors or any Founder Entity).

"Guarantor Net Worth Requirements" shall have the meaning set forth in Section 8.5.

"Guarantor Subsequent Intercompany Loans" shall have the meaning set forth in the definition of Guarantor Intercompany Loans herein.

"Hazardous Materials" shall have the meaning provided in the Environmental Indemnity.

"HoldCo" shall mean OSI HoldCo, Inc., a Delaware corporation.

"Holdings" shall mean Kangaroo Holdings, Inc., a Delaware corporation.

"Hypothetical Borrower Group Tax" means, for any period, the sum of the hypothetical consolidated federal income tax liability and the applicable Tax liability imposed under state, local or foreign Tax law of the Borrower Group for such period with respect to a Tax that is described in the definition of Guarantor Group Tax (including any Tax liability of any member of the Borrower Group) determined in accordance with the Code and Treasury regulations thereunder and comparable provisions of applicable state, local or foreign Tax law as if the Borrower Group were, as applicable, a separate affiliated group of corporations filing a consolidated federal income tax return (or the applicable comparable group filing consolidated, unitary, combined or similar group Tax returns, or applicable separate entity filing separate Tax returns, under state, local or foreign Tax law) including any elections and accounting methods available which the Master Lessee or Guarantor on behalf of the Master Lessee (or other parent of the applicable Guarantor Group) has made pursuant to the Code and Treasury regulations (or comparable provisions of applicable state, local or foreign Tax law) and other administrative pronouncements. For avoidance of doubt, in no event shall the term "Tax liability" as used in this definition be construed to refer to a negative amount.

"Impositions" shall mean all Taxes, governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rents (including all interest and penalties thereon), which at any time

prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Guarantor Group, provided such amounts shall in no event exceed the Separate Borrower Group Tax Liability for the applicable period, (b) the Property, or any other collateral delivered or pledged to Lender in connection with the Loan, or any part thereof, or any Rents therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property or the leasing or use of all or any part thereof. Nothing contained in this Agreement shall be construed to require Borrower to pay any Tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of the Property or (ii) except as provided in Section 2.5, Lender in the nature of a capital levy, estate, inheritance, succession, income or net revenue Tax.

"Income Tax" means federal, state, local and foreign income Taxes and franchise Taxes based on net income, including alternative minimum Tax and any interest, penalties, fines, assessments or additions imposed in respect of the foregoing.

"Increased Costs" shall have the meaning set forth in Section 2.5.1.

"Indebtedness" shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Lender pursuant hereto, under the Note or in accordance with the other Loan Documents and all other amounts, sums and expenses paid by or payable to Lender hereunder or pursuant to the Note or the other Loan Documents.

"Indemnified Parties" shall have the meaning set forth in Section 19.12(b).

"Independent" shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in any Borrower or in any Affiliate of any Borrower or Master Lessee, (ii) is not connected with any Borrower or any Affiliate of any Borrower or Master Lessee as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, customer or supplier (other than a customer or supplier in the ordinary course of business on terms applicable generally to all customers and suppliers) or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"Independent Accountant" shall mean a firm of nationally recognized, certified public accountants which is Independent and which is selected by Borrower or any Senior Borrower, as applicable, and reasonably acceptable to Lender.

"Independent Manager" of any corporation or limited liability company means an individual with at least three (3) years of employment experience serving as an independent director or independent manager, and who is provided by, and is in good standing with, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors or independent managers, another nationally-recognized company reasonably approved by Lender in each case, that is not an Affiliate of such corporation or limited liability company and that provides professional independent directors or independent managers and other corporate services in the ordinary

course of its business, and which individual is duly appointed as a member of the board of directors or board of managers or as an Independent Manager of such corporation or limited liability company and is not, and has never been, and will not while serving as Independent Manager be:

(i) a member (other than an independent, non-economic "springing member"), partner, equityholder, manager, director, officer or employee of such corporation or limited liability company, or any of its equityholders or Affiliates (other than as an independent director or independent manager of an Affiliate of such corporation or limited liability company that is not in the direct chain of ownership of such corporation or limited liability company and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Manager is employed by a company that routinely provides professional independent directors or independent managers);

(ii) a customer, creditor, supplier or service provider (including provider of professional services) to such corporation or limited liability company or any of its equityholders or Affiliates (other than a nationally-recognized company that routinely provides professional independent directors or independent managers and other corporate services to such corporation or limited liability company or any of its equityholders or Affiliates in the ordinary course of business);

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that Controls or is under common Control with (whether directly, indirectly or otherwise) any of (i), (ii) or (iii) above.

A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the independent director or independent manager of a single purpose bankruptcy remote entity in the direct chain of ownership of such corporation or limited liability company shall not be disqualified from serving as an Independent Manager of such corporation or limited liability company, provided that the fees that such individual earns from serving as independent director or independent manager of such Affiliates in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding anything to the contrary herein, (A) Borrower may not have the same independent directors or independent managers as any Senior Borrower, and (B) Borrower's independent directors or independent managers shall not be Affiliates of Master Lessee or Master Lease Guarantor.

"Initial Interest Period" shall mean a period from and including the Closing Date and ending on and including April 9, 2012.

"Intercreditor Agreement" shall have the meaning set forth in Section 19.26.

"Interest Period" shall mean a period from and including the tenth (10th) calendar day of each calendar month during the term of the Loan and ending on and including the ninth (9th) calendar day of the immediately succeeding calendar month.

"Interest Rate" shall mean a rate of eleven and one quarter percent (11.25%) per annum, or where applicable pursuant to this Agreement or any other Loan Document, the Default Rate.

"Intermediate Entity" means any Intermediate HoldCo Entity or Intermediate PropCo Entity.

"Intermediate HoldCo Entity" shall mean any Person satisfying all of the following: (a) 100% of the direct or indirect Equity Interests in such Person are owned by, and such Person is Controlled by, Guarantor, (b) such Person owns, directly or indirectly, 100% of the Equity Interests in, and Controls, HoldCo, and (c) such Person does not own, directly or indirectly, any Equity Interest in any Person other than another Intermediate HoldCo Entity (if any) and, indirectly by virtue of its direct or indirect Equity Interests in HoldCo, the Persons in which HoldCo owns a direct or indirect Equity Interest. As of the Closing Date, there are no Intermediate HoldCo Entities.

"Intermediate PropCo Entity" shall mean any Person satisfying all of the following: (a) 100% of the direct or indirect Equity Interests in such Person are owned by, and such Person is Controlled by, HoldCo, (b) such Person owns, directly or indirectly, 100% of the Equity Interests in, and Controls, PropCo and does not directly or indirectly own any Equity Interest in Master Lease Guarantor, and (c) such Person does not own, directly or indirectly, any Equity Interest in any Person other than another Intermediate PropCo Entity (if any) and, indirectly by virtue of its direct or indirect Equity Interests in PropCo, PRP, Borrower, and each Senior Borrower. As of the Closing Date, there are no Intermediate PropCo Entities.

"Involuntary Lien" shall mean any lien on the Property other than a lien that Mortgage Borrower or any Affiliate of Mortgage Borrower voluntarily causes to be placed, or which Mortgage Borrower or any Affiliate of Mortgage Borrower colludes in the placing, on the Property.

"IPO Entity" shall mean any Lower Tier Entity or Upper Tier Entity.

"Late Payment Charge" shall have the meaning set forth in Section 2.2.3.

"Leaseable Building Pad" shall have the meaning set forth in Section 8.8.11.

"Lease Coverage Ratio" shall mean a ratio, as determined by Lender for the twelve calendar months immediately preceding the date of calculation, in which:

(a) the numerator is the Portfolio Four-Wall EBITDAR, applied consistently, stated on the most recent monthly report or reports delivered to Lender pursuant to Sections 11.2.1 through 11.2.3 for the trailing twelve (12) month period ended on the last day of the period covered by such report; and

(b) the denominator is the aggregate amount of Master Lease Base Rent payable under the Master Lease for the twelve calendar months immediately prior to the applicable calculation date, provided that for the twelve-month period following the Closing Date, Lease Coverage Ratio shall be calculated based on the Master Lease Base Rent payable under the Master Lease from the Closing Date through the full calendar month preceding the calculation date, with such sum annualized to determine the Master Lease Base Rent for a full twelve month period.

Notwithstanding the foregoing, when determining whether the Lease Coverage Ratio condition is satisfied in connection with a Property Release, the following shall apply: (i) the numerator of Lease Coverage Ratio immediately prior to the Release Date shall only include the trailing twelve (12) month Portfolio Four-Wall EBITDAR contributed by the Individual Properties that are subject to the Lien of the Security Instrument immediately prior to the Property Release, including the subject Release Property, but excluding all previous Release Properties regardless of the applicable Release Dates; (ii) the numerator of Lease Coverage Ratio on the Release Date shall only include the trailing twelve (12) month Four-Wall EBITDAR contributed by the Individual Properties that are subject to the Lien of the Security Instrument immediately following the Property Release, excluding the subject Release Property and all previous Release Properties regardless of the applicable Release Date; (iii) the denominator of Lease Coverage Ratio immediately prior to the Release Date shall equal the monthly Master Lease Base Rent in effect immediately prior to the Property Release, multiplied by twelve (12); and (iv) the denominator of Lease Coverage Ratio on the Release Date shall equal the monthly Master Lease Base Rent to be in effect immediately following the Property Release (taking into account the reduction of the Master Lease Base Rent with respect to the subject Release Property), multiplied by twelve (12).

"Legal Requirements" shall mean all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements of every Governmental Authority affecting the Loan, any Securitization of the Loan, Borrower or any Individual Property or any part thereof, or the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any Individual Property or any part thereof, or the Improvements or the Building Equipment thereon, whether now or hereafter enacted and in force, including without limitation, the Securities Act, the Exchange Act, Regulation AB, the rules and regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Environmental Laws, all covenants, restrictions and conditions now or hereafter of record, building and zoning codes and ordinances and laws relating to handicapped accessibility.

"Lender" shall have the meaning set forth in the first paragraph of this Agreement.

"Lien" shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Borrower, any Senior Borrower, the Collateral, the First Mezzanine Collateral, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances, in each case, excluding any such items filed against and solely affecting the Excluded Personal Property.

"LLC Agreement" shall have the meaning set forth in Section 5.3(c).

"Loan" shall mean the loan in the amount of the Loan Amount made by Lender to Borrower pursuant to this Agreement.

"Loan Amount" shall mean the original principal amount of the Loan equal to $87,600,000.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Pledge, the Environmental Indemnity, the Recourse Guaranty, the Subordination of Asset Management Agreement, and all other documents executed and/or delivered by Borrower to Lender in connection with the Loan, including any opinion certificates or other certifications or representations delivered by or on behalf of Borrower or any Affiliate of Borrower to Lender.

"Loan Party" shall mean, individually or collectively as the context requires, Borrower, each SPE Component Entity, each Senior Borrower and Guarantor.

"Lockout Expiration Date" shall have the meaning set forth in Section 2.3.1 hereof.

"Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to reasonable legal fees and other costs of defense).

"Lower Tier Entity" shall mean any of Master Lease Guarantor, HoldCo or any Intermediate HoldCo Entity.

"Management Stockholders" means the bona fide members of management of Master Lease Guarantor or its Subsidiaries (excluding the Founders) who are as of the relevant date of determination both (i) actively involved in the management of Master Lease Guarantor or its Subsidiaries and (ii) investors in Guarantor or any direct or indirect parent thereof.

"Master Lease" shall mean that certain Amended and Restated Master Lease Agreement for the Property by and between Mortgage Borrower, as lessor, and Master Lessee, as lessee, dated the date hereof. Lender acknowledges that Mortgage Borrower does not own, and Mortgage Lender does not have a lien on, the Excluded Personal Property and that the term "Master Lease" shall not include the Excluded Personal Property or leases or licenses with respect to the Excluded Personal Property.

"Master Lease Default" shall mean a default by Master Lessee or Mortgage Borrower under the terms of the Master Lease beyond any applicable notice and cure periods contained therein.

"Master Lease Guarantor" shall mean OSI Restaurant Partners, LLC, a Delaware limited liability company.

"Master Lease Guarantor Asset Covenants" shall mean the following covenants pertaining to the Master Lease Guarantor, except to the extent such covenants are no longer complied with as a result of a foreclosure (or transfer in lieu thereof) of the Liens granted by HoldCo, Master Lease Guarantor or any of Master Lease Guarantor's Subsidiaries resulting from

the exercise of remedies as set forth in the Master Lease Guarantor Facility: (i) Master Lease Guarantor shall continue to own, directly or through Close Subsidiaries, the restaurant brands and related intellectual property and businesses known as "Outback Steakhouse" and "Carraba's Italian Grill"; (ii) Master Lease Guarantor shall not dispose of all or substantially all of its assets, exclusive of transfers to and among Master Lease Guarantor's Close Subsidiaries; and (iii) Master Lessee shall continue to be a wholly owned Subsidiary of Master Lease Guarantor and Master Lease Guarantor shall not permit and shall not consent to any assignment by Master Lessee of its interest in the Master Lease or its rights and interests thereunder.

"Master Lease Guarantor Consolidated EBITDA" shall mean, as of any date of determination, Consolidated EBITDA (as defined in the Master Lease Guarantor Initial Credit Agreement, assuming for this purpose all adjustments thereto made pursuant to the Master Lease Guarantor Initial Credit Agreement for purposes of determining the Total Leverage Ratio, as defined in the Master Lease Guarantor Initial Credit Agreement) for the Test Period (as defined in the Master Lease Guarantor Initial Credit Agreement) then last ended.

"Master Lease Guarantor Facility" shall mean the credit facilities provided under the Credit Agreement, dated as of June 14, 2007, by and among Master Lease Guarantor, as borrower, HoldCo, Deutsche Bank AG, New York Branch, as Administrative Agent, and the other lenders from time to time party thereto (the "Master Lease Guarantor Initial Credit Agreement"), and any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof and any one or more indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that extend, replace, refund, refinance, renew or defease any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof or adds additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders; provided, however, that in no event shall such credit facilities, or any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof, be secured in whole or in part by the direct or indirect Equity Interests in Guarantor or any of its direct or indirect parent entities or in HoldCo, any Intermediate Entity, PropCo, PRP, Mortgage Borrower, First Mezzanine Borrower or Borrower.

"Master Lease Guarantor Initial Credit Agreement" shall have the meaning set forth in the definition of Master Lease Guarantor Facility, without giving effect to any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof.

"Master Lease Guarantor Total Leverage Ratio" shall mean, as of any date of determination, the Total Leverage Ratio (as defined in the Master Lease Initial Credit Agreement) for the Test Period (as defined in the Master Lease Guarantor Initial Credit Agreement) then last ended.

"Master Lease Guaranty" shall mean that certain Master Lease Guaranty, dated as of the date hereof, by Master Lease Guarantor in favor of Mortgage Borrower, as the same may, with Lender's consent, be amended, supplemented, restated or otherwise modified from time to time.

"Master Lease Tenant Default" shall mean a default by Master Lessee under the terms of the Master Lease beyond any applicable notice and cure periods contained therein.

"Master Lease Variable Additional Rent" shall mean the "Variable Additional Charges" as defined under the Master Lease.

"Master Lessee" shall mean Private Restaurant Master Lessee, LLC, a Delaware limited liability company.

"Material Action" shall mean, as to any Person, (i) to consolidate or merge such Person with or into any Person, (ii) to sell all or substantially all of the assets of such Person, (iii) to institute proceedings to have such Person be adjudicated bankrupt or insolvent or, to file or consent to the institution of bankruptcy or insolvency proceedings against such Person, (iv) to file, institute, commence or seek relief under, any petition, proceeding, action or case under any Creditors Rights Laws, or to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, (v) to make any assignment for the benefit of creditors of such Person, (vi) to admit in writing such Person's inability to pay its debts generally as they become due (other than, with respect to Borrower, Mortgage Borrower and First Mezzanine Borrower, communications with Lender, Mortgage Lender or First Mezzanine Lender), or (vii) to the fullest extent permitted by law, to dissolve or liquidate such Person, or (viii) to take action in furtherance of any of the foregoing.

"Material Adverse Effect" shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of any Individual Property, (iii) the business, profits, operations or financial condition of Borrower or any Senior Borrower, (iv) the ability of Mortgage Borrower to repay the principal and/or interest of the Mortgage Loan as it becomes due or to satisfy any of Mortgage Borrower's material obligations under the Mortgage Loan Documents, (v) the ability of Borrower to repay the principal and/or interest of the Loan as it becomes due or to satisfy any of Borrower's material obligations under the Loan Documents, (vi) the ability of First Mezzanine Borrower to repay the principal and/or interest of the First Mezzanine Loan as it becomes due or to satisfy any of First Mezzanine Borrower's material obligations under the First Mezzanine Loan Documents, or (vii) the Collateral taken as a whole.

"Material Agreements" shall mean any contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property or any Individual Property that provides for annual payments by Mortgage Borrower or any other Loan Party of $50,000.00 or more unless the same is cancelable without penalty or premium on no more than thirty (30) days notice (other than the Master Lease, the Asset Management Agreement, the Operating Agreements, and excluding any contracts entered into for the restoration of an Individual Property in accordance with the Mortgage Loan Documents and the Master Lease).

"Maturity Date" shall mean the Stated Maturity Date, or such earlier date on which the final payment of principal of the Loan becomes due and payable as provided herein, whether by declaration of acceleration, or otherwise.

"Maximum Legal Rate" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Member" shall have the meaning set forth in Section 5.3(c).

"Mezzanine Borrower" shall mean Borrower and/or First Mezzanine Borrower, individually or collectively, as the context may require.

"Mezzanine Collateral" shall mean the Collateral and/or the First Mezzanine Collateral, or all such collateral collectively, as the context may require.

"Mezzanine Foreclosure Divestment" shall have the meaning set forth in Section 18.1.4(a).

"Mezzanine Lender" shall mean Lender and/or First Mezzanine Lender, or both such lenders collectively, as the context may require.

"Mezzanine Lender Controlled Actions" shall have the meaning set forth in Section 18.1.4(b).

"Mezzanine Lender Monthly Debt Service Notice" shall have the meaning set forth in Section 3.1.6.

"Mezzanine Loan" shall mean the Loan and/or the First Mezzanine Loan, or both such loans collectively, as the context may require.

"Mezzanine Loan Agreement" shall mean this Agreement and/or the First Mezzanine Loan Agreement, or both such loan agreements collectively, as the context may require.

"Mezzanine Loan Debt Service Amount" shall mean, with respect to any Payment Date, interest and principal payments scheduled to be due under the Loan (or the undefeased portion thereof in the event of a defeasance of a portion thereof) pursuant to the Loan Documents (excluding default or accrued interest other than regularly scheduled interest, but including all servicing fees due on such Payment Date under Section 16.3) on such date (as set forth in the Mezzanine Lender Monthly Debt Service Notice delivered to Lender), assuming repayment in full of the principal balance of the Note on the Stated Maturity Date (but excluding any principal payments on account of an acceleration of the Loan or a default under any of the Loan Documents).

"Mezzanine Loan Default Notice" shall have the meaning set forth in Section 3.1.6(e).

"Mezzanine Loan Documents" shall mean the Loan Documents and/or the First Mezzanine Loan Documents, or all such loan documents, collectively, as the context may require.

"Minimum Net Worth" shall have the meaning set forth in Section 8.5.

"Minimum Ownership/Control Requirements" shall have the meaning set forth in Section 8.4(d).

"Monetary Default" shall mean a Default (i) that can be cured with the payment of money or (ii) arising pursuant to Section 17.1(a)(vi) or (vii).

"Monthly Payment Amount" shall mean, for each Payment Date, an amount equal to the sum of (a) the aggregate amount of interest which has accrued during the relevant Interest Period, plus (b) the amount of principal payable on such Payment Date based on the amortization schedule attached hereto as Schedule I and made a part hereof, as such schedule may be amended from time to time in accordance with the last sentence of the definition of Scheduled Defeasance Payments.

"Mortgage Borrower" shall have the meaning ascribed to the term "Borrower" in the Mortgage Loan Agreement.

"Mortgage Borrower's Account" shall have the meaning ascribed to the term "Borrower's Account" in the Mortgage Loan Agreement.

"Mortgage Cash Management Bank" shall have the meaning ascribed to the term "Cash Management Bank" in the Mortgage Loan Agreement.

"Mortgage Collateral Account" shall have the meaning ascribed to the term "Collateral Accounts" in the Mortgage Loan Agreement.

"Mortgage Default" shall have the meaning ascribed to the term "Default" in the Mortgage Loan Agreement.

"Mortgage Event of Default" shall have the meaning ascribed to the term "Event of Default" in the Mortgage Loan Agreement.

"Mortgage Lender" shall have the meaning ascribed to the term "Lender" in the Mortgage Loan Agreement.

"Mortgage Loan" shall have the meaning ascribed to the term "Loan" in the Mortgage Loan Agreement.

"Mortgage Loan Agreement" shall mean the Loan and Security Agreement, dated as of the date hereof, between Mortgage Borrower, as borrower, and Mortgage Lender, as lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Mortgage Loan Documents" shall have the meaning ascribed to the term "Loan Documents" in the Mortgage Loan Agreement.

"Mortgage Note" shall have the meaning ascribed to the term "Note" in the Mortgage Loan Agreement.

"Mortgage Obligations" shall have the meaning ascribed to the term "Obligations" in the Mortgage Loan Agreement.

"Mortgage Trust Fund Expenses" shall have the meaning ascribed to the term "Trust Fund Expenses" in the Mortgage Loan Agreement.

"Net Worth" of a Person shall mean, as of a given date, the net worth of such Person as calculated in accordance with GAAP; provided (a) that the Individual Properties and such Person's direct or indirect equity therein shall be excluded from the calculation of net worth, and (b) all computations of Net Worth shall be made without giving effect to any election under Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any indebtedness or other liabilities at "fair value", as defined therein.

"Net Worth Covenants" shall have the meaning set forth in Section 8.5.

"New Sublease" shall have the meaning set forth in Section 8.8.1.

"Non-Consolidation Opinion" shall mean that certain bankruptcy non-consolidation opinion letter dated the date hereof delivered by Edwards Wildman Palmer LLP in connection with the Loan.

"Note" shall mean that certain Mezzanine Note (Second Mezzanine) dated the date hereof, made by Borrower, as maker, in favor of Lender, as payee, in the principal amount of $87,600,000, evidencing the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, including any Undefeased Note that may exist from time to time, but excluding any Defeased Note.

"Obligations" shall mean, collectively, Borrower's obligations for the payment of the Indebtedness and the performance of all other obligations of Borrower contained in this Agreement, the Note or any other Loan Document, or any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Agreement, the Note or any other Loan Document.

"OFAC" List means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

"Officer's Certificate" shall mean a certificate executed by an authorized signatory of Borrower that is familiar with the financial condition of Borrower and the operation of the Property, or, in the case of Officer's Certificates required under Section 11, the Chief Financial Officer of Borrower.

"Opco Equity Foreclosure" shall have the meaning set forth in Section 8.4(a).

"Operating Agreements" shall mean, collectively, the REAs, the Condominium Documents and all amendments, modifications and supplements thereto.

"Opinion of Counsel" shall mean an opinion of counsel of a law firm selected by Borrower and reasonably acceptable to Lender.

"Other Taxes" shall have the meaning set forth in Section 2.5.3.

"Ownership Interest" shall mean the 100% membership interest in First Mezzanine Borrower pledged to Lender by Borrower pursuant to the Pledge and a membership certificate and transfer power delivered to Lender in the form attached as Exhibit A to that certain Acknowledgement (First Mezzanine Borrower), dated as of the date hereof, by First Mezzanine Borrower to Lender.

"Partial Defeasance Collateral" shall mean, with respect to a Partial Defeasance Event, U.S. Securities that provide payments (a) on or prior to, but as close as possible to, the Business Day immediately preceding each Payment Date after the Defeasance Date of such Partial Defeasance Event and up to and including the Lockout Expiration Date (or any date thereafter as specified by Borrower on or prior to the Defeasance Date), and (b) in amounts equal to or greater than the Scheduled Defeasance Payments relating to each such Partial Defeasance Event.

"Partial Defeasance Date" shall have the meaning set forth in Section 2.4.2(a).

"Partial Defeasance Event" shall have the meaning set forth in Section 2.4.2.

"Partner Equity Program" shall mean the Outback Steakhouse, Inc. Partner Equity Plan and OSI Restaurant Partners, LLC Partner Ownership Account Plan, each as may be modified, amended, extended, supplemented, restated or replaced from time to time.

"Payment Date" shall mean the tenth (10th) calendar day of each calendar month, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on April 10, 2012 and continuing to and including the Maturity Date.

"Permitted Debt" shall mean, as applicable:

(a) with respect to Borrower only, (i) the Loan and the other obligations, indebtedness and liabilities specifically provided for in any Loan Document to which Borrower is a party, and secured by this Agreement, the Pledge and the other Loan Documents, and (ii) trade payables, operational debt, deferred purchase payments for services incurred in the ordinary course of Borrower's business, not secured by Liens on the Collateral (other than liens being properly contested in accordance with the provisions of the Loan Documents or any of the Senior Loan Documents), not to exceed $100,000 in the aggregate at any one time outstanding, payable by or on behalf of Borrower in the ordinary course of operating Borrower's business, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred

(b) with respect to Mortgage Borrower only, the Mortgage Loan and the other obligations, indebtedness and liabilities specifically provided for in the Mortgage Loan

Documents evidencing and/or securing the Mortgage Loan to which Mortgage Borrower is a party and any other Debt permitted to be incurred by Mortgage Borrower pursuant to the Mortgage Loan Documents;

(c) with respect to First Mezzanine Borrower only, the First Mezzanine Loan and the other obligations, indebtedness and liabilities specifically provided for in the First Mezzanine Loan Documents evidencing and/or securing the First Mezzanine Loan to which First Mezzanine Borrower is a party and any other Debt permitted to be incurred by First Mezzanine Borrower pursuant to the First Mezzanine Loan Documents;

(d) with respect to Guarantor, the Guarantor Intercompany Loans and the obligations, indebtedness and liabilities of Guarantor specifically provided for in the Loan Documents, and any Senior Loan Documents to which Guarantor is a party;

(e) with respect to PropCo, the obligations, indebtedness and liabilities of PropCo specifically provided for in the Loan Documents, Mortgage Loan Documents and First Mezzanine Loan Documents to which PropCo is a party; and

(f) with respect to HoldCo, the Master Lease Guarantor Facility and any Debt permitted to be incurred by HoldCo pursuant thereto; provided that HoldCo shall not grant Liens upon, nor shall the Master Lease Guarantor Facility be secured in whole or in part by, the direct or indirect Equity Interests in Guarantor, or any of its direct or indirect parent entities, or in HoldCo, any Intermediate Entity, PropCo, PRP, any Senior Borrower or Borrower.

Nothing contained herein shall be deemed to require Borrower to pay any amount, so long as Borrower is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, and (iii) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount and such contest is maintained and prosecuted continuously and with diligence. Notwithstanding anything set forth herein, in no event shall Borrower be permitted under this provision to enter into a note (other than the Note and the other Loan Documents) or other instrument for borrowed money.

"Permitted First Mezzanine Loan Amendment" shall have the meaning set forth in Section 5.1.24(a).

"Permitted Holders" shall mean the Sponsors, the Founders and the Management Stockholders; provided that, for purposes of determining under the provisions of this Agreement the percentage of stock or ownership interests directly or indirectly owned by the Permitted Holders at any time, (i) if the Management Stockholders own beneficially or of record more than ten percent (10%) of the outstanding Equity Interests of any Person in the aggregate, they shall be treated as Permitted Holders of only ten percent (10%) of the outstanding Equity Interests of such Person at such time; and (ii) if the Founders own beneficially or of record more than fifteen percent (15%) of the outstanding Equity Interests of any Person in the aggregate, they shall be treated as Permitted Holders of only fifteen percent (15%) of the outstanding Equity Interests of such Person at such time.

"Permitted Mortgage Loan Amendment" shall have the meaning set forth in Section 5.1.22(b).

"Permitted Transferee" shall mean any Person that, immediately prior to the applicable Transfer, satisfies the following: (a) such Person, together with its Close Affiliates, has (or at least fifty-one percent (51%) of the Equity Interests in such Person are owned, directly or indirectly, by and such Person is Controlled, directly or indirectly, by one or more Persons that each, together with its Close Affiliates, has) a net worth of at least $1 Billion, and (b) if immediately following the applicable Transfer, such Person will own direct or indirect Equity Interests in PropCo, PRP, any Senior Borrower, Borrower or any Transferee Borrower, then such Person, together with its Close Affiliates, controls (or at least fifty-one percent (51%) of the Equity Interests in such Person are owned, directly or indirectly, by and such Person is Controlled, directly or indirectly by one or more Persons that each, together with its Close Affiliates, controls) real estate assets of at least $1 Billion, and (c) neither such Person, nor any Person directly or indirectly Controlling such Person is, a Disqualified Transferee.

"Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Plan" shall have the meaning set forth in Section 4.1.10(a).

"Pledge" shall mean that certain Pledge and Security Agreement (Second Mezzanine), dated as of the date hereof, by Borrower in favor of Lender.

"Pledged Collateral" shall have the meaning set forth in the Pledge.

"Pledged Entity's Organizational Document" shall have the meaning set forth in the Pledge.

"Pledged Entity's Organizational Document (First Mezzanine)" shall have the meaning set forth in the First Mezzanine Pledge.

"Portfolio Four-Wall EBITDAR" shall mean, with respect to any Individual Property or the Property, as the case may be, earnings from restaurant and related operations conducted thereon (after deducting compensation payable directly or indirectly to restaurant employees in the nature of regular salaries, wages and bonuses, but prior to deductions, without duplication, for payment of management services fees to any management partnerships owned by employees or other partners which are based upon earnings or cash flow, elimination of minority partner interest or distributions payable to partners and joint venturers) plus, to the extent deducted in determining such earnings:

(a) interest expense,

(b) income taxes,

(c) depreciation and amortization,

(d) any rental expense on real property,

(e) regional office allocation and corporate-level overhead expense (including marketing, insurance, accounting and supervision expense allocable to the restaurant-level for internal accounting purposes),

(f) royalty charges from affiliates,

(g) pre-opening expenses and restructuring expenses,

(h) provisions for impairments, closings and disposals, and

(i) any non-cash charges (whether positive or negative including but not limited to gains/losses on sales of assets, provisions for restatement of prior periods and non-cash compensation expense, including Partner Equity Program expense).

Portfolio Four-Wall EBITDAR shall be calculated consistently with past practice, as reflected in the Portfolio Four Wall EBITDAR calculations for purposes of determining the Closing Date Lease Coverage Ratio and past periods pursuant to the past period calculations and associated financial statements attached as Schedule VIII of the Mortgage Loan Agreement.

"Post-IPO Change of Control" shall mean, in the event of a Qualifying IPO of any IPO Entity, that the Post-IPO Control Requirements are no longer satisfied.

"Post-IPO Control Requirements" shall mean, in the event of a Qualifying IPO of an IPO Entity, that either (i) Permitted Holders or, following a Transfer to a Permitted Transferee permitted under this Agreement, such Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), shall own, directly or indirectly, of record and beneficially, no less than fifty-one percent (51%) of the voting stock of such IPO Entity, and have the right, directly or indirectly, to designate (and do so designate) a majority of the board of directors of such IPO Entity, or (ii) both of the following criteria are satisfied: (A) no "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person and its subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Permitted Holders or, following a Transfer to a Permitted Transferee permitted under this Agreement, such Permitted Transferee, shall become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of more than the greater of (x) thirty-five percent (35%) of the shares outstanding of such IPO Entity, and (y) the percentage of the then outstanding voting stock of such IPO Entity owned, directly or indirectly, beneficially by the Permitted Holders or, following a Transfer to a Permitted Transferee permitted under this Agreement, such Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), and (B) the majority of the board of directors of such IPO Entity consist of Continuing Directors.

"Principal Amount" shall mean the aggregate outstanding principal balance from time to time of the Loan.

"Principal Amount (Mortgage)" shall mean the "Principal Amount" as such term is defined in the Mortgage Loan Agreement.

"Principal Amount (First Mezzanine)" shall mean the "Principal Amount" as such term is defined in the First Mezzanine Loan Agreement.

"Prohibited First Mezzanine Loan Amendment" shall have the meaning set forth in Section 5.1.24(a).

"Prohibited Person" shall mean any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"PropCo" shall mean PRP Holdings, LLC, a Delaware limited liability company.

"Property" shall mean, collectively, all Individual Properties.

"Property Release Notice" shall have the meaning set forth in Section 2.3.6(a).

"Proprietary Information" shall have the meaning set forth in Section 11.2.9.

"PRP" shall mean Private Restaurant Properties, LLC, a Delaware limited liability company.

"Qualifying IPO" shall mean, with respect to any IPO Entity, the issuance by such IPO Entity of its common equity interests in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8), satisfying the following conditions: (a) such public offering is made pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act, (b) the publicly-offered common equity interests of such IPO Entity are listed and traded on the New York Stock Exchange, the NASDAQ Global Market or other nationally or internationally recognized stock exchange or automated quotation system, and (c) after giving effect to such public offering, the Post-IPO Change of Control Requirements are satisfied.

"Qualifying Replacement Guarantor" shall mean a Person that: (a) Controls each of PropCo, PRP, each Senior Borrower and Borrower; and (b) satisfies the Guarantor Net Worth Requirements.

"REAs" shall mean, collectively, any recorded "construction, operation and reciprocal easement agreement" or similar agreement (including any "separate agreement" or other agreement between Mortgage Borrower and one or more other parties to an REA with respect to such REA) affecting any Individual Property or portion thereof.

"Receivership Event" shall have the meaning set forth in Section 18.1.4(a).

"Receivership Period" shall have the meaning set forth in Section 18.1.4(a).

"Receivership Property" shall have the meaning set forth in Section 18.1.4(a).

"Recourse Guaranty" shall mean (a) that certain Guaranty of Recourse Obligations of Borrower, dated as of the date hereof, by Guarantor in favor of Lender, and (b) any Replacement Guaranty, in each case, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Recourse Obligations" shall have the meaning set forth in Section 18.1.4(a).

"Register" shall have the meaning set forth in Section 15.2.

"Regulation AB" shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

"Regulatory Change" shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person Controlling Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"Related Holding Entity shall have the meaning set forth in Section 8.4(d).

"Release" shall have the meaning provided in the Environmental Indemnity.

"Release Date" shall have the meaning provided in Section 2.3.6(a).

"Release Instruments" shall have the meaning provided in Section 2.3.6(a).

"Release Price" shall mean, with respect to each Individual Property, the product of the designated Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage; provided, however, that with respect to any Individual Property transferred to any Affiliate of Mortgage Borrower, Borrower, Guarantor, Master Lessee or Master Lease Guarantor, the Release Price for such Individual Property shall be the greater of (a) the product of the designated Allocated Loan Amount applicable to such Individual Property and the Release Price Percentage, and (b) the product of (i) the Fair Market Value of such Individual Property at the time of such transfer, multiplied by (ii) a fraction, the numerator of which is the Allocated Loan Amount for such Individual Property, and the denominator of which is the Combined Allocated Loan Amount for such Individual Property.

"Release Price (First Mezzanine)" shall have the meaning ascribed to the term "Release Price" in the First Mezzanine Loan Agreement.

"Release Price (Mortgage)" shall have the meaning ascribed to the term "Release Price" in the Mortgage Loan Agreement.

"Release Price Percentage" shall mean 115%; provided, however, that with respect to a release in connection with a casualty or Taking pursuant to Section 6.2.3 hereof, the Release Price Percentage shall equal 100%.

"Release Property" shall have the meaning provided in Section 2.3.6(a).

"Release Property-Specific Default" shall have the meaning set forth in Section 2.3.6(a).

"Remaining Property" shall have the meaning set forth in Section 2.3.6(b).

"Replacement Cash Management Agreement" shall have the meaning set forth in Section 3.1.7.

"Replacement Guaranty" shall have the meaning set forth in Section 8.5.

"Replacement Indemnity" shall have the meaning set forth in Section 8.5.

"Required Tax Distribution Amount" shall mean, for any period, that portion of the amount required by law to be paid by a member of the Stand Alone Guarantor Group equal to the following: (i) solely with respect to Separate Borrower Group Tax Liability, if payments of estimated Taxes (as reasonably determined pursuant to Section 6655 of the Code or comparable provisions of state, local or foreign Tax law and payable on a timely basis) are required to be made by a member of the Stand Alone Guarantor Group for any quarter in which all of the interests in Borrower were owned by a member of the Stand Alone Guarantor Group, the amount of any estimated Separate Borrower Group Tax Liability for such period and (ii) if the consolidated federal Income Tax return (or any consolidated, combined, unitary or similar group Tax return pursuant to state, local or foreign Tax law) of the Guarantor Group is required to be filed for any taxable year during which all of the interests in Borrower were owned by a member of the Stand Alone Guarantor Group, the positive difference between the Separate Borrower Group Tax Liability for such taxable year and the sum of the estimated Tax amounts computed in accordance with clause (i) above for each prior quarter of such taxable year.

"Restricted Party" shall mean Borrower, any Senior Borrower, any SPE Component Entity, PRP, PropCo, HoldCo, Guarantor, any Intermediate Entity, or any shareholder, partner, member or non-member manager, or direct or indirect legal or beneficial owner of Borrower, any Senior Borrower, any SPE Component Entity, HoldCo, Guarantor or any Intermediate Entity.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Scheduled Defeasance Payments" shall mean (a) in the case of a Total Defeasance Event, scheduled payments of interest on and principal of the Loan (less, for clarity, any previously defeased portion thereof) for each Payment Date occurring after the Defeasance Date and up to and including the Payment Date selected by Borrower from and after (and including) the Lockout Expiration Date (including the outstanding principal balance of the Loan as of such Payment Date so selected), and (b) in the case of a Partial Defeasance Event, with respect to the principal portion of the Loan being defeased, scheduled payments of interest on and principal of such principal portion for each Payment Date occurring after the Defeasance Date and up to and

including the Payment Date selected by Borrower from and after (and including) the Lockout Expiration Date (including the outstanding principal balance of such principal portion as of such Payment Date so selected). In the case of a Partial Defeasance Event, for purposes of clause (b) of the preceding sentence, the scheduled payments of principal on each Payment Date in respect of the principal portion being defeased will be equal to the product of (i) the amount of principal payable on such Payment Date based on the amortization schedule attached hereto as Schedule I (as the same shall have been amended in connection with any prior Partial Defeasance Event in accordance with the immediately following sentence) multiplied by (ii) a fraction, the numerator of which is such principal portion being defeased as of the Defeasance Date for such Partial Defeasance Event, and the denominator of which is the Principal Amount as of the Defeasance Date for such Partial Defeasance Event (for clarity, excluding any portion of the Loan previously defeased). Such amortization schedule will be amended in connection with such Partial Defeasance Event by deducting from the scheduled principal payment to be made on each Payment Date pursuant to such schedule (as the same may have been previously amended in connection with a prior Partial Defeasance Event) the scheduled payments of principal on such Payment Date in respect of the Defeased Note for such Partial Defeasance Event, as determined in accordance with the immediately preceding sentence.

"SEC" shall mean the United States Securities and Exchange Commission.

"Secondary Market Transaction" shall have the meaning set forth in Section 14.1.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Securitization" shall have the meaning set forth in Section 14.1.

"Security Deposits" shall have the meaning set forth in Section 8.8.5.

"Senior Borrower" shall mean Mortgage Borrower and/or First Mezzanine Borrower, individually or collectively, as the context may require.

"Senior Lender" shall mean Mortgage Lender and/or First Mezzanine Lender, individually or collectively, as the context may require.

"Senior Loan" shall mean the Mortgage Loan and/or the First Mezzanine Loan, individually or collectively, as the context may require.

"Senior Loan Agreement" shall mean the Mortgage Loan Agreement and/or the First Mezzanine Loan Agreement, individually or collectively, as the context may require.

"Senior Loan Default" shall mean a Mortgage Default and/or a First Mezzanine Default, individually or collectively, as the context may require.

"Senior Loan Documents" shall mean the Mortgage Loan Documents and/or the First Mezzanine Loan Documents, individually or collectively, as the context may require.

"Senior Loan Event of Default" shall mean a Mortgage Event of Default and/or a First Mezzanine Event of Default, individually or collectively, as the context may require.

"Senior Note" shall mean the Mortgage Note and/or the First Mezzanine Note, individually or collectively, as the context may require.

"Senior Obligations" shall mean the Mortgage Obligations and/or the First Mezzanine Obligations, individually or collectively, as the context may require.

"Separate Borrower Group Tax Liability" means, with respect to any period, the lesser of (a) the Hypothetical Borrower Group Tax for such period and (b) the Guarantor Group Tax for such period reduced by any payments (estimated or otherwise) made in respect of any applicable Imposition for or with respect to such period by a member of the Borrower Group other than any such payments financed by short term Debt that is Permitted Debt or other Debt permitted to be incurred hereunder.

"Servicer" shall mean such Person designated in writing with an address for such Person by Lender, in its sole discretion, to act as Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement or otherwise, together with such other powers as are reasonably incidental thereto.

"Single Purpose Entity" shall mean a Person, other than an individual, that complies with the provisions of Sections 5.3 and 5.4.

"Special Member" shall have the meaning set forth in Section 5.3(c).

"Special Taxes" shall mean any and all Taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, arising after the date hereof as result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of Lender, such Taxes (including Income Taxes, franchise Taxes and branch profit Taxes) as are imposed on or measured by Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Lender is organized or maintains a lending office.

"SPE Component Entity" shall have the meaning set forth in Section 5.3(b).

"Sponsors" shall mean Bain Capital Partners, LLC, Catterton Partners and any investment funds advised or managed by either of them, but not including, however, any Sponsor Portfolio Companies.

"Sponsor Portfolio Company" shall mean a company and the related business in which any Sponsor, or any investment fund advised or managed by any Sponsor, is invested, so long as such company is not otherwise an Affiliate of any Senior Borrower, Borrower, PRP, PropCo, HoldCo, Guarantor, Master Lessee, Master Lease Guarantor or any of their respective Subsidiaries.

"Stand Alone Guarantor Group" shall mean Guarantor and all other members of the Guarantor Group, other than Borrower and each subsidiary of Guarantor which owns, directly or indirectly, Equity Interests in Borrower.

"State" shall mean, with respect to each Individual Property, the State in which such Individual Property or any part thereof is located.

"Stated Maturity Date" shall mean the Payment Date occurring in April, 2017.

"Store-Level Information" shall mean the information delivered pursuant to Sections 11.2.1(A), 11.2.2(A) and 11.2.3(A) hereof.

"Sublease" shall mean any lease (other than the Master Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, letting, license, concession or other agreement entered into in connection with such lease, sublease, subsublease, letting, license, concession or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto. Lender acknowledges that Mortgage Borrower does not own, and Mortgage Lender does not have a lien on, the Excluded Personal Property and that the term " Subleases" shall not include the Excluded Personal Property or leases or licenses with respect to the Excluded Personal Property.

"Subordination of Asset Management Agreement " shall mean that certain Second Mezzanine Asset Manager's Consent and Subordination of Asset Management Agreement, dated as of the date hereof, among Borrower, Lender and Asset Manager.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise Controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

"Successor Borrower" shall have the meaning set forth in Section 2.4.4.

"Taking" shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, environmental, customs duties, capital stock, profits, documentary, property, franchise, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add on minimum, or other tax of any kind whatsoever, including any interest, penalty, fine, assessment or addition thereto.

"Tenant" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property, other than Master Lessee and its employees and agents.

"Tenant Competitor" shall mean (i) any entity listed on Schedule IV attached hereto as such Schedule IV may be supplemented in accordance with the provisions of Section 11.2.9(g) and (ii) any subsidiary (a) Controlled by any such entity listed on Schedule IV (as may be supplemented in accordance with the terms hereof) and (b) owned at least fifty-one percent (51%) by any such entity listed on Schedule IV (as may be supplemented in accordance with the terms hereof).

"Tenant Security Period" shall have the meaning assigned thereto in the Master Lease.

"Third-Party Brand" shall mean any restaurant brand operated at an Individual Property where such restaurant brand is not owned by Master Lease Guarantor or its Close Subsidiaries (regardless of whether such Individual Property is subleased by a Pass-Through Subsidiary). As of the Closing Date, the Third-Party Brands are Cheeseburger in Paradise, Lee Roy Selmon's and Sterling's Bistro.

"Threat of Release" shall have the meaning provided in the Environmental Indemnity.

"Title Company" shall mean, collectively, Chicago Title Insurance Company (as to one-third of coverage), Fidelity National Title Insurance Company (as to one-third of coverage) and Lawyers Title Insurance Corporation (as to one-third of coverage).

"Title Policy (Owner)" shall mean an ALTA owner's title insurance policy in a form reasonably acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and reasonably acceptable to Lender) issued by the Title Company with respect to an Individual Property and insuring ownership of such Individual Property.

"Total Defeasance Collateral" shall mean, with respect to a Total Defeasance Event, U.S. Securities that provide payments (a) on or prior to, but as close as possible to, the Business Day immediately preceding each Payment Date after the Defeasance Date of such Total Defeasance Event and up to and including the Lockout Expiration Date (or any date thereafter as specified by Borrower on or prior to the Defeasance Date), and (b) in amounts equal to or greater than the Scheduled Defeasance Payments relating to such Total Defeasance Event.

"Total Defeasance Date" shall have the meaning set forth in Section 2.4.1(a).

"Total Defeasance Event" shall have the meaning set forth in Section 2.4.1.

"Transfer" shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any legal or beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of any legal or beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A "Transfer" shall include, but not be limited to, (a) an installment sales agreement wherein

Mortgage Borrower agrees to sell the Property, or Borrower or First Mezzanine Borrower agrees to sell any portion of the Mezzanine Collateral, or any part thereof for a price to be paid in installments; (b) an agreement by Mortgage Borrower to lease all or any part of the Property other than pursuant to the Master Lease and the Subleases in accordance with the terms of the Mortgage Loan Agreement (including without limitation, Sections 5.1.22 and 8.8 of the Mortgage Loan Agreement), or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower's right, title and interest in and to the Master Lease, any Subleases or any Rents except in favor of Mortgage Lender in accordance with the Mortgage Loan Documents; (c) if a Restricted Party is a corporation, any merger or consolidation, or any sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of such corporation's stock, or the creation or issuance of new stock in one or a series of transactions; (d) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation, or any sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests, or the change, removal, resignation or addition of a general partner, or the creation or issuance of new partnership interests; (e) if a Restricted Party is a limited liability company, any merger or consolidation, or any sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of the membership interest of any member or any profits or proceeds relating to such membership interest, or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member); or (f) if a Restricted Party is a trust or nominee trust, any merger or consolidation, or sale, assignment, conveyance, mortgage, transfer, pledge, hypothecation, encumbrance, exchange or other disposition of the legal or beneficial interest in such Restricted Party, or the creation or issuance of new legal or beneficial interests.

"Transferee Borrower" shall have the meaning set forth in Section 8.7.

"Transferee First Mezzanine Borrower" shall have the meaning set forth in Section 8.7.

"Transferee Mortgage Borrower" shall have the meaning set forth in Section 8.7.

"Transferee Senior Borrower" shall have the meaning set forth in Section 8.7.

"True Lease Opinion" shall mean that certain true lease opinion letter dated the date hereof delivered by Sullivan & Cromwell LLP in connection with the Loan.

"UCC" or "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in the State of Delaware or New York, as applicable, from time to time.

"Unaffiliated Business" shall mean a business being operated at an Individual Property where either or both of the following conditions are satisfied: (a) such business is a Third-Party Brand restaurant or is any other business that is not a Concept restaurant; and/or (b) the Tenant operating such business is the subtenant under an Unaffiliated Sublease.

"Undefeased Note" shall have the meaning set forth in Section 2.4.2(d) hereof.

"Upper Tier Entity" shall mean any of Guarantor or any direct or indirect parent of Guarantor.

"U.S. Government Obligations" shall mean any direct obligations of, or obligations guaranteed as to principal and interest by, the United States Government or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States of America. Any such obligation must be limited to instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If any such obligation is rated by S&P, it shall not have an "r" highlighter affixed to its rating. Interest must be fixed or tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with said index. U.S. Government Obligations include, but are not limited to: U.S. Treasury direct or fully guaranteed obligations, Farmers Home Administration certificates of beneficial ownership, General Services Administration participation certificates, U.S. Maritime Administration guaranteed Title XI financing, Small Business Administration guaranteed participation certificates or guaranteed pool certificates, U.S. Department of Housing and Urban Development local authority bonds, and Washington Metropolitan Area Transit Authority guaranteed transit bonds. In no event shall any such obligation have a maturity in excess of 365 days.

"U.S. Securities" shall mean obligations or securities not subject to prepayment, call or early redemption which are (a) obligations of, or obligations fully guaranteed as to timely payment by, the United States of America or (b) obligations of any agency or instrumentality of the United States of America that qualify as "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

"wholly-owned" shall mean, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by Legal Requirements) are owned by such Person and/or by one or more wholly-owned Subsidiaries of such Person.

"Yield Maintenance Premium" shall mean the amount (if any) which, when added to the aggregate outstanding principal amount of the Loan (or any portion thereof evidenced by any Undefeased Note as applicable, but excluding any Defeased Note) will be sufficient to purchase U.S. Securities providing the required Scheduled Defeasance Payments.

1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. All references to

any Senior Loan Agreement, any Senior Note or any other Senior Loan Document shall mean such Senior Loan Agreement, such Senior Note or such other Senior Loan Document as in effect on the date hereof, as each of the same may hereafter be amended, restated, replaced, supplemented or otherwise modified as permitted by Sections 5.1.22(b) and 5.1.24(b), and to the extent Lender's consent is required pursuant to Sections 5.1.22(b) and 5.1.24(b), only to the extent that Lender's consent has been obtained. Capitalized terms that are used but not defined herein shall have the respective meanings assigned to such terms in the Mortgage Loan Agreement as of the date hereof, and no modifications to the Mortgage Loan Agreement shall have the effect of changing any such definitions for the purposes of this Agreement unless Lender expressly agrees that such definition as used in this Agreement have been revised to the extent Lender's consent is required pursuant to Section 5.1.22(b). Capitalized terms used herein that are defined herein by referring to any such term as defined in any Senior Loan Agreement, shall have the respective meaning assigned to such term in such Senior Loan Agreement as of the date hereof, and no modifications to any Senior Loan Agreement shall have the effect of changing any such definitions for the purposes of this Agreement unless Lender expressly agrees that such definition as used in this Agreement have been revised to the extent Lender's consent is required pursuant to Section 5.1.22(b) or 5.1.24(b).

II. GENERAL TERMS

2.1 Loan; Disbursement to Borrower.

2.1.1 The Loan. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower. Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Lender to Borrower on the Closing Date.

2.1.3 The Note, Pledge and Loan Documents. The Loan shall be evidenced by the Note and secured by the Pledge, this Agreement and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower may use the proceeds of the Loan only (i) as a contribution to First Mezzanine Borrower to (1) contribute to Mortgage Borrower to (a) acquire and refinance the Property, (b) make deposits into the Holding Account (and/or the Sub Accounts thereof) as required under the Mortgage Loan Agreement, (c) pay Mortgage Trust Fund Expenses due and payable on the Closing Date and (d) pay costs and expenses incurred in connection with the closing of the Mortgage Loan, and (2) to pay costs and expenses incurred in connection with the closing of the First Mezzanine Loan and (ii) to pay costs and expenses incurred in connection with the closing of the Loan.

2.2 Interest; Loan Payments; Late Payment Charge.

2.2.1 Payment and Accrual of Interest.

(i) Except as set forth in Section 2.2.1(ii), interest shall accrue on the outstanding principal balance of the Loan during each Interest Period at the Interest Rate.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the Loan and shall be secured by the Pledge. This clause (ii) shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default, and Lender retains its rights under the Loan Documents to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

(iii) Except as expressly set forth herein to the contrary, interest shall accrue on all amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents (other than the Principal Amount, which shall accrue interest in accordance with clauses (i) and (ii) above) at the Default Rate.

(iv) Interest on the Principal Amount shall accrue and be computed based on the daily rate produced assuming a three hundred sixty (360) day year, consisting of twelve (12) months of thirty (30) days each, determined (a) for each Interest Period (other than the Initial Interest Period) as one-twelfth (1/12th) of the aggregate annualized interest that would accrue on such Principal Amount at the Interest Rate, and (b) for the Initial Interest Period, as the product of (x) one-twelfth (1/12th) of the aggregate annualized interest that would accrue on such Principal Amount at the Interest Rate multiplied by (y) a fraction the numerator of which is the number of days from and including the Closing Date through and including the last day of the Initial Interest Period, and the denominator of which is 30. The accrual period for calculating interest due on each Payment Date shall be the Interest Period ending immediately prior to such Payment Date.

(v) The provisions of this Section 2.2.1 are subject in all events to the provisions of Section 2.2.4 below.

2.2.2 Payment of Monthly Payment Amount; Application of Principal; Method and Place of Payment.

(a) On each Payment Date, Borrower shall pay to Lender consecutive monthly installments of principal and interest in an amount equal to the Monthly Payment Amount until the entire Indebtedness is fully paid, except that any remaining Indebtedness, if not sooner paid, shall be due and payable on the Maturity Date; provided, however, that on the first Payment Date

(occurring on April 10, 2012), Borrower shall pay to Lender interest only on the Principal Amount accruing during the Initial Interest Period at the Interest Rate, with no principal amortization due on such first Payment Date.

(b) All payments made by Borrower hereunder or under any of the Loan Documents shall be made on or before 2:00 p.m. New York City time. Any payments received after such time shall be credited to the next following Business Day.

(c) All amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents, other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents. In the event any such advance or charge is not so repaid by Borrower, Lender may, at its option, first apply any payments received under the Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents, and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(d) The entire Principal Amount, all unpaid accrued interest (including all Applicable Interest) and all other fees and sums then payable hereunder or under the Loan Documents, including, without limitation the Yield Maintenance Premium (if applicable), shall be due and payable in full on the Maturity Date.

(e) Amounts due hereunder shall be payable, without any counterclaim, setoff or deduction whatsoever, at the office of Lender or its agent or designee at the address set forth on the first page of this Agreement or at such other place as Lender or its agent or designee may from time to time designate in writing.

(f) All amounts due hereunder, including, without limitation, interest and the Principal Amount, shall be due and payable in lawful money of the United States of America.

(g) To the extent that Borrower makes a payment or Lender receives any payment or proceeds for Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the obligations of Borrower hereunder intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Lender.

2.2.3 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (other than the outstanding Principal Amount due and payable on the Maturity Date) is not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal Rate (the " Late Payment Charge") in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Security Instrument and the other Loan Documents to the extent permitted by applicable law.

2.2.4 Usury Savings. This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of the Maximum Legal Rate, then the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.3 Prepayments.

2.3.1 Voluntary Prepayments. Except as otherwise provided in this Agreement, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Stated Maturity Date. Notwithstanding the foregoing, on the Payment Date occurring in January, 2017 (the " Lockout Expiration Date") and on any Business Day thereafter, Borrower may, at its option and upon ten (10) Business Days' prior written notice to Lender (provided such notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment), prepay the entire Principal Amount in whole (but not in part) without payment of the Yield Maintenance Premium or other penalty or premium; provided, that as a condition precedent to such prepayment, Borrower shall also cause (i) First Mezzanine Borrower to prepay the entire Principal Amount (First Mezzanine) in whole in accordance with the terms of the First Mezzanine Loan Agreement and (ii) First Mezzanine Borrower to cause Mortgage Borrower to prepay the entire Principal Amount (Mortgage) in whole in accordance with the terms of the Mortgage Loan Agreement, in each case simultaneously with such prepayment of the entire Principal Amount. If Borrower prepays the entire Principal Amount, Borrower shall pay Lender, in addition to the Principal Amount, all Applicable Interest. Except in connection with a prepayment of the Floating Rate Component (Mortgage) as expressly permitted under the Mortgage Loan Agreement, Borrower shall not consent to or permit, or allow First Mezzanine Borrower to consent to or permit, a prepayment of the Mortgage Loan or the First Mezzanine Loan (other than in connection with the simultaneous repayment of the Loan, in its entirety and in accordance with the terms and provisions of the Loan Documents and the Senior Loan Documents, respectively), unless it obtains the prior written consent of Lender, which consent may be given or withheld by Lender in its sole discretion.

2.3.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Proceeds in accordance with Section 6.2.3 of the Mortgage Loan Agreement, (a) such Proceeds shall be applied to prepay the Principal Amount to the extent of the Release Price for the affected Individual Property in accordance with the terms

hereof, and such amount prepaid by Borrower shall result in a corresponding reduction of the Release Price and the Combined Release Price of the affected Individual Property, (b) Borrower shall pay to Lender all Applicable Interest, and (c) Borrower shall pay (without duplication) all reasonable costs and expenses of Lender incurred in connection with such prepayment (including without limitation, any reasonable attorneys' fees and expenses). Notwithstanding anything to the contrary contained herein, if the Proceeds applied by each Senior Lender and Lender in accordance with Section 6.2.3 of the Mortgage Loan Agreement (together with any other prepayment or defeasance permitted under this Agreement and any Senior Loan Agreement) equal or exceed the Combined Release Price for the applicable Individual Property, then Lender hereby agrees that Borrower shall be entitled to cause Mortgage Borrower to obtain a Property Release for such Individual Property consistent with, and subject to, the terms of Section 6.2.3 of the Mortgage Loan Agreement, and neither the release of such Individual Property from the Lien of the applicable Security Instrument and related Loan Documents and Mortgage Loan Documents, the Transfer of such Individual Property or the amendment of the Master Lease pursuant to Section 3.2.6(a)(xiv) of the Master Lease shall be deemed an Event of Default hereunder or under the other Loan Documents.

2.3.3 Prepayments After Event of Default; Application of Amounts Paid . If, after the occurrence and during the continuance of an Event of Default, Lender shall accelerate the Indebtedness and Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all Applicable Interest and all other fees and sums payable hereunder or under the Loan Documents, including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges, (b) such payment shall be deemed a voluntary prepayment by Borrower, and (c) to the extent that the same would, if a prepayment, be prohibited under Section 2.3.1, Borrower shall pay, in addition to the Indebtedness, an amount equal to the greater of (i) three percent (3%) of the then outstanding principal amount of the Loan to be prepaid or satisfied (excluding any portion thereof evidenced by Defeased Notes), or (ii) the Yield Maintenance Premium in respect of the then outstanding principal amount of the Loan to be prepaid or satisfied (excluding any portion thereof evidenced by Defeased Notes).

2.3.4 Reserved.

2.3.5 Release of All Collateral.

(a) Upon Repayment in Full of Loan. If Borrower has repaid the entire Principal Amount in accordance with Section 2.3.1 or Section 2.3.3 and paid to Lender all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, then Lender shall release the Lien of this Agreement and the Pledge upon the Collateral (or assign it (together with the Note), in whole or in part, to a new lender without representation, warranty or recourse). In such event, Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release or assignment, a release of lien or assignment of lien, as applicable, for such Collateral for execution by Lender. Such release or assignment, as applicable, shall be in a form satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release or assignment, as applicable.

(b) Upon Total Defeasance Event. If Borrower has defeased the Loan in its entirety in accordance with Section 2.4.1, and paid to Lender all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, then Lender shall release the Lien of this Agreement and the Pledge upon the Collateral (or assign it to a new lender without representation, warranty or recourse), and the U.S. Securities constituting the Total Defeasance Collateral, pledged pursuant to the Defeasance Security Agreement, shall be the sole source of collateral securing the Note. In such event, Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release or assignment, a release of lien for such Collateral for execution by Lender. Such release shall be in a form satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release.

2.3.6 Release of Individual Properties and Outparcels .

(a) Individual Properties. In the event Mortgage Borrower requests the release of any Individual Property from the Lien of the applicable Security Instrument and related Mortgage Loan Documents (or to the extent so requested by Mortgage Borrower, the assignment of the Lien of the applicable Security Instrument to a new lender without representation, warranty or recourse) (each release under this Section 2.3.6, a "Property Release"), subject to satisfaction of each of the conditions set forth below with respect to such Individual Property, Lender shall consent to such Property Release and the other actions to be taken by Mortgage Lender in accordance with Section 2.3.6 of the Mortgage Loan Agreement with respect to such Individual Property (each a " Release Property"):

(i) Borrower shall deliver a written notice (a "Property Release Notice") to Lender of its desire to cause First Mezzanine Borrower to cause Mortgage Borrower to effect such Property Release no later than thirty (30) days prior to the date of such desired Property Release, and setting forth the Business Day (the "Release Date") on which Borrower desires that Mortgage Lender release its interest in such Release Property (provided such Property Release Notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment);

(ii) Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to either:

(A) if the outstanding principal balance of the Floating Rate Component (Mortgage) is greater than or equal to the Combined Release Price for the Release Property, pay to Mortgage Lender (x) the Combined Release Price for the Release Property, to be applied in reduction of the Floating Rate Component (Mortgage), (y) all Applicable Interest (Mortgage) on the portion of the Floating Rate Component (Mortgage) being repaid, and (z) all other sums due and payable under the Mortgage Loan Agreement, the Mortgage Note, the Security Instrument and the other Mortgage Loan Documents through and including the Release Date; or

(B) if the outstanding principal balance of the Floating Rate Component (Mortgage) has previously been reduced to zero, partially defease the Fixed Rate Components (Mortgage) in an aggregate amount equal to the Release Price (Mortgage) for the Release Property, in accordance with Section 2.4.2 of the Mortgage Loan Agreement; or

(C) if the outstanding principal balance of the Floating Rate Component (Mortgage) is greater than zero but less than the Combined Release Price for the Release Property, then (x) pay to Mortgage Lender the outstanding principal balance of the Floating Rate Component (Mortgage), to be applied in reduction of the Floating Rate Component (Mortgage), (y) pay to Mortgage Lender the amounts specified in clauses (y) and (z) of subparagraph (ii)(A) above, and (z) if and only if the outstanding principal balance of the Floating Rate Component (Mortgage) being repaid pursuant to clause (x) of this subparagraph (C) is less than the Release Price (Mortgage) for the Release Property, partially defease the Fixed Rate Components (Mortgage) in an amount equal to the positive difference between the Release Price (Mortgage) for the Release Property and the outstanding principal balance of the Floating Rate Component (Mortgage) being repaid, in accordance with Section 2.4.2 of the Mortgage Loan Agreement;

(iii) as a condition precedent to a Property Release when the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Combined Release Price for the Release Property, on the Release Date, Borrower shall cause First Mezzanine Lender to partially defease the First Mezzanine Loan in accordance with the provisions of the First Mezzanine Loan Agreement, in an amount equal to either:

(A) if the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Release Price (Mortgage) or has previously been reduced to zero, then the Release Price (First Mezzanine) for the Release Property; otherwise

(B) the amount by which the Combined Release Price for the Release Property exceeds the outstanding principal balance of the Floating Rate Component (Mortgage), multiplied by a fraction, the numerator of which is the principal balance of the First Mezzanine Loan immediately prior to the Property Release, and the denominator of which is the aggregate principal balance of all Mezzanine Loans immediately prior to the Property Release.

(iv) as a condition precedent to a Property Release when the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Combined Release Price for the Release Property, on the Release Date, Borrower shall partially defease the Loan in accordance with the provisions of this Agreement, in an amount equal to either:

(A) if the outstanding principal balance of the Floating Rate Component (Mortgage) is less than the Release Price (Mortgage) or has previously been reduced to zero, then the applicable Release Price for the Release Property; otherwise

(B) the amount by which the Combined Release Price for the Release Property exceeds the outstanding principal balance of the Floating Rate Component (Mortgage), multiplied by a fraction, the numerator of which is the principal balance of the Loan immediately prior to the Property Release, and the denominator of which is the aggregate principal balance of all Mezzanine Loans immediately prior to the Property Release.

(v) Borrower shall deliver to Lender not less than ten (10) Business Days prior to the Release Date (which must be on a Business Day) all documentation that may be reasonably required by Lender to be delivered by Borrower in connection with such Property Release (collectively, " Release Instruments"), together with an Officer's Certificate certifying that (A) any and all Release Instruments, if applicable, are in compliance with all Legal Requirements, (B) the release to be effected will not violate the terms of this Agreement, (C) the release to be effected will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released and (D) the requirement described in paragraph (vi) below is satisfied in connection with such Property Release (together with calculations and supporting documentation demonstrating the same in reasonable detail);

(vi) with respect to any Property Release (other than an Excluded Release), after giving effect to such Property Release, the Lease Coverage Ratio as of the Release Date for all of the Individual Properties then remaining subject to the Liens of the Security Instrument shall not be less than the greater of (A) the Closing Date Lease Coverage Ratio and (B) the Lease Coverage Ratio for the Individual Properties subject to the Lien of the Security Instrument immediately prior to the Release Date;

(vii) no Event of Default shall have occurred and then be continuing on the date on which Borrower delivers the Property Release Notice or on the Release Date (except as provided in the last grammatical paragraph of this Section 2.3.6(a));

(viii) the Release Property is simultaneously transferred pursuant to a bona fide all-cash sale on arms-length terms and conditions;

(ix) Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to execute and deliver such other instruments, certificates, opinions of counsel and documentation as Mortgage Lender shall reasonably request in order to preserve, confirm or secure the Liens and security granted to Mortgage Lender by the Mortgage Loan Documents, including any amendments, modifications or supplements to any of the Mortgage Loan Documents;

(x) Borrower shall pay for any and all reasonable out-of-pocket costs and expenses incurred in connection with any proposed Property Release, including Lender's reasonable attorneys' fees and disbursements;

(xi) prior to the Release Date, Borrower shall deliver to Lender evidence reasonably satisfactory to Lender that all amounts owing to any parties in connection with the transaction relating to the proposed Property Release have been paid in full, or will simultaneously be paid in full on the Release Date or adequate reserves therefor are established by Borrower in cash with respect to contingent or other liabilities that may arise out of such transaction and for which Borrower is not adequately indemnified or insured against as reasonably determined by Lender;

(xii) as a condition precedent to a Property Release, on the Release Date, Borrower shall cause (a) First Mezzanine Borrower to satisfy all conditions to such Property Release set forth in the First Mezzanine Loan Documents and (b) First Mezzanine Borrower to cause Mortgage Borrower to satisfy all conditions to such Property Release set forth in the Mortgage Loan Documents;

(xiii) reserved;

(xiv) the transfer of the Release Property in connection with the Property Release does not trigger any rights of first refusal or purchase options in any Operating Agreements, including, but not limited to the rights or obligations set forth on Schedule VI of the Mortgage Loan Agreement as to any remaining Property unless the same have been waived or terminated by the holder thereof;

(xv) following such Property Release, each Senior Borrower and Borrower shall each continue to be a Single Purpose Entity and comply with all provisions of the Loan Documents pertaining to a Single Purpose Entity; and

(xvi) Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to enter into an amendment to the Master Lease with Master Lessee (A) to effect the reduction in the Master Lease Base Rent by an amount not to exceed the amount allocable to such Individual Property as set forth on Schedule IV to the Mortgage Loan Agreement, and (B) to cause such Release Property to be removed from the Master Lease, including amending the legal description of the "Leased Property" (as defined therein) to effect such removal.

Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, if on the date Borrower delivers a Property Release Notice, (a) a Default or Event of Default has occurred and is continuing which relates solely to the Individual Property or Individual Properties subject to the proposed Property Release (each or any such Default or Event of Default, a " Release Property-Specific Default"), (b) the Allocated Loan Amounts of such Individual Properties do not exceed, in the aggregate of all Individual Properties that are then subject to a Release Property-Specific Default, 15% of the Principal Amount, and (c) no other Default or Event of Default exists, Borrower shall not be prohibited from causing First Mezzanine Borrower to cause Mortgage Borrower to exercise a release with respect to such Individual Property or Individual Properties and such Release-Property-Specific Default will be deemed to have been cured upon completion of the Property Release of such Individual Property or Individual Properties by (1) delivery of such Property Release Notice and (2) completion of the Property Release of such Individual Property or Individual Properties; provided, that, if Borrower fails to cause First Mezzanine Borrower to cause Mortgage Borrower to complete the Property Release of each Individual Property then subject to a Release-Property-Specific Default by a Release Date that is not more than forty-five (45) days after receiving written notice from Lender or otherwise obtaining actual knowledge of the occurrence of such Release Property-Specific Default, such Default or Event of Default shall be deemed not to have been cured by delivery of such Property Release Notice and shall be retroactive to the date such Default or Event of Default first occurred.

(b) Outparcels. Provided that (i) no Event of Default has occurred and is continuing, and (ii) Mortgage Borrower shall have satisfied each of the conditions set forth in Section 2.3.6(b) of the Mortgage Loan Agreement, Borrower shall be permitted to cause First Mezzanine Borrower to cause Mortgage Borrower to request that Mortgage Lender release certain Outparcels in accordance with the terms of Section 2.3.6(b) of the Mortgage Loan Agreement without the consent of Lender.

2.3.7 Provisions Relating to Individual Properties That Go Dark .

(a) At any one time and from time to time, Borrower may cause First Mezzanine Borrower to cause Mortgage Borrower to allow Restaurant Locations to Go Dark provided that (i) the number of Go Dark Restaurant Locations plus the number of Restaurant Locations that are being operated as one or more Unaffiliated Businesses (without duplication) does not exceed the Go Dark/Sublease Limit at any time, and (ii) in no event may Borrower cause First Mezzanine Borrower to cause Mortgage Borrower to allow any Go Dark Purchase Option Property to Go Dark unless the holder of the purchase right, termination right, recapture right, option or similar right has irrevocably waived in writing such rights with respect to the period during which such Go Dark Purchase Option Property continues to be a Go Dark Restaurant Location. If the number of Go Dark Restaurant Locations plus the number of Restaurant Locations that are being operated as one or more Unaffiliated Businesses (without duplication) exceeds the Go Dark/Sublease Limit at any time, then within thirty (30) days of such Go Dark/Sublease Limit being exceeded, Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to cause one or more Individual Properties to be released from the Lien of the applicable Security Instrument in accordance with Section 2.3.6 hereof such that the number of Go Dark Restaurant Locations plus the number of Restaurant Locations that are being operated as one or more Unaffiliated Businesses (without duplication) does not exceed the Go Dark/Sublease Limit.

(b) If any Restaurant Location shall Go Dark, Borrower will promptly send written notice thereof to Lender. If any Restaurant Location shall Go Dark, the full Master Lease Rent payment as and when, and to the extent, required under the Master Lease and the Master Lease Rent Payment Direction Letter with respect to all Restaurant Locations that are leased pursuant to the Master Lease shall nonetheless be required to be deposited into the Holding Account without reduction.

2.4 Defeasance. Provided no Event of Default shall have occurred and be continuing, Borrower shall have the right at any time after the Closing Date to voluntarily defease all or any portion of the Loan by and upon satisfaction of the following conditions (such event being a " Defeasance Event"):

2.4.1 Conditions to Total Defeasance Event. Provided that Mortgage Borrower shall have paid in full the Floating Rate Component (Mortgage) (either previously or simultaneously with the Total Defeasance Event), Borrower shall have the right to voluntarily defease the entire outstanding principal balance of the Loan without Yield Maintenance Premium or other premium or penalty and obtain a release of the Lien of the Pledge and this Agreement by providing Lender with the Total Defeasance Collateral (herein, a "Total Defeasance Event"), subject to the satisfaction of the following conditions precedent:

(a) Except as otherwise set forth herein, Borrower shall have delivered to Lender all documentary deliveries required pursuant to this Section 2.4.1 at least thirty (30) days prior to the requested effective date of such proposed Total Defeasance Event and shall specify a date (the " Total Defeasance Date") on which the Total Defeasance Event is to occur (provided such notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment);

(b) Borrower shall pay to Lender (i) all payments of principal and interest due on the Loan to and including the Total Defeasance Date, and (ii) all other sums then due on such Total Defeasance Date under the Note, this Agreement, the Pledge and the other Loan Documents;

(c) Borrower shall deposit the Total Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Section 2.4.3 hereof;

(d) Borrower shall execute and deliver to Lender a Defeasance Security Agreement in respect of the Defeasance Collateral Account and the Total Defeasance Collateral;

(e) Borrower shall deliver to Lender (i) an Opinion of Counsel for Borrower that is reasonably satisfactory to Lender opining that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Total Defeasance Collateral, and (B) the Total Defeasance Event pursuant to this Section 2.4.1 does not constitute a "significant modification" under Section 1001 of the Code, will not cause any Securitization vehicle to fail to qualify as a grantor trust under the Code and will not cause a federal income tax to be imposed on any Securitization vehicle and (ii) a non-consolidation opinion with respect to the Successor Borrower;

(f) reserved;

(g) On or prior to the Total Defeasance Date, Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.4.1 have been satisfied;

(h) Borrower shall deliver a certificate of an Independent certified public accounting firm reasonably acceptable to Lender certifying that the Total Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(i) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request, to the extent such delivery would be required by a reasonably prudent lender defeasing mortgage loans for securitization similar to the Loan, provided that Borrower shall not be required to deliver any certificate, opinion, document or instrument that would increase Borrower's obligations or liabilities under this Agreement or any other Loan Document;

(j) Borrower shall pay to Lender a defeasance and release fee in an amount equal to $10,000; and

(k) Borrower shall pay all reasonable out-of-pocket costs and expenses of Lender incurred in connection with the Total Defeasance Event, including Lender's reasonable attorneys' fees and expenses.

Notwithstanding the foregoing, Borrower shall not consent to or permit, or allow First Mezzanine Borrower to consent to or permit, a total defeasance of the Mortgage Loan or the First Mezzanine Loan (other than in connection with a simultaneous defeasance of the Loan in its entirety in accordance with the terms and conditions of the Loan Documents), unless it obtains the prior written consent of Lender, which consent may be given or withheld by Lender in its sole discretion.

2.4.2 Conditions to Partial Defeasance. Provided that Mortgage Borrower shall have paid in full the Floating Rate Component (Mortgage) (either previously or simultaneously with the Partial Defeasance Event), Borrower shall have the right to voluntarily defease a portion of the outstanding principal balance of the Loan without Yield Maintenance Premium or other premium or penalty, in connection with a Property Release consummated in accordance with Section 2.3.6(a), by providing Lender with the Partial Defeasance Collateral (herein, a " Partial Defeasance Event"), subject to the satisfaction of the following conditions precedent:

(a) Except as otherwise set forth herein, Borrower shall have delivered to Lender all documentary deliveries required pursuant to this Section 2.4.2 at least thirty (30) days prior to the requested effective date of such proposed Partial Defeasance Event and shall specify a date (the " Partial Defeasance Date") on which the Partial Defeasance Event is to occur (provided such notice shall be revocable at any time and for any reason by Borrower and may be adjourned on a day-to-day basis on reasonable notice to Lender, but Borrower shall pay any actual reasonable out-of-pocket expenses incurred by Lender in connection with such revocation and/or adjournment);

(b) Borrower shall pay to Lender (i) all payments of principal and interest due on the Loan to and including the Partial Defeasance Date, and (ii) all other sums then due on such Partial Defeasance Date under the Note, this Agreement, the Pledge and the other Loan Documents;

(c) Borrower shall deposit the Partial Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Section 2.4.3 hereof;

(d) Borrower shall prepare all necessary documents to modify this Agreement and to amend and restate the Note and issue substitute notes, with one or more substitute notes having an aggregate principal balance equal to the aggregate Release Price for the Release Property or Release Properties (collectively, the "Defeased Note"), and one or more substitute notes having a principal balance equal to the excess of (i) the original principal amount of the Loan, over (ii) the amount of the Defeased Note and any prior Defeased Note issued (collectively, the " Undefeased Note"). The Defeased Note and Undefeased Note shall have identical terms as the Note except for the principal balance and the monthly payment amount. The Defeased Note and the

Undefeased Note shall not be cross defaulted or cross collateralized. A Defeased Note may not be the subject of any further defeasance, and all amounts paid in reduction of the principal balance thereof will be exclusively from the Scheduled Defeasance Payments in accordance herewith. In addition, a Defeased Note may be repaid in whole in connection with a repayment of the entire Loan on or after the Lockout Expiration Date in accordance with the terms hereof;

(e) Borrower shall execute and deliver to Lender a Defeasance Security Agreement in respect of the Defeasance Collateral Account and the Partial Defeasance Collateral;

(f) Borrower shall deliver to Lender (i) an Opinion of Counsel for Borrower that is reasonably satisfactory to Lender opining that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Partial Defeasance Collateral and (B) that the Partial Defeasance Event pursuant to this Section 2.4.2 does not constitute a "significant modification" under Section 1001 of the Code, will not cause any Securitization vehicle to fail to qualify as a grantor trust under the Code and will not cause any federal income tax to be imposed on any Securitization vehicle and (ii) a non-consolidation opinion with respect to the Successor Borrower;

(g) reserved;

(h) on or prior to the Partial Defeasance Date, Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.4.2 have been satisfied;

(i) Borrower shall deliver a certificate of an Independent certified public accounting firm reasonably acceptable to Lender certifying that the Partial Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(j) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request, to the extent such delivery would be required by a reasonably prudent lender defeasing mortgage loans for securitization similar to the Loan, provided that Borrower shall not be required to deliver any certificate, opinion, document or instrument that would increase Borrower's obligations or liabilities under this Agreement or any other Loan Document;

(k) Borrower shall pay to Lender a defeasance and release fee in an amount equal to $10,000;

(l) Borrower shall pay all reasonable out-of-pocket costs and expenses of Lender incurred in connection with the Partial Defeasance Event, including Lender's reasonable attorneys' fees and expenses;

(m) Borrower shall have complied with the provisions of Section 2.3.6 with respect to the Individual Property or Individual Properties being released; and

(n) as a condition precedent to a Partial Defeasance Event, on the Defeasance Date, Borrower shall cause (i) First Mezzanine Borrower to partially defease the First Mezzanine Loan in accordance with the provisions of the First Mezzanine Loan Agreement in the amount specified in Section 2.3.6(a)(iii) and (ii) cause First Mezzanine Borrower to cause Mortgage Borrower to partially defease the Mortgage Loan in accordance with the provisions of the Mortgage Loan Agreement in the amount specified in Section 2.3.6(a)(ii).

2.4.3 Defeasance Collateral Account. On or before the date on which Borrower delivers the Total Defeasance Collateral or Partial Defeasance Collateral, as applicable, Borrower shall open at any Eligible Institution the defeasance collateral account (the " Defeasance Collateral Account") which shall at all times be an Eligible Account. The Defeasance Collateral Account shall contain only (a) Total Defeasance Collateral or the applicable Partial Defeasance Collateral, and (b) cash from interest and principal paid on the Total Defeasance Collateral or the applicable Partial Defeasance Collateral. All cash from interest and principal payments paid on the Total Defeasance Collateral or Partial Defeasance Collateral shall be paid over to Lender on each Payment Date and applied in accordance with the terms of this Agreement. Following the payment of all Scheduled Defeasance Payments, any cash from interest and principal paid on the Total Defeasance Collateral or Partial Defeasance Collateral in excess of the amounts necessary to pay the Scheduled Defeasance Payments shall be paid to Borrower or, if there is a Successor Borrower, to Successor Borrower. Borrower shall cause the Eligible Institution at which the Total Defeasance Collateral or Partial Defeasance Collateral is deposited to enter into an agreement with Borrower or Successor Borrower, as applicable, and Lender, satisfactory to Lender in its reasonable discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Total Defeasance Collateral or Partial Defeasance Collateral in accordance with this Agreement. Borrower or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Total Defeasance Collateral or Partial Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrower shall pay all costs and expenses associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account. At Borrower's election, different Defeasance Collateral Accounts may be established for each defeasance consummated pursuant to this Agreement.

2.4.4 Successor Borrower. In connection with a Defeasance Event under this Section 2.4, Borrower shall, if reasonably required by Lender or if Borrower elects to do so, establish or designate a successor entity (the " Successor Borrower") which shall be a single purpose bankruptcy remote entity and which shall be reasonably approved by Lender. Any such Successor Borrower may, at Borrower's option, be an Affiliate of Borrower unless Lender shall reasonably require otherwise. Borrower shall transfer and assign all obligations, rights and duties under and to the Note (in connection with a Total Defeasance Event) and under the Defeased Note (in connection with a Partial Defeasance Event), together with the Total Defeasance Collateral or Partial Defeasance Collateral, as applicable, to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note (in connection with a Total Defeasance Event) and under the Defeased Note (in connection with a Partial Defeasance Event) and the Defeasance Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay all reasonable, out-of-pocket costs and expenses incurred by Lender, including Lender's reasonable attorney's fees and expenses, incurred in connection therewith. A different Successor Borrower may be established for each defeasance consummated pursuant to this Agreement.

2.5 Regulatory Change; Taxes.

2.5.1 Increased Costs. If as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation of payments to Lender or any company Controlling Lender of the principal of or interest on the Loan is changed or Lender or the company Controlling Lender shall be subject to (i) any Tax, duty, charge or withholding of any kind with respect to this Agreement (excluding taxation of the overall net income of Lender or the company Controlling Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Lender or any company Controlling Lender is imposed, modified or deemed applicable; and Lender determines that, by reason thereof, the cost to Lender or any company Controlling Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by Lender or any company Controlling Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called " Increased Costs"), then Lender shall provide notice thereof to Borrower and Borrower agrees that it will pay to Lender upon Lender's written request such additional amount or amounts as will compensate Lender or any company Controlling Lender for such Increased Costs to the extent Lender determines that such Increased Costs are allocable to the Loan; provided, however, that with respect to the period during which the Loan is held by a Securitization trust, Borrower's liability under this Section 2.5.1 shall be limited to the Increased Costs to which such Securitization trust itself is subject, if any. If Lender requests compensation under this Section 2.5.1, Borrower may, by notice to Lender, require that Lender furnish to Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof. In the event that Borrower is required to pay any Increased Costs in accordance with the terms hereof, Borrower shall have the right to prepay the Principal Amount (together with all Applicable Interest) without the imposition of any Yield Maintenance Premium.

2.5.2 Special Taxes. Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.5.2) Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law. Notwithstanding anything to the contrary contained in this Section 2.5, Borrower shall not be liable for any amounts as a result of (a) withholding for Special Taxes or additional costs incurred as a result of the assignment of all or any portion of the Loan by Lender to any Person that is subject to Special Taxes at the time of such assignment, which Special Taxes exceed the Special Taxes to which the assignor is subject, and which is organized under or has its principal place of business outside of the United States of America or any political subdivision thereof or (b) failure of Lender to comply with any certification, identification, information, documentation or other reporting requirement if (i) such compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or reduction in the rate of, deduction or withholding of any Special Taxes and (ii) at least thirty

(30) days prior to the first Payment Date with respect to which Borrower shall apply this clause (b), Borrower shall have notified Lender that Lender will be required to comply with such requirement, provided, however, that the exclusion set forth in this clause (b) shall not apply in respect of any certification, identification, information, documentation or other reporting requirement if such requirement would be materially more onerous, in form, in procedure or in the substance of information disclosed, to Lender than comparable information or other reporting requirements imposed under U.S. Tax law, regulation and administrative practice (such as IRS Forms W-8BEN and W-9).

2.5.3 Other Taxes. In addition, Borrower agrees to pay any present or future stamp or documentary taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (hereinafter referred to as " Other Taxes").

2.5.4 Indemnity. Subject to the limitations in the last sentence of Section 2.5.2, Borrower shall indemnify Lender for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.5.4) paid by Lender and any liability (including penalties, interest, and reasonable out-of-pocket expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Lender makes written demand therefor.

2.5.5 Change of Office. To the extent that changing the jurisdiction of Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Lender.

2.5.6 Survival. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.5 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

III. CASH MANAGEMENT

3.1 Cash Management.

3.1.1 Establishment of Collateral Account. Borrower hereby acknowledges that (A) simultaneously with the execution of this Agreement, Lender (or Lender's Servicer on behalf of Lender) has established with Cash Management Bank, in the name of Lender (or Lender's Servicer on behalf of Lender), an account (the "Collateral Account"), which has been established as a deposit account, and (B) Lender (or Lender's Servicer on behalf of Lender) shall be the customer (within the meaning Section 4-104(a)(5) of the UCC) of Cash Management Bank with respect to the Collateral Account. The Collateral Account and the funds deposited therein shall serve as additional security for the Loan. Borrower shall not have any right to make, and shall not deliver any orders to Cash Management Bank for, and withdrawals from the Collateral

Account. The Collateral Account shall be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement. For the avoidance of doubt, the Collateral Account is the same account as the Second Mezzanine Account (as defined in the Mortgage Loan Agreement).

3.1.2 Pledge of Account Collateral. To secure the full and punctual payment and performance of the Obligations, Borrower hereby collaterally assigns, grants a security interest in and pledges to Lender, to the extent not prohibited by applicable law, a first priority continuing security interest in and to the following property of Borrower, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the "Account Collateral"):

(a) the Collateral Account and all cash, deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Account;

(b) all interest and cash from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Account unless released; and

(c) to the extent not covered by clauses (a) or (b) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Account Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts.

(a) Borrower agrees that the Collateral Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a)(29) of the UCC), (ii) in such a manner that Lender (or Lender's Servicer on behalf of Lender) is the customer (within the meaning of Section 4-104(a)(5) of the UCC) of Cash Management Bank with respect to the Collateral Account and Lender (or such other Person designated in writing by Lender to Borrower from time to time) shall have control (within the meaning of Section 9-104(a)(2) of the UCC) over the Collateral Account, and (iii) such that Borrower shall have no right of withdrawal from the Collateral Account and, except as provided herein, no Account Collateral shall be released to Borrower from the Collateral Account.

(b) Notwithstanding Section 3.1.3(a)(i) above, Lender (or Lender's Servicer on behalf of Lender) shall be permitted to cause the Collateral Account to be maintained as "securities accounts" pursuant to Article 8 of the UCC, provided that (i) Lender is the entitlement holder (within the meaning of Section 8-102(a)(7) of the UCC) with respect to the Collateral Account, (ii) Lender (or such other Person designated in writing by Lender to Borrower from time to time) shall have control (within the meaning of Section 8-106(d) of the UCC) over such "securities

account" and at all times Lender shall have a perfected first priority lien on the Collateral Account, (iii) such account shall be maintained in such a manner that the Cash Management Bank shall agree to treat all property credited to the Collateral Account as "financial assets" and, (iv) all securities or other property underlying any financial assets credited to the Collateral Account shall be registered in the name of Cash Management Bank, endorsed to Cash Management Bank or in blank or credited to another securities account maintained in the name of Cash Management Bank and in no case will any financial asset credited to any of the Collateral Account be registered in the name of Borrower, payable to the order of Borrower or specially endorsed to Borrower except to the extent the foregoing have been specially indorsed to Cash Management Bank or in blank.

3.1.4 Eligible Account. The Collateral Account shall be an Eligible Account. The Collateral Account shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Account or any investments held in such account shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement. Borrower shall be the beneficial owner of the Collateral Account for federal income tax purposes and shall report all income on the Collateral Account.

3.1.5 Cash Management Arrangement. Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to cause all Rents to be deposited and applied in accordance with the Mortgage Loan Documents and shall cause First Mezzanine Borrower to cause Mortgage Borrower to at all times comply with the provisions of Article 3 of the Mortgage Loan Agreement. All funds deposited by the Mortgage Cash Management Bank into the Collateral Account shall be deemed to be a distribution from Mortgage Borrower to First Mezzanine Borrower and a further distribution from First Mezzanine Borrower to Borrower and shall be applied and disbursed in accordance with this Agreement.

3.1.6 Monthly Funding.

(a) Borrower hereby irrevocably authorizes Lender to transfer, and Lender shall transfer, from the Collateral Account by 11:00 a.m. New York time on each Payment Date, or as soon thereafter as there shall be sufficient collected funds on deposit in the Collateral Account, and from time to time (but no less frequently than weekly thereafter) to Lender funds in an amount equal to the sum of any Protective Advances which may have been advanced by (and not previously reimbursed to) Lender pursuant to the terms of the Loan Documents to cure any Default or Event of Default, any Senior Loan Default or Senior Loan Event of Default, or to protect the Collateral together with any interest payable on such amounts pursuant to the Loan Documents, plus (x) the unpaid Mezzanine Loan Debt Service Amount due on the Payment Date on which the transfer from the Collateral Account is made, plus (y) an amount equal to such payments for any prior month(s), to the extent not previously paid, plus (z) an amount equal to the amount, if any, deducted from the Collateral Account in any preceding month to pay any other amounts then due under the Loan Documents (other than any Mezzanine Loan Debt Service Amounts).

(b) If for any reason there will be insufficient amounts in the Collateral Account on any Payment Date to pay the Mezzanine Loan Debt Service Amount due on such Payment Date, Borrower shall immediately deposit into the Collateral Account an amount equal to the shortfall of available funds. Any failure by Borrower to deposit the full amount required by the preceding sentence shall constitute an Event of Default hereunder. If Lender shall reasonably determine that there will be insufficient amounts in the Collateral Account to pay any Protective Advances as and when the same are due and payable, Lender shall provide written notice of same to Borrower setting forth the basis for such determination. Within five (5) Business Days of receipt of said notice, Borrower shall deposit into the Collateral Account an amount equal to the shortfall of available funds in the Collateral Account. Any failure by Borrower to deposit the full amount required by the preceding sentence within said five (5) Business Day period shall constitute an Event of Default hereunder.

(c) Lender agrees to deliver to Mortgage Lender at least five (5) Business Days prior to each Payment Date a written notice setting forth the Mezzanine Loan Debt Service Amount payable by Borrower on the first Payment Date occurring after the date such notice is delivered (the " Mezzanine Lender Monthly Debt Service Notice"); provided, however, that any Mezzanine Lender Monthly Debt Service Notice sent to Mortgage Lender shall be applicable with respect to all future Payment Dates until Lender sends a new Mezzanine Lender Monthly Debt Service Notice to Mortgage Lender, it being understood that Lender will not be required to send a new Mezzanine Lender Monthly Debt Service Notice to Mortgage Lender unless and until the Mezzanine Loan Debt Service Amount due on the ensuing Payment Date is different from the Mezzanine Loan Debt Service Amount due on the immediately preceding Payment Date, and Mortgage Lender shall be permitted to rely on the most recently received Mezzanine Lender Monthly Debt Service Notice until Mortgage Lender receives a new Mezzanine Lender Monthly Debt Service Notice from Lender. Borrower agrees that Lender shall not be required to deliver to Mortgage Lender any additional notice with respect to distribution of Proceeds prior to the deposit of Proceeds into the Collateral Account.

(d) Borrower hereby acknowledges that, (i) pursuant to Section 3.1.6 of the Mortgage Loan Agreement, (A) to the extent that a Mortgage Event of Default has occurred and is continuing, all Excess Cash Flow and any other payments that would otherwise be distributed to Borrower, First Mezzanine Borrower, Lender or First Mezzanine Lender are to be held in the Holding Account and applied in accordance with the Mortgage Loan Agreement (unless otherwise agreed to by Mortgage Lender) and (B) to the extent that a First Mezzanine Event of Default has occurred and is continuing but no Mortgage Event of Default has occurred and is continuing, all Excess Cash Flow and any other payments that would otherwise be distributed to Borrower or Lender are to be deposited into the First Mezzanine Collateral Account and applied in accordance with the First Mezzanine Loan Agreement (unless otherwise agreed to by First Mezzanine Lender) and (ii) to the extent required by, and in accordance with Section 6.2.3(b) of the Mortgage Loan Agreement, any Proceeds will be disbursed to Lender to prepay the Loan in the amount of the Release Price for such Individual Property to which the Proceeds relate. Any Proceeds received by Mortgage Lender in excess of the release price specified in Section 6.2.3(b) of the Mortgage Loan Agreement for such affected Individual Property shall be paid in accordance with the payment priorities set forth in Section 6.2.3(b) of the Mortgage Loan Agreement.

(e) Borrower hereby also acknowledges that (i) Lender has the right to deliver notice to Mortgage Lender that an Event of Default has occurred and is continuing under the Loan Documents (a "Mezzanine Loan Default Notice"), and (ii) pursuant to the Mortgage Loan Agreement, provided there is no Senior Loan Event of Default and to the extent Mortgage Lender has received a Mezzanine Loan Default Notice, Mortgage Borrower has irrevocably directed that all Excess Cash Flow is to be deposited directly into the Collateral Account for application as provided in this Agreement (in lieu of transferring such funds to the Mortgage Borrower's Account if Mortgage Lender had not received a Mezzanine Loan Default Notice) until such time as Mortgage Lender receives a notice from Lender that such Event of Default is no longer continuing.

(f) Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, payments or distributions made directly to or on behalf of any Senior Borrower or any Senior Lender, including the distribution or payment of any Asset Management Fee, pursuant to any of the Senior Loan Documents, and any funds distributed or paid to the Borrower's Account pursuant to this Agreement, shall be free and clear of any lien of the Senior Loan Documents and the Loan Documents and may be paid, used, or distributed without the same being transferred to the Mortgage Collateral Account, the Collateral Account, or the First Mezzanine Collateral Account.

3.1.7 Cash Management Agreement Upon Repayment of Senior Loans . In the event that the Senior Loans have been fully repaid and the Loan has not been fully repaid, then Borrower shall, and shall cause First Mezzanine Borrower to cause Mortgage Borrower to, enter into a cash management agreement with Lender, in form and substance reasonably satisfactory to Lender (the " Replacement Cash Management Agreement "), that shall require, among other things, that Borrower and Mortgage Borrower establish certain accounts and reserves, and pledge such accounts and reserves to Lender as additional Collateral for the Loan, such that Lender has the same legal and economic rights and remedies as Mortgage Lender has under the cash management and reserve provisions of the Mortgage Loan Documents, including without limitation, Article III of the Mortgage Loan Agreement. Until such time as the Replacement Cash Management Agreement has been fully-executed, Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to continue to comply with the cash management and reserve provisions of the Mortgage Loan Documents notwithstanding the repayment of the Mortgage Loan, provided that such performance by Mortgage Borrower shall be in favor of Lender rather than Mortgage Lender.

3.1.8 Cash Management Bank .

(a) Lender shall have the right at Borrower's sole cost and expense to replace the Cash Management Bank at any time with another Eligible Institution without the consent of, or notice to, Borrower. Borrower shall cooperate with Lender in connection with the appointment of any replacement Cash Management Bank. Borrower shall have no right to replace the Cash Management Bank.

3.1.9 Borrower's Representations, Warranties and Covenants Regarding Collateral Account . Borrower represents, warrants and covenants that:

(a) Borrower will not have any right, title or interest in or to any Excess Cash Flow during any period with respect to which Mortgage Lender is obligated under the Mortgage Loan Agreement to transfer such Excess Cash Flow to the Collateral Account, except any rights Borrower shall have to allocations of such funds following the disbursement to Borrower of any Excess Cash Flow as provided in Section 3.1.6(d).

(b) There are no accounts other than the Mortgage Collateral Account, the First Mezzanine Collateral Account and the Collateral Account maintained by any Senior Borrower, Borrower, or any other Person with respect to the collection of rents, revenues, proceeds or other income of any Senior Borrower or Borrower from the Property or for the collection of Proceeds in respect of any Senior Borrower or Borrower.

(c) So long as the Loan shall be outstanding, no Senior Borrower, Borrower nor any other Person shall open any other accounts with respect to the collection of rents, revenues, proceeds or other income from the Property or for the collection of Proceeds in respect of any Senior Borrower or Borrower, except as provided in any Senior Loan Agreement or this Agreement.

3.1.10 Account Collateral and Remedies .

(a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Lender to Borrower, (i) Lender may, in addition to and not in limitation of Lender's other rights, make any and all withdrawals from the Collateral Account as Lender shall determine in its sole and absolute discretion and in any order of priority to pay any Obligations, operating expenses and/or capital expenditures for the Property and (ii) Distributions shall be retained in the Collateral Account.

(b) Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Account Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Lender may perform or cause performance of any such agreement, and any reasonable out-of-pocket expenses of Lender incurred in connection therewith shall be paid by Borrower as provided in Section 5.1.16.

(c) Except for any notice required by this Agreement and the related Loan Documents, Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind in connection with this Agreement or the

Account Collateral. Borrower acknowledges and agrees that ten (10) days' prior written notice of the time and place of any public sale of the Account Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

3.1.11 Transfers and Other Liens. Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral or (ii) create or permit to exist any Lien upon or with respect to all or any of Borrower's interest in the Account Collateral, except for the Lien granted to Lender under this Agreement.

3.1.12 Reasonable Care. Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Account Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody of the Account Collateral in its possession if the Account Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. In no event shall Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Lender's reasonable control or for indirect, special or consequential damages except to the extent of Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Borrower acknowledges and agrees that (i) Cash Management Bank has custody of the Account Collateral, and (ii) Lender has no obligation or duty to supervise Cash Management Bank or to see to the safe custody of the Account Collateral.

3.1.13 Lender's Liability.

(a) Lender shall be responsible for the performance only of such duties with respect to the Account Collateral as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents, and no other duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with the transactions contemplated hereby with respect to the Account Collateral except as such may be caused by the gross negligence or willful misconduct of Lender, its employees, officers or agents.

(b) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.14 Continuing Security Interest. This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until payment in full of the Indebtedness. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the Account Collateral.

3.1.15 Distributions. Transfers of Mortgage Borrower's funds from the Holding Account to or for the benefit of Borrower shall constitute distributions to First Mezzanine Borrower and further distributions from First Mezzanine Borrower to Borrower and must comply with the requirements as to distributions of the Delaware Limited Liability Company Act. The provisions of this Article III shall not create a debtor-creditor relationship between Mortgage Borrower and Lender.

IV. REPRESENTATIONS AND WARRANTIES

4.1 Borrower Representations. Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization. Each of Senior Borrower, Borrower, Master Lessee and Master Lease Guarantor is a limited liability company and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Guarantor is a corporation and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Senior Borrower, Borrower, Guarantor, Master Lessee and Master Lease Guarantor has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, or, in the case of qualifications in the various States (a) an application for such qualification has been duly filed with the applicable Governmental Authority and all fees required in order to obtain such qualification have been paid in full, (b) all conditions to obtaining such qualification have been satisfied under applicable law and the issuance of such qualification is a ministerial act of the applicable Governmental Authority, and (c) no such failure to qualify would be reasonably likely to have a Material Adverse Effect. Each of Senior Borrower, Borrower, Guarantor, Master Lessee and Master Lease Guarantor possesses all material rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership of the Ownership Interests. The organizational structure of Senior Borrower, Borrower, Guarantor, Master Lessee and Master Lease Guarantor is accurately depicted by the schematic diagram attached hereto as Exhibit A. Borrower shall not change or permit to be changed (i) Borrower's name, (ii) Borrower's identity (including its trade name or names), (iii) Borrower's principal place of

business set forth on the first page of this Agreement, (iv) the corporate, partnership or other organizational structure of Borrower or any SPE Component Entity, (v) Borrower's state of organization, or (vi) Borrower's organizational identification number, unless it shall have given Lender thirty (30) days prior written notice of any such change (and, in the case of a change in Borrower's structure, has first obtained the prior written consent of Lender) and shall have taken all steps reasonably requested by Lender to grant, perfect, protect and/or preserve the liens and security interest granted to Lender under the Loan Documents. Borrower expressly authorizes Lender and its counsel to file such financing statements, with or without the signature of Borrower, as Lender may elect, as may be necessary or desirable to perfect the lien of Lender's security interest in the Collateral, including without limitation, UCC financing statements describing the collateral as all assets and personal property of Borrower, whether now owned or existing or hereafter acquired or arising and wheresoever located, including all accessions thereto and products and proceeds thereof, or using words with similar effect. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change. Subject to the provisions of the Pledged Entity's Organizational Document, which require actions and/or consents of Mortgage Borrower's Independent Managers, Borrower has the power and authority and the requisite ownership interests in First Mezzanine Borrower to control the actions of First Mezzanine Borrower, and upon the realization of the Collateral, Lender or any other party succeeding to Borrower's interest in the Collateral would have such control. First Mezzanine Borrower has the power and authority and requisite ownership interests in Mortgage Borrower to control the actions of Mortgage Borrower. Without limiting the foregoing, and subject to the provisions of the Pledged Entity's Organizational Document, which require actions and/or consents of Mortgage Borrower's Independent Managers, Borrower has sufficient control over First Mezzanine Borrower to cause First Mezzanine Borrower to (i) take any action on First Mezzanine Borrower's part required to be taken by First Mezzanine Borrower under the First Mezzanine Loan Documents and (ii) refrain from taking any action prohibited to be taken by First Mezzanine Borrower under the First Mezzanine Loan Documents.

4.1.2 Proceedings. Each of First Mezzanine Borrower, Borrower, Guarantor and Master Lessee has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party. The Loan Documents to which such Person is a party have been duly executed and delivered by, or on behalf of, First Mezzanine Borrower, Borrower, Guarantor and Master Lessee, as applicable, and constitute legal, valid and binding obligations of such Persons, as applicable, enforceable against such Persons, as applicable in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by First Mezzanine Borrower, Borrower, Guarantor and Master Lessee, as applicable, will not conflict with or result in a material breach of any of the terms or provisions of, or constitute a material default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of any such Person pursuant to the terms of any indenture, mortgage, deed of

trust, loan agreement, partnership agreement or other agreement or instrument to which any such Person is a party or by which any of such Person's property or assets is subject (unless consents from all applicable parties thereto have been obtained), except for any conflict that would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority, and any material consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by First Mezzanine Borrower, Borrower, Guarantor and Master Lessee of this Agreement or any other Loan Document has been obtained and is in full force and effect.

4.1.4 Litigation. Except as set forth on Schedule II attached hereto, there are no arbitration proceedings, governmental investigations, actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the best of Borrower's knowledge, threatened against or affecting any Senior Borrower, Borrower, Guarantor, Master Lessee, Master Lease Guarantor or any Individual Property or any Mezzanine Collateral (other than claims (A) (i) which are being covered by insurance, (ii) which are being defended by the relevant insurance company and (iii) as to which Borrower has not received a notice from such insurance company that the claim exceeds the total amount of insurance coverage with respect to such claim by more than $500,000; or (B) which relate to claims for which liability in the event any such matter is adversely determined could not reasonably be expected to exceed $500,000). The actions, suits or proceedings identified on Schedule II, if determined against any Senior Borrower, Borrower, Guarantor, Master Lessee, Master Lease Guarantor or the Individual Property, would not materially and adversely affect the condition or operation of any Individual Property or the value of any Mezzanine Collateral, as applicable.

4.1.5 Agreements. The Pledged Entity's Organizational Document, the Pledged Entity's Organizational Document (First Mezzanine), the Operating Agreements, the Master Lease and the Subleases listed on Schedule I attached to the Mortgage Loan Agreement (including the Concept Subleases, the RLP Subleases, the Pass-Through Subleases, the Specified Prior Leases and the Unaffiliated Subleases) constitute all of the material agreements to which Borrower and/or any Senior Borrower or any of their Affiliates are party or are bound which are material to the ownership and operation of any Individual Property or any Mezzanine Collateral. Borrower is not a party to any agreement or instrument or subject to any restriction which is reasonably likely to materially and adversely affect Borrower or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower or the Mezzanine Collateral is bound. Borrower has no material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other similar agreement or instrument to which Borrower is a party or by which Borrower or the Collateral is otherwise bound, other than (a) obligations constituting Permitted Debt which are incurred in the ordinary course of the ownership and operation of the Collateral and (b) obligations under the Loan Documents.

4.1.6 Title.

(a) Borrower owns all of the Collateral as of the date hereof, subject to no rights of others, including any mortgages, leases, conditional sales agreements, title retention agreements, liens or other encumbrances, except for the Permitted Encumbrances and other Liens permitted under the Loan Documents or any Senior Loan Document. The Pledge, together with the UCC financing statements relating to the Collateral, when properly filed in the appropriate records, will create a valid, perfected first priority security interest in and to the Collateral (other than the Pledged Collateral), all in accordance with the terms thereof, for which a Lien can be perfected by filing a UCC financing statement. Borrower's delivery of the Certificate (as defined in the Pledge), together with the applicable undated limited liability company membership power covering the applicable certificate duly executed in blank, creates a first priority valid and perfected security interest in the Pledged Collateral.

(b) Mortgage Borrower has good, marketable and insurable fee simple title to the Land and the Improvements relating to the Individual Properties, in each case free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Mortgage Loan Documents and the Liens created by the Mortgage Loan Documents. Mortgage Borrower has good and marketable title to the remainder of the Property (excluding the Excluded Personal Property), free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first mortgage lien on the Land and the Improvements subject only to Permitted Encumbrances and (ii) perfected security interests in and to all personalty other than the Excluded Personal Property (including the Subleases) or any leases of equipment from third parties, all in accordance with the terms thereof, to the extent such security interest may be perfected by filing a UCC financing statement under Article 9 of the UCC (as defined in the Mortgage Loan Agreement), in each case subject only to any applicable Permitted Encumbrances. There are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents other than the Permitted Encumbrances. Borrower represents and warrants that none of the Permitted Encumbrances would individually or in the aggregate reasonably be expected to result in a Material Adverse Effect as of the Closing Date and thereafter. Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to preserve its right, title and interest in and to the Property, except for Individual Properties released under the terms hereof, for so long as the Note and each Senior Note remains outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Encumbrances.

(c) With respect to any Individual Property for which no survey has been prepared or updated in connection with the Loan, to the actual knowledge of Borrower after diligent inquiry (which shall not generally include site visits except where deemed necessary to confirm or investigate issues raised in reviewing company files or interviews with property managers):

(i) other than as disclosed in the 2007 surveys provided to Lender in connection with the Loan, there are no easements, encroachments or other title defects that would be disclosed by an accurate survey as of this date that could interfere in any material respect with the continued use and operation of such Individual Property as used as of the date hereof; and

(ii) other than as disclosed in the 2007 surveys provided to Lender in connection with the Loan, the Improvements and parking at such Individual Property and purported to be owned by Mortgage Borrower and appraised pursuant to the appraisal received by Lender in connection with the origination of the Loan are wholly located on the Land related to such Individual Property.

(d) First Mezzanine Borrower owns all of the First Mezzanine Collateral as of the date hereof, subject to no rights of others, including any mortgages, leases, conditional sales agreements, title retention agreements, liens or other encumbrances, except for Permitted Encumbrances and other Liens permitted under any Mortgage Loan Document. The First Mezzanine Pledge, together with the UCC financing statements relating to the First Mezzanine Collateral, when properly filed in the appropriate records, will create a valid, perfected first priority security interest in and to the First Mezzanine Collateral (other than the Pledged Collateral (as defined in the First Mezzanine Pledge)), all in accordance with the terms thereof, for which a Lien can be perfected by filing a UCC financing statement. First Mezzanine Borrower's delivery of the Certificate (as defined in the First Mezzanine Pledge), together with the applicable undated limited liability company membership power covering the applicable certificate duly executed in blank, creates a first priority valid and perfected security interest in the Pledged Collateral (as defined in the First Mezzanine Pledge) in favor of First Mezzanine Lender.

4.1.7 No Bankruptcy Filing. None of Senior Borrower, Borrower, Guarantor, Master Lessee or Master Lease Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or against any Senior Borrower, Guarantor, Master Lessee or Master Lease Guarantor.

4.1.8 Full and Accurate Disclosure.

(a) To Borrower's knowledge, no material information submitted by Borrower to Lender in writing in connection with the Loan, nor any statement of material fact made by Borrower in this Agreement or in any of the other Loan Documents, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not materially misleading as of the date made in light of the circumstances in which such information was submitted or such statements were made.

(b) There is no fact presently known to Borrower which has not been disclosed which would reasonably be expected to have a Material Adverse Effect.

4.1.9 Ownership Interests. The Ownership Interests constitute all of the Ownership Interests currently owned by Borrower.

4.1.10 No Plan Assets.

(a) Borrower does not maintain an employee benefit plan as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA, and Borrower (i) has no knowledge of any

material liability which has been incurred or is expected to be incurred by Borrower which is or remains unsatisfied for any taxes or penalties with respect to any "employee benefit plan," within the meaning of Section 3(3) of ERISA, or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a multiemployer plan) maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under common control with Borrower within the meaning of ERISA Section 4001(a)(14) (a " Plan") or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans, if any. Each such Plan has been and will be administered in compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(b) Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, subject to Title I of ERISA, none of the assets of Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and Borrower is not a governmental plan within the meaning of Section 3(32) of ERISA and transactions by or with Borrower are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.11 Compliance. Borrower, each Senior Borrower, the Property and the Mezzanine Collateral and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes (except for any non-compliance that individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect). To the best of Borrower's knowledge, none of Borrower or any Senior Borrower is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the best of Borrower's knowledge, there has not been committed by Borrower, or any Senior Borrower any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property, the First Mezzanine Collateral, the Collateral or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.12 Financial and Property Information. The information set forth in the Master Owned Property Schedule of even date herewith (a) is true, complete and correct in all material respects and (b) fairly represents the financial condition of the Property as of the Closing Date. Neither Borrower nor any Senior Borrower has any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower (other than (i) such liabilities as are set forth in the financial statements furnished to Lender, and (ii) obligations arising under this Agreement, the other Loan Documents and the Senior Loan Documents).

4.1.13 Absence of UCC Financing Statements, Etc.. Except with respect to the Permitted Encumbrances, the Senior Loan Documents and the Loan Documents, there is no financing statement, security agreement, chattel mortgage, real estate mortgage or other

document filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest or security title in the interest in the Property, the First Mezzanine Collateral or any of the Collateral.

4.1.14 Federal Reserve Regulations. None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X, which in any such case would cause the Loan, Borrower or Lender to be in violation of Regulation U. As of the Closing Date, Borrower does not own any "margin stock."

4.1.15 Setoff, Etc. The Collateral and the rights of Lender with respect to the Collateral are not subject to any setoff, claims, withholdings or other defenses.

4.1.16 Not a Foreign Person. Borrower is not a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.17 Perfection of Collateral Account.

(a) This Agreement, together with the other Loan Documents, creates a valid and continuing security interest (as defined in the Uniform Commercial Code) in the Collateral Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold or otherwise conveyed the Collateral Account;

(b) The Collateral Account constitutes a "deposit account" or "securities account" within the meaning of the Uniform Commercial Code; and

(c) The Collateral Account is not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Cash Management Bank's complying with instructions with respect to the Collateral Account from any Person other than Lender.

4.1.18 Reserved.

4.1.19 Reserved.

4.1.20 Reserved.

4.1.21 Reserved.

4.1.22 Insurance. Borrower has obtained (or has caused First Mezzanine Borrower, or has caused First Mezzanine Borrower to cause Mortgage Borrower, to obtain) and has delivered to Lender certified copies or originals of all insurance policies required under this Agreement, reflecting the insurance coverages, amounts and other requirements set forth in this
Agreement. Borrower has not, and to the best of Borrower's knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.23 Reserved.

4.1.24 Reserved.

4.1.25 Reserved.

4.1.26 Physical Condition. To the best of Borrower's knowledge, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the best of Borrower's knowledge, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would materially and adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.27 Reserved.

4.1.28 Subleases. The Property is not subject to any leases other than the Master Lease, Affiliated Subleases, Unaffiliated Subleases, Excluded Licenses and the Specified Prior Subleases, in each case as set forth on Schedule I to the Mortgage Loan Agreement. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Master Lease, the Affiliated Subleases, the Unaffiliated Subleases, the Excluded Licenses, the Specified Prior Subleases and the REAs. The current Subleases are in full force and effect and to Borrower's knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed in the Mortgage Loan Agreement). No Rent has been paid more than one (1) month in advance of its due date, except as disclosed on Schedule I to the Mortgage Loan Agreement. There has been no prior sale, transfer or assignment, hypothecation or pledge by Mortgage Borrower or Master Lessee of the Master Lease or any Sublease or of the Rents received thereunder, which will be outstanding following the funding of the Loan, other than those being assigned to Mortgage Lender concurrently herewith.

4.1.29 Subsidiaries. Borrower has no subsidiaries other than each Senior Borrower.

4.1.30 Opinion Assumptions.

(a) All of the assumptions relating to Borrower and each SPE Component Entity made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto, are true and correct in all material respects and any Additional Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all material respects. Each Senior Borrower, Borrower and each SPE Component Entity have complied and will comply in all material respects with all of the

assumptions made with respect to it in the Non-Consolidation Opinion in all material respects. Each Senior Borrower, Borrower and each SPE Component Entity will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion. Each entity other than each Senior Borrower and Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply in all material respects with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

(b) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct in all material respects; provided, however, that Borrower is not making any representation or warranty with respect to any assumption that relies upon factual information provided by Cushman & Wakefield or any other third party.

4.1.31 Non-imputation. Solely with respect to the Individual Properties located in Florida, New Mexico, Pennsylvania and Texas, Borrower has no knowledge of any fact, circumstance, information, state of facts, defect, lien, encumbrance, adverse claim or other matter that has not been disclosed to the Title Company by Borrower on or before the date hereof; and that would permit the Title Company to assert an exclusion from the coverage provided under the Title Policy (Owner) covering such Individual Property, other than any such fact, circumstance, information, state of facts, defect, lien, encumbrance, adverse claim or other matter with respect to the Individual Properties located in Florida, New Mexico, Pennsylvania and Texas that is either (A) disclosed by the public records of the county in which such Individual Property is located, (B) otherwise known to the Title Company, (C) Permitted Encumbrances, or (D) as would not reasonably be expected to result in a Material Adverse Effect.

4.1.32 Reserved.

4.1.33 Reserved.

4.1.34 Reserved.

4.1.35 Tax Filings. Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower.

4.1.36 Solvency/Fraudulent Conveyance. Borrower (a) does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay such Debts and liabilities as they mature in their ordinary course; (b) is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which its assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which Borrower is engaged; (c) represents that the fair value of the assets of Borrower is greater than the total amount of liabilities, including without limitation, contingent liabilities of Borrower, such contingent liabilities computed at the amount which, in light of all the facts and circumstances existing at this time, represents the amount that can reasonably be expected to become an actual or matured liability; (d) represents that the present fair saleable

value of the assets of Borrower is not less than the amount that will be required to pay the probable liability of Borrower on its debts as they become absolute and matured; (e) has not entered into the transaction contemplated by this Agreement or any Loan Document with the actual intent to hinder, delay, or defraud either present or future creditors or any other person to which Borrower is or will become, on or after the date hereof, indebted; and (f) has received reasonably equivalent value in exchange for its obligations under the Loan Documents.

4.1.37 Investment Company Act. Borrower is not an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.1.38 Reserved.

4.1.39 Reserved

4.1.40 Brokers. Borrower has not dealt with, and Lender hereby represents that it has not dealt with, any broker or finder with respect to the transactions contemplated by the Loan Documents, and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents. Borrower and Lender shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any breach or default by the indemnifying party of its representations, warranties and/or agreements set forth in this Section 4.1.40. The provisions of this Section 4.1.40 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.41 No Other Debt. Borrower has not borrowed or received debt financing that has not been heretofore repaid in full, other than the Permitted Debt.

4.1.42 Taxpayer Identification Number. Borrower's Federal taxpayer identification number is 61-1677580.

4.1.43 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws. (i) None of Borrower, Guarantor or any Person who Controls Borrower or Guarantor currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and (ii) none of Borrower or Guarantor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time. To Borrower's knowledge, no tenant at the Property currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person and no tenant at the Property is owned or Controlled by a Prohibited Person.

4.1.44 Representations and Warranties in the Senior Loan Documents. Borrower hereby represents and warrants that (i) each Senior Loan has been fully funded and remains outstanding, (ii) each of the representations and warranties contained in the Senior Loan Documents (which are hereby incorporated by reference as if fully set forth herein) is true and correct in all material respects, as of the Closing Date and (iii) there is no Senior Loan Event of Default thereunder.

4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall be deemed given and made as of the date hereof and survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower or Guarantor unless a longer survival period is expressly stated in a Loan Document with respect to a specific representation or warranty, in which case, for such longer period. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

4.3 Borrower's Knowledge. Whenever a representation or warranty is made "to Borrower's knowledge," "to Borrower's best knowledge," or a term of similar import, such term shall mean the actual knowledge of Borrower or its officers or directors who would be likely to have actual knowledge of the relevant subject matter.

V. BORROWER COVENANTS

5.1 Affirmative Covenants. From the Closing Date and until payment and performance in full of all obligations of Borrower under the Loan Documents (other than contingent obligations for which a claim has not been made), Borrower (as to itself and each Senior Borrower) hereby covenants and agrees with Lender that:

5.1.1 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill in all material respects each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower, as applicable, without the prior written consent of Lender.

5.1.2 Existence; Compliance with Legal Requirements; Insurance. Subject to Mortgage Borrower's right of contest pursuant to Section 7.3 of the Mortgage Loan Agreement, Borrower shall at all times comply and cause First Mezzanine Borrower, and cause First Mezzanine Borrower to cause Mortgage Borrower and the Property, to be in compliance in all material respects with all Legal Requirements applicable to Borrower and/or any Senior Borrower, as applicable, any SPE Component Entity, and the Property and the uses permitted upon the Property. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, material rights, licenses, permits and material franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall not knowingly permit First

Mezzanine Borrower and Borrower shall not permit First Mezzanine Borrower to permit Mortgage Borrower or any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property, the Mezzanine Collateral or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect (and shall cause First Mezzanine Borrower, and shall cause First Mezzanine Borrower to cause Mortgage Borrower, to at all time maintain, preserve and protect) all franchises and trade names where the failure to so preserve and protect would be reasonably likely to have a Material Adverse Effect, and preserve all the remainder of its property used in and necessary for the conduct of its business and shall keep the Property (or cause First Mezzanine Borrower, or cause First Mezzanine Borrower to cause Mortgage Borrower, to keep the Property) in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto as required by the Mortgage Loan Agreement. Borrower shall keep or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower, to keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as is more fully set forth in this Agreement and the Mortgage Loan Agreement.

5.1.3 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower, any Senior Borrower, the Mezzanine Collateral or the Property which, if determined adversely to such party, the Mezzanine Collateral or the Property would reasonably be expected to result in liability (not covered by insurance) to Borrower or any Senior Borrower in excess of $500,000.

5.1.4 Reserved

5.1.5 Reserved

5.1.6 Access to Property. Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to permit agents, representatives and employees of Lender to inspect the Property or any part thereof during normal business hours on Business Days upon reasonable advance notice.

5.1.7 Notice of Default. Borrower shall promptly advise Lender (a) of any event or condition of which Borrower has knowledge that has or is likely to have a Material Adverse Effect or (b) of the occurrence of any Event of Default of which Borrower has knowledge.

5.1.8 Cooperate in Legal Proceedings. Borrower shall and shall cause First Mezzanine Borrower, and shall cause First Mezzanine Borrower to cause Mortgage Borrower, to cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.9 Reserved

5.1.10 Reserved

5.1.11 Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder.

5.1.12 Taxes. Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender.

5.1.13 Reserved.

5.1.14 Business and Operations. Borrower shall continue to and shall cause First Mezzanine Borrower, and shall cause First Mezzanine Borrower to cause Mortgage Borrower, to continue to engage in the businesses presently conducted by each of them as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property and the Mezzanine Collateral, as applicable. Borrower shall and shall cause First Mezzanine Borrower, and shall cause First Mezzanine Borrower to cause Mortgage Borrower, to qualify to do business and shall remain in good standing subject to the terms hereof under the laws of all applicable jurisdictions as and to the extent required for Mortgage Borrower's ownership, maintenance, management and operation of the Property and, as applicable, each Mezzanine Borrower's ownership of the Mezzanine Collateral.

5.1.15 Title to the Collateral. Borrower shall warrant and defend (a) its title to the Collateral and every part thereof, subject to the Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Pledge and this Agreement on the Collateral, subject to the Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Collateral is claimed by another Person.

5.1.16 Costs of Enforcement. In the event (a) that this Agreement or the Pledge is foreclosed upon in whole or in part or that by reason of Borrower's default hereunder this Agreement or the Pledge is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement or the Pledge in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any Senior Borrpower or any of its constituent Persons or an assignment by Borrower or any Senior Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or

assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.17 Estoppel Statements. Borrower shall, from time to time, upon thirty (30) days' prior written request from Lender, execute, acknowledge and deliver to Lender (and shall cause First Mezzanine Borrower, and shall cause First Mezzanine Borrower to cause Mortgage Borrower, to execute, acknowledge and deliver to Lender), an Officer's Certificate, stating that this Agreement and the other Loan Documents (or, as applicable, the Senior Loan Documents) are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents or, as applicable, the Senior Loan Documents are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Note (or, as applicable, each Senior Note and each Component) and containing such other information with respect to Borrower, any Senior Borrower, the Property, any Senior Loan and the Loan as Lender shall reasonably request. Lender shall, from time to time, upon thirty (30) days' prior written request from Borrower, execute, acknowledge and deliver to Borrower, a certificate signed by an officer of Lender, stating that this Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents are in full force and effect as modified and setting forth such modifications). The estoppel certificate from Borrower shall also state either that, to Borrower's knowledge, no Default exists hereunder or, if any Default shall exist hereunder, specify such Default and the steps being taken to cure such Default and the estoppel certificate from Lender shall state whether Lender has delivered notice of a Default or an Event of Default.

5.1.18 Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.5.

5.1.19 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property, (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 No Further Encumbrances. Subject to Section 8.3, Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and the Collateral and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use or development of the Property, except for (a) Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents or the Senior Loan Documents, (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) the Subleases entered into in accordance with Section 8.8 of the Mortgage Loan Agreement.

5.1.21 Article 8 "Opt In" Language. Each organizational document of each Senior Borrower and Borrower shall be modified to include, the language set forth on Exhibit B.

5.1.22 Mortgage Loan Covenants.

(a) Borrower hereby covenants that it shall cause First Mezzanine Borrower to cause Mortgage Borrower in a timely manner, to fully keep, perform and comply with (or cause to be kept, performed and complied with) each any every covenant, term and provision set forth in the Mortgage Loan Agreement, the Security Instrument and the other Mortgage Loan Documents, which are hereby incorporated by reference as if fully set forth herein, notwithstanding any waiver or future amendment of such covenants by Mortgage Lender (other than a Permitted Mortgage Loan Amendment). Borrower acknowledges that the obligation to comply with such covenants is separate from, and may be enforced independently from, the obligations of Mortgage Borrower under the Mortgage Loan Documents. For the avoidance of doubt, any rights given to Mortgage Lender in any such incorporated provision, including, without limitation, any consent or approval rights or any rights to receive notices thereunder (other than any notices which are required to be delivered by insurance carriers to Mortgage Lender), are also given to Lender.

(b) Borrower shall not, and shall cause First Mezzanine Borrower to cause Mortgage Borrower not to, (i) amend or modify (by agreement on the part of Mortgage Borrower or Borrower) or (ii) affirmatively permit the modification or amendment of (by operation of law or otherwise) the Mortgage Loan Documents in effect as of the Closing Date except for those amendments or modifications (" Permitted Mortgage Loan Amendments ") that (i) are required under the Mortgage Loan Documents or that Mortgage Borrower is required to consent to thereunder pursuant to the express terms of the Mortgage Loan Documents, (ii) which do not constitute a Prohibited Mortgage Loan Amendment, or (iii) are otherwise consented to by Lender. As used herein, a " Prohibited Mortgage Loan Amendment" shall mean an amendment or modification to the Mortgage Loan Documents that (1) increases the principal amount of the Mortgage Loan (exclusive of protective advances), (2) increases the interest rate payable under the Mortgage Loan, (3) provides for the payment of any contingent interest, additional interest, additional fees, increases the amount of or adds additional reserve payments or increases the amount of or adds additional escrows, or otherwise increases in any material respect any monetary obligations of Borrower under the Mortgage Loan Documents, (4) converts or exchanges the Mortgage Loan into or for any other indebtedness, (5) releases Guarantor under the Recourse Guaranty or the Environmental Indemnity (as such terms are defined in the Mortgage Loan Agreement) or any other guaranties or indemnities that may from time to time be executed and delivered with respect to the Mortgage Loan, except in connection with an assumption of the Mortgage Loan pursuant to the terms of the Mortgage Loan Agreement and acceptance of a replacement guarantor and/or a replacement Indemnitor, as applicable, in accordance therewith, (6) amends or modifies the provisions limiting transfers of interests in Mortgage Borrower, the Property, Guarantor, or any Affiliate of any Borrower or Guarantor, (7) subordinates the Mortgage Loan to any other indebtedness, (8) adds or modifies any cure periods under the Mortgage Loan Documents, (9) shortens or extends the maturity date of the Mortgage Loan beyond the initially scheduled maturity date (except in connection with any workout or other surrender, compromise, release, renewal, or indulgence relating to the Mortgage Loan), (10) modifies any provisions of the Mortgage Loan Documents related to the funding of escrows, cash management or the manner, timing, priority, amounts, conditions of release or method of application of payments or reserves under the Mortgage Loan Documents, (11) materially decreases or materially modifies any insurance requirements under the Mortgage Loan

Documents (including any deductibles, limits, qualifications of insurers or terrorism insurance requirements), (12) consents to a strike price with respect to any new or extended interest rate cap agreement entered into in connection with the extended term of the Mortgage Loan higher than the strike price provided for in the Mortgage Loan Documents in effect on the date hereof, (13) extends the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increases the amount of any such prepayment fee, premium or yield maintenance charge or imposes any new prepayment fee, premium or yield maintenance charge, (14) releases its lien on any material portion of the collateral originally granted under the Mortgage Loan Documents (except as may be required or permitted in accordance with the terms of the Mortgage Loan Documents as they exist on the date hereof, (15) provides for Mortgage Lender's acquisition of a direct or indirect equity interest in Mortgage Borrower, (16) imposes any financial covenants or negative covenants on Mortgage Borrower (or if such covenants exist, imposes more restrictive financial covenants or negative covenants on Mortgage Borrower), (17) cross-defaults the Mortgage Loan with any other indebtedness or modifies or amends any default provision including the definition of "Default" or "Event of Default", (18) amends or modifies the release prices or financial thresholds for releases in connection with the release of an Individual Property, (19) amends or modifies any provision of Section 2.3.7 of the Mortgage Loan Agreement or (20) amends or modifies any provision of the Mortgage Loan Documents that restrict amendments, modifications, terminations or releases of the Master Lease, the Master Lease Guaranty or the Master Lease Guarantor. Any amendment or modification to the Mortgage Loan Documents in violation of this Section 5.1.22(b) shall be ineffective as between Borrower and Lender, and, if not cured by Borrower within thirty (30) days after written notice from Lender, shall constitute an Event of Default hereunder, unless Lender consents thereto in writing in its sole discretion.

(c) In the event the Mortgage Loan shall at any time be repaid, or the Liens securing the Mortgage Loan at any time be released in full, then unless and until the Note shall have been repaid in full and all obligations of Borrower to Lender hereunder and under the other Loan Documents shall have been satisfied, then Borrower shall nevertheless comply or cause First Mezzanine Borrower to (or cause First Mezzanine Borrower to cause Mortgage Borrower to) comply with each of the terms and provisions of the Mortgage Loan Documents (other than payment of principal, interest and premium (if any)) and the Mortgage Loan Documents shall nevertheless be deemed to remain in full force and effect as between Borrower and Lender with Lender being deemed in such context to possess exclusively all of the rights and remedies of Mortgage Lender thereunder including without limitation, all rights of consent and approval, rights to receive and control the disposition of casualty insurance proceeds and condemnation awards, and the right to collect rents through a lockbox and make waterfall distributions (but expressly excluding any rights and remedies relating to payment of the indebtedness under the Mortgage Loan Documents and evidenced by the Mortgage Note and Borrower shall nevertheless comply or cause First Mezzanine Borrower to (or cause First Mezzanine Borrower to cause Mortgage Borrower to) comply with each of the terms and provisions of the Mortgage Loan Documents (and any Permitted Mortgage Loan Amendments or amendment or modification consented to in writing by Lender) (other than the payment of principal, interest and premium, if any). Borrower shall, and shall cause First Mezzanine Borrower to (and cause First Mezzanine Borrower to cause Mortgage Borrower to), execute any and all documents reasonably requested by Lender for the implementation or furtherance of the foregoing;

provided, that the same shall be at Lender's sole cost and expense. Borrower shall deliver to Lender copies of any and all modifications to the Mortgage Loan Documents within five (5) Business Days after execution thereof.

(d) Borrower covenants and agrees to cause First Mezzanine Borrower to, or cause First Mezzanine Borrower to cause Mortgage Borrower to, deliver any and all financial information delivered or required to be delivered to Mortgage Lender pursuant to the terms of the Mortgage Loan Documents to be delivered simultaneously to Lender.

5.1.23 Impositions. Borrower shall cause First Mezzanine Borrower to (and cause First Mezzanine Borrower to cause Mortgage Borrower to) pay all Impositions, to timely pay all claims for labor, material or supplies that if unpaid or unbonded might by law become a lien or charge upon any of its property (including the Property), and to keep the Property and the Mezzanine Collateral free from any Lien (other than the lien of the Loan Documents, the Senior Loan Documents and the Permitted Encumbrances), and shall in any event cause the prompt, full and unconditional discharge of all Liens (other than Permitted Encumbrances) imposed upon the Property or the Mezzanine Collateral or any portion thereof within forty-five (45) days after receiving written notice (whether from Lender, the lienholder or any other Person) of the filing thereof; subject in each case to Mortgage Borrower's or Master Lessee's right to contest the same as permitted in but subject to the conditions set forth in the Mortgage Loan Agreement so long as no Event of Default has occurred and is continuing. In the event that Mortgage Borrower elects to commence any contest or similar proceeding with respect to any such Imposition, Lien or other claim described herein, Borrower shall provide prompt written notice thereof to Lender together with such evidence as Lender may reasonably require showing Mortgage Borrower's satisfaction of the requirements set forth in Section 7.3 of the Mortgage Loan Agreement to Mortgage Borrower conducting such contest. Notwithstanding the foregoing, Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower, promptly to pay any contested Imposition, Lien or claim and the payment thereof shall not be deferred, if Lender or any Senior Borrower may be subject to criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to any Senior Borrower, then Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower, to deliver to Lender reasonable evidence of payment of such contested Imposition or Lien.

5.1.24 First Mezzanine Loan Covenants.

(a) Borrower hereby covenants that it shall cause First Mezzanine Borrower to fully keep, perform and comply with (or cause to be kept, performed and complied with) each of the covenants set forth in the First Mezzanine Loan Agreement and the First Mezzanine Loan Documents, which are hereby incorporated by reference as if fully set forth herein, notwithstanding any waiver or future amendment of such covenants by First Mezzanine Lender (other than a Permitted First Mezzanine Loan Amendment). Borrower acknowledges that the obligation to comply with such covenants is separate from, and may be enforced independently from, the obligations of First Mezzanine Borrower under the First Mezzanine Loan Documents. For the avoidance of doubt, any rights given to First Mezzanine Lender in any such incorporated provision, including, without limitation, any consent or approval rights or any rights to receive notices thereunder (other than any notices which are required to be delivered by insurance carriers to Mortgage Lender), are also given to Lender.

(b) Borrower shall not, and shall cause First Mezzanine Borrower not to, (i) amend or modify (by agreement on the part of First Mezzanine Borrower) or (ii) affirmatively permit the modification or amendment of (by operation of law or otherwise) the First Mezzanine Loan Documents in effect as of the Closing Date except for those amendments or modifications ("Permitted First Mezzanine Loan Amendments") that (i) are required under the First Mezzanine Loan Documents or that First Mezzanine Borrower is required to consent to thereunder pursuant to the express terms of the First Mezzanine Loan Documents, (ii) do not constitute a Prohibited First Mezzanine Loan Amendment, or (iii) are otherwise consented to by Lender, in its reasonable discretion. As used herein, a "Prohibited First Mezzanine Loan Amendment" shall mean an amendment or modification to the First Mezzanine Loan Documents that (1) increases the principal amount of the First Mezzanine Loan (exclusive of protective advances), (2) increases the interest rate payable under the First Mezzanine Loan, (3) provides for the payment of any contingent interest, additional interest, additional fees, increases the amount of or adds additional reserve payments or increases in any material respect any monetary obligations of First Mezzanine Borrower under the First Mezzanine Loan, (4) converts or exchanges the First Mezzanine Loan into or for any other indebtedness, (5) amends or modifies the provisions limiting transfers of interests in any Senior Borrower, the Property, Guarantor or any Affiliate of any Senior Borrower or Guarantor, (6) subordinates the First Mezzanine Loan to any other indebtedness, (7) shortens or extends the maturity date of the First Mezzanine Loan beyond the initially scheduled maturity date (except in connection with any work-out or other surrender, compromise, release, renewal, or indulgence relating to the First Mezzanine Loan), (8) modifies any provisions of the First Mezzanine Loan Documents related to the funding of escrows, cash management or the manner, timing, priority, amounts, conditions of release or method of application of payments or reserves under the First Mezzanine Loan Documents, (9) extends the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increases the amount of any such prepayment fee, premium or yield maintenance charge or imposes any new prepayment fee, premium or yield maintenance charge, (10) cross-defaults the First Mezzanine Loan with any other indebtedness or modifies or amends any default provision including the definition of "Default" or "Event of Default", (11) modifies or amends any insurance requirements under the First Mezzanine Loan Documents (including any deductibles, limits, qualifications of insurers or terrorism insurance requirements or any material casualty or condemnation provisions), (12) releases its lien on any material portion of the collateral originally granted under the First Mezzanine Loan Documents (except as may be required or permitted in accordance with the terms of the First Mezzanine Loan Documents as they exist on the date hereof), (13) imposes any financial covenants or negative covenants on First Mezzanine Borrower (or if such covenants exist, imposes more restrictive financial covenants or negative covenants on First Mezzanine Borrower), (14) amends or modifies the release prices or financial thresholds for releases in connection with the release of an Individual Property or (15) increases the monthly amount of principal payments required under the First Mezzanine Loan. Any amendment or modification to the First Mezzanine Loan Documents in violation of this Section 5.1.24(b) shall be ineffective as between Borrower and Lender, and, if not cured by Borrower within thirty (30) days after written notice from Lender shall constitute an Event of Default hereunder, unless Lender consents thereto in writing in its reasonable discretion.

5.2 Negative Covenants. From the Closing Date until payment and performance in full of all obligations of Borrower under the Loan Documents (other than contingent obligations

for which a claim has not been made) or the earlier release of the Lien of this Agreement or the Pledge in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do (and will not permit First Mezzanine Borrower to do, and will not permit First Mezzanine Borrower to permit Mortgage Borrower to do, as applicable), or permit to be done, directly or indirectly, any of the following:

5.2.1 Debt. Without the prior written consent of Lender, such consent to be made in Lender's sole determination, Borrower shall not incur, create, assume or be liable with respect to any additional Debt (including, but not limited to, any secondary or junior financing or any preferred equity investment), or create or permit to be created or to remain, any Lien on, or conditional sale or other title retention agreement with respect to the Collateral or any part thereof or income therefrom, other than the Debt created pursuant to the Loan Documents, Permitted Debt or any other Debt permitted pursuant to the terms of the Loan Documents (it being acknowledged and agreed that any refinancing of such Debt in connection with an assignment and restatement of any of the Senior Loan Documents shall be in violation of this Section 5.2.1);

5.2.2 Encumbrances. Other than in connection with or as permitted under the Loan Documents or the Senior Loan Documents, neither of Borrower or any Senior Borrower shall (a) create or incur or suffer to be created or incurred or to exist any lien, security title, encumbrance, mortgage, pledge, negative pledge, charge, restriction or other security interest of any kind upon any of its property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom; (b) transfer any of its property or assets or the income or profits therefrom for the purpose of subjecting the same to the payment of Debt or performance of any other obligation in priority to payment of its general creditors; (c) acquire, or agree or have an option to acquire, any property or assets upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (d) suffer to exist for a period of more than 30 days after the same shall have been incurred any Debt or claim or demand against it that if unpaid might by law or upon bankruptcy or insolvency, or otherwise, be given any priority whatsoever over its general creditors; (e) sell, assign, pledge or otherwise transfer any accounts, contract rights, general intangibles, chattel paper or instruments, with or without recourse (other than endorsements of checks and negotiable instruments in the ordinary course); or (f) incur or maintain any obligation to any holder of Debt which prohibits the creation or maintenance of any lien securing the Obligations;

5.2.3 Partition. Except as otherwise provided herein, partition any Individual Property;

5.2.4 Transfer of Property. Transfer any Property, or any portion thereof or any interest therein, except in each case (including in connection with a Property Release) as may be permitted hereby or in the other Loan Documents;

5.2.5 Bankruptcy. File or solicit the filing of an involuntary bankruptcy petition against any Senior Borrower, Borrower, PRP, PropCo, HoldCo, Guarantor, Master Lessee, Master Lease Guarantor or any SPE Component Entity;

5.2.6 ERISA. Engage in any activity that would subject Borrower to material liability under ERISA or qualify it as an " employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.7 Distributions. From and after the occurrence and during the continuance of an Event of Default, make any distributions to or for the benefit of any of its partners or members or its or their Affiliates. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender. Borrower shall not cause or permit any Senior Borrower to distribute to its equity owners any property other than cash, except for any Individual Property or Individual Properties (or portions thereof) released from the Lien of the Security Instrument in accordance with the terms of the Mortgage Loan Documents;

5.2.8 Modify REAs. Without the prior consent of Lender, which shall not be unreasonably withheld, delayed or conditioned, Borrower shall not cause Mortgage Borrower to execute modifications to the REAs, except as would not reasonably be expected to have a Material Adverse Effect;

5.2.9 [Reserved].

5.2.10 Zoning Reclassification. Without the prior written consent of Lender (which in the case of clause (a) shall not be unreasonably withheld), permit First Mezzanine Borrower to permit Mortgage Borrower to (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.11 Change of Principal Place of Business. Change its principal place of business and chief executive office set forth on the first page of this Agreement without first giving Lender thirty (30) days' prior written notice (but in any event, within the period required pursuant to the UCC) and there shall have been taken such action, reasonably satisfactory to Lender, as may be necessary to maintain fully the effect, perfection and priority of the security interest of Lender hereunder in the Account Collateral at all times;

5.2.12 Debt Cancellation. Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business and except for termination of a Sublease as permitted by Section 8.8 of the Mortgage Loan Agreement;

5.2.13 Misapplication of Funds. Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Collateral Account, as applicable, as required by Section 3.1 or the Pledge, misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.5;

5.2.14 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws . Permit (i) any of Borrower, Guarantor or any Person who Controls Borrower or Guarantor to be identified on the OFAC List or otherwise qualified as a Prohibited Person, or (ii) Borrower or Guarantor to be in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time;

5.2.15 Affiliate Transactions. Any contracts or agreements relating to the Property in any manner between or among any Loan Party and any other Loan Party or their respective direct or indirect partners, members, shareholders or Affiliates (collectively, the " Affiliate Agreements") shall provide that such agreement is terminable by Mortgage Borrower or Lender immediately upon notice, without the payment of any fee, penalty, premium or liability for future or accrued liabilities or obligations, if an Event of Default shall have occurred and be continuing. Following an Event of Default, if requested by Lender in writing, Borrower shall, or shall cause the applicable Loan Party to, terminate any existing Affiliate Agreement specified by Lender within five (5) days after delivery of Lender's request without payment of any penalty, premium, termination fee or any other amount which might be due and payable under such Affiliate Agreement. If such Affiliate Agreement is not terminated in accordance with the immediately preceding sentence, Lender shall have the right, and Borrower hereby irrevocably authorizes Lender and irrevocably appoints Lender as Borrower's attorney-in-fact coupled with an interest, at Lender's sole option, to terminate such Affiliate Agreement on behalf of and in the name of the applicable Loan Party, and Borrower hereby releases and waives any claims against Lender arising out of Lender's exercise of such authority. Borrower shall not, and shall not permit First Mezzanine Borrower (and shall not permit First Mezzanine Borrower to permit Mortgage Borrower), to make any payments under any Affiliate Agreement after the occurrence and during the continuance of an Event of Default;

5.2.16 Limitation on Securities Issuances . Borrower shall cause First Mezzanine Borrower, and shall cause First Mezzanine Borrower to cause Mortgage Borrower, to not issue any limited liability company interests, partnership interests, capital stock interests or other securities other than those that have been issued as of the date hereof;

5.2.17 Acquisition of a Senior Loan .

(a) No Loan Party nor any Affiliate of any Loan Party or any Person acting at any such Person's request or direction, shall acquire or agree to acquire the lender's interest in any Senior Loan, or any portion thereof or any interest therein, or any direct or indirect ownership interest in the holder of any Senior Loan, via purchase, transfer, exchange or otherwise, and any breach or attempted breach of this provision shall constitute an Event of Default hereunder. If, solely by operation of applicable subrogation law, Borrower shall have failed to comply with the foregoing, then Borrower: (i) shall immediately notify Lender of such failure; (ii) shall cause any and all such prohibited parties acquiring any interest in any of the Senior Loan Documents: (A) not to enforce such Senior Loan Documents; and (B) upon the request of Lender, to the extent any of such prohibited parties has or have the power or authority to do so, to promptly:

(1) cancel the promissory note evidencing such Senior Loan, (2) reconvey and release the Lien securing such Senior Loan and any other collateral under such Senior Loan Documents, and (3) discontinue and terminate any enforcement proceeding(s) under such Senior Loan Documents.

(b) Lender shall have the right at any time to acquire all or any portion of any Senior Loan or any interest in any holder of, or participant in, any Senior Loan without notice or consent of Borrower or any other Loan Party, in which event Lender (if it is the holder of all of either Senior Loan) shall have and may exercise all rights of such Senior Lender thereunder, including the right, in accordance with and subject to the terms of such Loan, (i) to declare that such Senior Loan is in default, (ii) to accelerate such Senior Loan indebtedness and (iii) to pursue all remedies against any obligor under the applicable Senior Loan Documents.

5.2.18 Material Agreements.

(a) Borrower shall not, and shall not permit First Mezzanine Borrower, and shall not permit First Mezzanine Borrower to permit Mortgage Borrower, to, enter into any Material Agreement without the consent of Lender not to be unreasonably withheld, conditioned or delayed, unless Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower, to, deliver to Lender a recognition agreement from the service or material provider under such Material Agreement providing for such Person's agreement to the termination of such Material Agreement without penalty or premium on no more than thirty (30) days' notice.

(b) Except as specifically set forth herein, Borrower will not, and will not permit and will not cause First Mezzanine Borrower, and will not permit or cause First Mezzanine Borrower to permit or cause Mortgage Borrower, to, amend or modify (but Borrower and any Senior Borrower may rescind or terminate so long as such action will not have a Material Adverse Effect), any Material Agreement for which Lender's consent had been obtained if the same would reasonably likely have a material adverse effect on Lender, unless Lender's approval (such approval not to be unreasonably withheld conditioned or delayed), is obtained therefor.

5.3 Single Purpose Entity/Separateness. Until the Indebtedness has been paid in full, Borrower represents, warrants and covenants as follows:

(a) Borrower has not and will not:

(i) engage in any business or activity other than the ownership of the Ownership Interests and activities related thereto;

(ii) acquire or own any assets other than (A) the Ownership Interests and (B) such incidental personal property as may be necessary for the ownership thereof;

(iii) merge into or consolidate with any Person, or, to the fullest extent permitted by law, dissolve, wind-up, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

(v) own any subsidiary other than each Senior Borrower, or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person, or permit Master Lessee, any Affiliate of either of them or any constituent party independent access to its bank accounts;

(vii) incur any Debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Permitted Debt of Borrower;

(viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Borrower's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separate identity of Borrower from such Affiliate and that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) Borrower's assets, liabilities and net worth shall also be listed on Borrower's own separate balance sheet;

(ix) except for capital contributions or capital distributions permitted under the terms and conditions of Borrower's organizational documents and properly reflected on its books and records, enter into any transaction, contract or agreement with any general partner, member, shareholder, principal, guarantor of the obligations of Borrower, Master Lessee or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties (it being agreed and acknowledged that the Asset Management Agreement is on terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties);

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets to secure the obligations of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person;

(xiii) fail to (A) file its own tax returns separate from those of any other Person, except to the extent that Borrower is treated as a "disregarded entity" for tax purposes and is not

required to file tax returns under applicable Legal Requirements, and (B) pay any taxes required to be paid under applicable Legal Requirements; provided, however, that Borrower shall not have any obligation to reimburse its equityholders or their Affiliates for any taxes that such equityholders or their Affiliates may incur as a result of any profits or losses of Borrower;

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to own its assets or conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided, however, that the foregoing shall not require any equity owner to make any additional capital contributions to Borrower);

(xvi) if it is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the managers of Borrower, including without limitation, each Independent Manager, take any Material Action or other action that is reasonably likely to cause such entity to become insolvent;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses and to use separate stationery, invoices and checks;

(xviii) fail to pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds, and Borrower represents that it is, as of the Closing Date, solvent and intends to be solvent;

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable;

(xx) violate or cause to be violated the assumptions made with respect to Borrower and its principals in any Non-Consolidation Opinion delivered to Lender in connection with the Loan;

(xxi) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(xxii) fail to maintain and use separate stationery, invoices and checks bearing its own name; or

(xxiii) have any of its obligations guaranteed by Master Lessee or any Affiliate of Borrower or Master Lessee except as contemplated by the Loan Documents.

(b) If Borrower is a partnership or limited liability company, each general partner in the case of a partnership, or the managing member in the case of a limited liability company (each an "SPE Component Entity") of Borrower, as applicable, shall be a corporation or a limited liability company whose sole asset is its interest in Borrower, provided that if such SPE Component Entity is a limited liability company, each of its managing members shall also be a

SPE Component Entity. Each SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in Section 5.3(a)(iii)—(vi) and (viii)—(xxi), as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in Borrower; (iii) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (iv) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (v) will cause Borrower to comply with the provisions of this Section 5.3 and Section 5.4. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation or limited liability company agreement, as applicable, are substantially similar to those of such SPE Component Entity and, if an opinion letter pertaining to substantive consolidation was required at closing, deliver a new opinion letter acceptable to Lender with respect to the new SPE Component Entity and its equity owners. Notwithstanding the foregoing, to the extent Borrower is a single member Delaware limited liability company, so long as Borrower maintains such formation status and complies with the requirements set forth in subsections (c) and (d) below, no SPE Component Entity shall be required.

(c) In the event Borrower is a single-member Delaware limited liability company, the limited liability company agreement of Borrower (the " LLC Agreement") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower (" Member") to cease to be the member of Borrower (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower, in either case in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Manager of Borrower (" Special Member") shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower, automatically be admitted to Borrower and shall continue Borrower without dissolution and (ii) Special Member may not resign from Borrower or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Manager. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of a substitute Member, (ii) Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of Borrower assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "Act"), Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower, (iv) Special Member, in its capacity as Special Member, may not bind Borrower, and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower, including, without limitation, the merger, consolidation or conversion of Borrower; provided, however, that such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Manager, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower as Special Member, Special Member shall not be a member of Borrower.

(d) In the event Borrower is a single-member Delaware limited liability company, the LLC Agreement shall provide that upon the occurrence of any event that causes the Member to cease to be a member of Borrower, to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower, agree in writing (i) to continue Borrower and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of Member of Borrower in Borrower. Any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower.

(e) The organizational documents of Borrower and each SPE Component Entity shall provide an express acknowledgment that Lender is an intended third-party beneficiary of the "special purpose" provisions of such organizational documents.

(f) Notwithstanding anything to the contrary contained in this Section 5.3 or Article VIII, in connection with and contemporaneously with a refinancing in full of the Loan, and each Senior Loan, Borrower may (i) amend its organizational documents and/or (ii) form one or more new direct or indirect wholly-owned Subsidiaries and transfer the Collateral to such direct or indirect wholly-owned Subsidiaries subject to escrow and other customary closing arrangements reasonably acceptable to Lender.

(g) Borrower shall cause (i) First Mezzanine Borrower to satisfy and comply in all respects with the provisions of Sections 5.3 and 5.4 of the First Mezzanine Loan Agreement and (ii) First Mezzanine Borrower to cause Mortgage Borrower to satisfy and comply in all respects with the provisions of Sections 5.3 and 5.4 of the Mortgage Loan Agreement.

5.4 Independent Manager. The organizational documents of Borrower shall include the following provisions: (a) at all times there shall be, and Borrower shall cause there to be, at least two Independent Managers; (b) the board of managers of Borrower shall not take any action which, under the terms of any certificate of formation or limited liability company agreement, requires unanimous vote of the board of managers of Borrower unless at the time of such action there shall be at least two members of the board of managers who are Independent Managers; (c) Borrower shall not, without the unanimous written consent of its board of managers including the Independent Managers, take any Material Action or any action that is reasonably likely to cause Borrower to become insolvent, and when voting with respect to such matters, the Independent Managers shall consider only the interests of Borrower, including its creditors; and (d) no Independent Manager of Borrower may be removed or replaced unless Borrower provides

Lender with not less than three (3) Business Days' prior written notice of (i) any proposed removal of an Independent Manager, together with a statement as to the reasons for such removal, and (ii) the identity of the proposed replacement Independent Manager, together with a certification that such replacement satisfies the requirements set forth in the organizational documents for an Independent Manager. Without limiting the generality of the foregoing, such documents shall expressly provide that, to the greatest extent permitted by law, except for duties to Borrower (including duties to Borrower's equity holders solely to the extent of their respective economic interests in Borrower and to Borrower's creditors as set forth in the immediately preceding sentence), such Independent Managers shall not owe any fiduciary duties to, and shall not consider, in acting or otherwise voting on any matter for which their approval is required, the interests of (A) any SPE Component Entity or Borrower's other equity holders, (B) other Affiliates of Borrower or Master Lessee, or (C) any group of Affiliates of which Borrower is a part; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (y) shall have accepted his or her appointment as an Independent Manager by a written instrument, which may be a counterpart signature page to the LLC Agreement, and (z) shall have executed a counterpart to the LLC Agreement. No Independent Manager may be removed other than for Cause. " Cause" means, with respect to an Independent Manager, (1) acts or omissions by such Independent Manager that constitute willful disregard of such Independent Manager's duties as set forth in Borrower's organizational documents, (2) that such Independent Manager has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Manager, (3) that such Independent Manager is unable to perform his or her duties as Independent Manager due to death, disability or incapacity, (4) that such Independent Manager no longer meets the definition of Independent Manager or (5) an increased change in the fees charged by the Independent Manager that is not reasonably acceptable to Borrower.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

6.1 Insurance Coverage Requirements.

(a) Borrower will cause First Mezzanine Borrower to cause Mortgage Borrower, at its expense, to procure and maintain the insurance policies required by the Mortgage Loan Documents. Each commercial general liability or umbrella liability policy with respect to the Property shall name Lender as an additional insured and shall contain a cross liability/severability endorsement in form and substance acceptable to Lender.

(b) In the event of any loss or damage to the Property, Borrower shall give prompt written notice to the insurance carrier and Lender. Lender acknowledges that Mortgage Borrower's rights to any insurance proceeds are subject to the terms of the Mortgage Loan Agreement. Subject to Section 6.1(f) below, Borrower may not and shall not permit First Mezzanine Borrower to permit Mortgage Borrower to settle, adjust or compromise any claim under such insurance policies without the prior written consent of Lender which shall not be unreasonably withheld, delayed or denied; provided, further, that Borrower may permit Mortgage Borrower to make proof of loss and adjust and compromise any claim under casualty insurance policies which does not exceed forty percent (40%) of the designated Combined

Allocated Loan Amount applicable to the affected Individual Property so long as no Event of Default has occurred and is continuing. Any excess Proceeds relating to such claim shall be applied as provided in Section 2.3.2. Borrower shall, upon Borrower's receiving written notice of same, provide written notice to Lender that any of the insurance policies required under this Section 6.1 are cancelled or terminated or are going to be cancelled or terminated. Borrower shall provide Lender with evidence of all such insurance required hereunder simultaneously with Mortgage Borrower's provision of such evidence to Mortgage Lender.

(c) Subject to Section 6.1(f) below, in the event that Mortgage Borrower is permitted or required pursuant to the terms of the Mortgage Loan Agreement to reconstruct, restore or repair the Property following a casualty to any portion of the Property, Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to promptly and diligently repair and restore the Property in the manner and within the time periods required by the Mortgage Loan Agreement, the Master Lease and any other agreements affecting the Property. Subject to Section 6.1(f) below, in the event that Mortgage Borrower is permitted pursuant to terms of the Mortgage Loan Agreement to elect to not reconstruct, restore or repair the Property following a casualty to any portion of the Property, Borrower shall not permit First Mezzanine Borrower to permit Mortgage Borrower to elect not to reconstruct, restore or repair the Property without the prior written consent of Lender.

(d) Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Individual Properties or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required to be maintained by Mortgage Borrower on or with respect to any part of the Property pursuant to Section 6.1 of the Mortgage Loan Agreement.

(e) Lender hereby confirms and acknowledges that Borrower has delivered to Lender certificates of insurance with respect to Master Lessee's insurance program, in amount, form and content so as to satisfy the requirements of this Section 6.1 in all material respects as of the Closing Date, and that any renewals or modifications that comply with Section 6.1.11 of the Mortgage Loan Agreement and are otherwise not, in substance, materially different from the approved program in place on the Closing Date shall be deemed to be in compliance.

(f) Notwithstanding this Section 6.1 and Section 6.2 below, so long as (i) the Master Lease is in full force and effect, (ii) no Master Lease Default has occurred and is continuing and (iii) the terms and provisions of the Master Lease pertaining to the subject matter addressed in Sections 6.1(b) and (c) and 6.2 have not been amended in violation of the terms hereof, then to the extent that the terms and provisions of the Master Lease pertaining to the subject matters addressed in Sections 6.1(b) and (c) and 6.2 are inconsistent with the terms and provisions set forth in Sections 6.1(b) and (c) and 6.2, respectively, the terms and provisions of the Master Lease shall control.

6.2 Condemnation. In the event that all or any portion of the Property shall be damaged or taken through any Taking, or any such Taking or condemnation shall be threatened, Borrower shall give prompt written notice to Lender. Lender acknowledges that Mortgage Borrower's rights to any condemnation award in respect of any Taking are subject to the terms of

the Mortgage Loan Agreement. Notwithstanding the foregoing, and subject to Section 6.1(f) above, Borrower may not and shall not permit First Mezzanine Borrower to permit Mortgage Borrower to settle or compromise any claim, action or proceeding relating to such Taking without the prior written consent of Lender, which shall not be unreasonably withheld, delayed or denied; provided, further, that Borrower may permit First Mezzanine Borrower to permit Mortgage Borrower to settle, adjust and compromise any such claim, action or proceeding which does not exceed forty percent (40%) of the designated Combined Allocated Loan Amount applicable to the affected Individual Property so long as no Monetary Default or Event of Default has occurred and is continuing. Any excess Proceeds shall be paid and applied as provided in Section 2.3.2. In the event that Mortgage Borrower is permitted or required pursuant to the terms of the Mortgage Loan Agreement to reconstruct, restore or repair the Property following a Taking of any Individual Property (or any portion thereof), Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to promptly and diligently repair and restore such Individual Property in the manner and within the time periods required by the Mortgage Loan Agreement, the Master Lease and any other agreements affecting such Individual Property. In the event that Mortgage Borrower is permitted pursuant to the terms of the Mortgage Loan Agreement to elect not to reconstruct, restore or repair the Individual Property following a Taking of any portion of such Individual Property, Borrower shall not permit First Mezzanine Borrower to permit Mortgage Borrower to elect not to reconstruct, restore or repair such Individual Property without the prior written consent of Lender.

6.3 Certificates.

(a) Certificates of insurance with respect to all replacement policies shall be delivered to Lender prior to the expiration date of any of the insurance policies required to be maintained hereunder, and upon demand by Lender, replacement insurance policies shall be delivered to Lender within one hundred twenty (120) days of the expiration of the insurance policies required to be maintained hereunder. If Borrower fails to (or fails to cause First Mezzanine Borrower, or to cause First Mezzanine Borrower to cause Mortgage Borrower, to) maintain and deliver to Lender the certificates of insurance and certified copies or originals required by this Agreement, upon five (5) Business Days' prior notice to Borrower, Lender may procure such insurance, and all costs thereof (and interest thereon at the Default Rate) shall be added to the Indebtedness. Lender shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, with respect to such matters.

(b) Concurrently with the delivery of each replacement policy or a binding commitment for the same pursuant to clause (a) above, Borrower shall deliver (or cause First Mezzanine Borrower to deliver, or cause First Mezzanine Borrower to cause Mortgage Borrower to deliver) to Lender a letter from a reputable and experienced insurance broker or from the insurer, stating that the insurance obtained by Borrower or any Senior Borrower through such broker or from such insurer pursuant to Section 6.1 of the Mortgage Loan Agreement, as applicable, meets the minimum requirements of Section 6.1 of the Mortgage Loan Agreement, that all insurance premiums then due thereon have been paid in full to the applicable insurers and that such insurance policies are in full force and effect (or if such letter shall not be available

after Borrower shall have used its reasonable efforts to provide the same, Borrower will deliver (or cause First Mezzanine Borrower to deliver, or cause First Mezzanine Borrower to cause Mortgage Borrower to deliver) to Lender an Officer's Certificate containing the information to be provided in such report), and Borrower shall deliver (or cause First Mezzanine Borrower to deliver, or cause First Mezzanine Borrower to cause Mortgage Borrower to deliver) to Lender an Officer's Certificate stating that such insurance otherwise complies in all material respects with the requirements of Schedule 6.1 of the Mortgage Loan Agreement.

6.4 Restoration. Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower, to deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.2.4 of the Mortgage Loan Agreement and to otherwise comply in all respects with Section 6.2.4 of the Mortgage Loan Agreement in connection with a restoration of any Individual Property after a Taking.

VII. RESERVED

VIII. TRANSFERS, INDEBTEDNESS AND OTHER FUNDAMENTAL MATTERS

8.1 General Restriction on Transfers, Indebtedness and Other Fundamental Matters .

(a) Unless otherwise expressly permitted under the provisions of this Article VIII, Borrower shall not cause, suffer or permit, and in no event shall there be permitted to occur, regardless of whether Borrower shall have or have not caused, suffered to permitted the same to occur:

(i) any Transfer of any Individual Property or any part thereof or any legal or beneficial interest therein, other than Permitted Encumbrances or a Property Release thereof permitted under, and satisfying the provisions of, Section 2.3.6 and the other provisions of this Agreement;

(ii) any Transfer of an Equity Interest in any Restricted Party;

(iii) unless and until the Guarantor Net Worth Requirements are imposed upon Guarantor or the Qualifying Replacement Guarantor, as applicable, pursuant to Section 8.5, any distribution or transfer by Guarantor of any of its assets to any Person, including its direct or indirect parent entities or their Affiliates unless as of the date of such distribution the Master Lease Guarantor Total Leverage Ratio is less than 3.50:1.00 (as certified by an Officer's Certificate and certificate of Guarantor provided to Lender, together with the related background financial statements and calculations in reasonable detail, delivered to Lender within five Business Days after such distribution or transfer); provided, however, that the foregoing restrictions shall not apply to the following distributions and transfers, which shall be expressly permitted pursuant to this Section 8.1(a)(iii):

(A) following a Qualifying IPO of an Upper Tier Entity (other than Guarantor), distributions of assets to such Upper Tier Entity for payment by such Upper Tier Entity of reasonable out-of-pocket costs and expenses incurred by such Upper Tier

Entity in connection with consummating such Qualifying IPO and ongoing compliance by such Upper Tier Entity with federal and state securities laws and regulations, SEC rules and regulations and the Sarbanes–Oxley Act of 2002 (as amended from time to time and any successor statute thereto);

(B) distributions of assets to Holdings for payment by Holdings of its franchise taxes and for payment by Holdings of Income Taxes that are attributable to the income of Holdings to the extent such income is attributable to the operations of Holdings, Guarantor and/or its direct or indirect Subsidiaries (but not any Subsidiary of Holdings that is not also a Subsidiary of Guarantor);

(C) distributions of assets to a direct or indirect parent of Guarantor for payment of the operating expenses (including administrative, legal, accounting and similar expenses provided by third parties) incurred by such parent in the ordinary course of business to the extent such operating expenses are directly related to the ownership of the direct or indirect Equity Interests in Guarantor and/or to the operations of Guarantor and/or its direct or indirect Subsidiaries;

(D) transfers of assets to Guarantor's direct or indirect Subsidiaries; and

(E) distribution of the proceeds of the Guarantor Subsequent Intercompany Loans to its parent entity;

(iv) any failure by Guarantor to satisfy the Guarantor Asset Covenant, unless the Guarantor Asset Covenant is expressly terminated pursuant to the provisions of Section 8.5 as a result of the imposition of the Guarantor Net Worth Requirements;

(v) in the event the Guarantor Net Worth Requirements are imposed upon Guarantor or the Qualifying Replacement Guarantor, as applicable, pursuant to Section 8.5, any failure by Guarantor or the Qualifying Replacement Guarantor, as applicable, to satisfy the Guarantor Net Worth Requirements;

(vi) any failure, prior to a Qualifying IPO, of the Minimum Ownership/Control Requirements set forth in clause (A) of the definition thereof set forth in Section 8.4 to continue to be satisfied;

(vii) any failure, subsequent to a Qualifying IPO of Master Lease Guarantor, of the Minimum Ownership/Control Requirements set forth in clause (B) of the definition thereof set forth in Section 8.4 to continue to be satisfied;

(viii) in the event a Qualifying IPO permitted under Section 8.4 occurs, any Post-IPO Change of Control;

(ix) any of Borrower, any Senior Borrower, any SPE Component Entity, PRP, PropCo, HoldCo, Guarantor or any Intermediate Entity incurring any Debt, other than the Permitted Debt of such Person; or

(x) any failure of Master Lease Guarantor to satisfy the Master Lease Guarantor Asset Covenants.

(b) Notwithstanding anything to the contrary set forth in this Article VIII or any other provision of this Agreement, (i) PropCo shall at all times own 100% of the direct Equity Interests in, and Control, PRP, (ii) PRP shall at all times own 100% of the direct Equity Interests in, and Control, Borrower, (iii) First Mezzanine Borrower shall at all times own 100% of the direct Equity Interests in, and Control, Mortgage Borrower (other than as a result of a foreclosure or transfer in lieu thereof of the First Mezzanine Loan), and (iv) Borrower shall at all times own 100% of the direct Equity Interests in, and Control, First Mezzanine Borrower (other than as a result of a foreclosure or transfer in lieu thereof of the Loan) (the foregoing (i)-(iv), the " Base PropCo Ownership Requirements").

(c) Nothing in this Section 8.1 shall prohibit (i) any action or event occurring following receipt by Borrower of written consent of Lender approving such action or event; provided, that Borrower pays to Lender a commercially reasonable fee in connection with such action or event (which fee shall in all events be reasonable in relation to the Assumption Fee payable pursuant to Section 8.7 hereof), or (ii) the grant of a Lien by Master Lessee, Master Lease Guarantor, any direct or indirect Subsidiary of Master Lease Guarantor or any Tenant on the Excluded Personal Property.

8.2 Sale of Building Equipment . Borrower may cause First Mezzanine Borrower to cause Mortgage Borrower, without the consent of Lender, to sell or dispose of Building Equipment which is being replaced or which is no longer necessary in connection with the operation of the Property free from the Lien of the Security Instrument, provided that such sale or disposal will not have a Material Adverse Effect and will not result in a reduction or abatement of, or right of offset against, the Rents payable under the Master Lease or any Sublease, in either case, as a result thereof, and provided further that any new Building Equipment acquired by Mortgage Borrower (and not so disposed of) shall be subject to the Lien of the Security Instrument.

8.3 Immaterial Transfers and Easements, etc . Borrower may cause First Mezzanine Borrower to cause Mortgage Borrower, without the consent of Lender, to (i) make immaterial Transfers of portions of the Property to Governmental Authorities for dedication or public use (subject to the provisions of Section 6.2), or immaterial Transfers of portions of the Property to third parties for the purpose of erecting and operating additional structures whose use is integrated with the use of the Property, and (ii) grant easements, licenses, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such Transfer, conveyance or encumbrance set forth in the foregoing clauses (i) and (ii) shall have a Material Adverse Effect.

8.4 Permitted Equity Transfers. Notwithstanding anything herein to the contrary, but subject to Section 8.1(b), the following Transfers shall not require the prior written consent of Lender:

(a) the pledge of the Equity Interests in Master Lease Guarantor or any of its Subsidiaries pursuant to the terms of the Master Lease Guarantor Facility or a foreclosure (or transfer in lieu of thereof) of such Equity Interests in Master Lease Guarantor or any of its Subsidiaries resulting from the exercise of remedies as set forth in the Master Lease Guarantor Facility (an "Opco Equity Foreclosure");

(b) a Transfer (but not a pledge or encumbrance) by (i) Guarantor or any then-existing Intermediate HoldCo Entity of 100% (and not less than 100%) of its direct Equity Interests in HoldCo or any then-existing Intermediate HoldCo Entity to a new Intermediate HoldCo Entity, provided that the Base Transfer Conditions have been satisfied, or (ii) HoldCo or any then-existing Intermediate PropCo Entity of 100% (and not less than 100%) of its direct Equity Interests in PropCo or any then-existing Intermediate PropCo to a new Intermediate PropCo Entity, provided that the Base Transfer Conditions have been satisfied;

(c) a Transfer of direct or indirect Equity Interests in any Sponsor;

(d) a Qualifying IPO of any IPO Entity, or any other Transfer (but not a pledge or encumbrance) of the direct or indirect Equity Interests in Guarantor, Master Lease Guarantor, HoldCo, any Intermediate Entity or PropCo (such Person in which such Equity Interests are transferred by means other than a Qualifying IPO, a "Related Holding Entity"), provided that the following conditions have been satisfied:

(i) the Base Transfer Conditions have been satisfied;

(ii) with respect to (A) any such Transfer other than a Qualifying IPO, subsequent to such Transfer, (1) Permitted Holders or in the case of a Transfer to a Permitted Transferee, the related Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), directly or indirectly own no less than fifty-one percent (51%) of the Equity Interests in, and Control, the Related Holding Entity (and, through ownership of the Related Holding Entity, in each direct or indirect Subsidiary of the Related Holding Entity) and (2) Permitted Holders or in the case of a Transfer to a Permitted Transferee, the related Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), directly or indirectly own no less than fifty-one percent (51%) of the Equity Interests in, and Control, PropCo, PRP, each Senior Borrower and Borrower, and (B) any Qualifying IPO of the Master Lease Guarantor, Permitted Holders or in the case of a prior Transfer to a Permitted Transferee, the related Permitted Transferee (or any combination of one or more of them, subject to the limitations in the definition of Permitted Holders), directly or indirectly own no less than fifty-one percent (51%) of the Equity Interests in, and Control, PropCo, PRP, each Senior Borrower and Borrower (the foregoing requirements of (A) and (B) above, as applicable, the "Minimum Ownership/Control Requirements"), and (C) any Qualifying IPO, following such Qualifying IPO, the Post-IPO Control Requirements shall be satisfied; and

(iii) if subsequent to any Qualifying IPO or any other Transfer, the Guarantor Asset Covenant would no longer be satisfied, then as an additional condition to completing any such Qualifying IPO or other such Transfer, the Guarantor Net Worth Requirements must be satisfied in accordance with Section 8.5; or

(e) upon and subsequent to a Qualifying IPO of any IPO Entity, Transfers (whether direct or indirect and whether in open market transactions or otherwise) of the shares in such IPO Entity, provided that no Post-IPO Change of Control occurs; or

(f) a Transfer (but not a pledge or encumbrance) of direct or indirect Equity Interests in any Permitted Transferee, provided that (i) subsequent to such Transfer, such Person shall continue to satisfy the criteria for a Permitted Transferee set forth in the definition thereof, and (ii) if such Permitted Transferee holds a direct Equity Interest in any Lower Tier Entity and such Transfer shall cause any transferee, together with its Affiliates, to acquire indirect Equity Interests in Borrower aggregating more than forty-nine percent (49%), or to increase its indirect Equity Interests in Borrower from an amount that is less than forty-nine percent (49%) to an amount that is greater than forty-nine percent (49%), an Additional Non-Consolidation Opinion is provided to Lender as a condition to such Transfer; or

(g) upon and subsequent to a Qualifying IPO of an Upper Tier Entity, Transfers of direct or indirect Equity Interests in such Upper Tier Entity, provided that no Post-IPO Change of Control occurs; or

(h) the pledge of any direct or indirect Equity Interest any Senior Borrower pursuant to the Loan Documents or the First Mezzanine Loan Documents and the exercise of, and any Transfer that results from the exercise of, any rights or remedies that Lender or First Mezzanine Lender may have under the Loan Documents or the First Mezzanine Loan Documents (but, for clarification, this Section 8.4(h) shall not permit an assignment in lieu of foreclosure).

Borrower shall be responsible for the payment of and shall pay or reimburse Lender for all of Lender's reasonable out-of-pocket fees, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, actually incurred by Lender in connection with the review, negotiation and implementation of the provisions and documentation provided for in this Section 8.4.

8.5 Guarantor Net Worth; Qualifying Replacement Guarantor. If the Guarantor Asset Covenant would no longer be satisfied subsequent to any Qualifying IPO or any other Transfer, or if the Guarantor Asset Covenant would no longer be satisfied as a result of any proposed transaction or for any other reason (other than as a result of an Opco Foreclosure), then:

(a) either (i) Guarantor shall continue to Control PropCo, PRP, each Senior Borrower and Borrower and shall have and maintain a Net Worth of not less than $200,000,000 (the "Minimum Net Worth") and demonstrate its Net Worth to Lender's reasonable satisfaction, with such reasonable supporting evidence as Lender may reasonably require, and shall confirm in writing to Lender that the covenants respecting the ongoing maintenance by Guarantor of the Minimum Net Worth set forth in Section 9 of the Recourse Guaranty (the "Net Worth Covenants") have been triggered and are in full force and effect as on-going covenants of

Guarantor, in which event, the Guarantor Asset Covenant shall no longer be in force or effect, as provided in Section 9 of the Recourse Guaranty, as a result of the Net Worth Covenants having been triggered in lieu thereof, or (ii) a Qualifying Replacement Guarantor having a Net Worth of not less than the Minimum Net Worth shall demonstrate its Net Worth to Lender's reasonable satisfaction, with such reasonable supporting evidence as Lender may reasonably require, and (A) such Qualifying Replacement Guarantor shall execute and deliver to Lender (x) a guaranty of recourse obligations in the same form as the Recourse Guaranty delivered to Lender by Guarantor on the Closing Date, modified such that the Net Worth Covenants are in full force and effect as on-going covenants of the Qualifying Replacement Guarantor, that the Guarantor Asset Covenant is not a covenant of the Qualifying Replacement Guarantor and, if the Qualifying Replacement Guarantor is not an Affiliate of the Guarantor being replaced, that the Qualifying Replacement Guarantor's liability is limited to circumstances, conditions, actions and events first occurring after the date on which the Replacement Guaranty is delivered (the " Replacement Guaranty"), and (y) an environmental indemnity agreement in the same form as the Environmental Indemnity delivered to Lender by Guarantor on the Closing Date, provided that if the Qualifying Replacement Guarantor is not an Affiliate of the Guarantor being replaced, such environmental indemnity agreement shall be modified such that the Qualifying Replacement Guarantor's liability is limited to circumstances, conditions, actions and events first occurring after the date on which the Replacement Indemnity is delivered (the "Replacement Indemnity"), and (B) Borrower and the Qualifying Replacement Guarantor shall provide to Lender an Additional Non-Consolidation Opinion, together with customary legal opinions and organizational document and certificate deliveries respecting the existence, due formation and organization and good standing of the Qualifying Replacement Guarantor and the due authorization, execution and delivery, and enforceability of the Replacement Guaranty and Replacement Indemnity, in each case reasonably satisfactory to Lender and in form and substance in nature and scope provided by or on behalf of Guarantor in connection with its execution and delivery of the Recourse Guaranty and Environmental Indemnity (the foregoing requirements of clause (i) or clause (ii), as applicable, including the continued maintenance of the Minimum Net Worth by the Guarantor or Qualifying Replacement Guarantor, as applicable, the "Guarantor Net Worth Requirements"). Upon a Qualifying Replacement Guarantor satisfying the conditions under clause (ii) above, the then existing Guarantor shall be released under the Recourse Guaranty and the Environmental Indemnity with respect to circumstances, conditions, actions and events first occurring after the date on which the Replacement Guaranty and the Replacement Indemnity are delivered; and

(b) upon satisfaction of the conditions set forth in the foregoing paragraph (a), the Guarantor Asset Covenant shall no longer be in force or effect and the Guarantor Net Worth Requirements shall be in full force and effect in lieu thereof.

8.6 Deliveries to Lender. Borrower shall deliver to Lender (a) with respect to any Transfer to which the Base Transfer Conditions apply, not less than thirty (30) days prior to the closing of such Transfer, an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted by this Article VIII, together with any appraisal or other documents upon which such Officer's Certificate is based, (b) an Officer's Certificate promptly following the realization or foreclosure upon any pledge or encumbrance described in Section 8.4, and (c) copies of executed deeds or other similar closing documents within ten (10) Business Days after the closing of any Transfer described in clauses (a) or (b) above.

8.7 Loan Assumption. Provided no Event of Default is then continuing, Borrower shall have the one time right to cause First Mezzanine Borrower to cause Mortgage Borrower to Transfer (but not mortgage, hypothecate, pledge or otherwise encumber or grant a security interest in) the fee simple title to all (but not fewer than all) of the Individual Properties only if after giving effect to the proposed transaction, the Individual Properties will be owned by one or more Single Purpose Entities (collectively, "Transferee Mortgage Borrower"), which Transferee Mortgage Borrower shall be wholly owned and Controlled by a Permitted Transferee ("Transferee First Mezzanine Borrower", and, together with Transferee Mortgage Borrower, individually or collectively, as the context may require, "Transferee Senior Borrower"), which Transferee First Mezzanine Borrower shall be wholly owned and Controlled by a Permitted Transferee ("Transferee Borrower"). Any such transfer to a Transferee Mortgage Borrower and assumption of the Loan shall be conditioned upon Lender's reasonable approval, which may be conditioned upon among other things, (i) the delivery of financial information, including, without limitation, audited financial statements, for Transferee Borrower and each Transferee Senior Borrower, and the direct and indirect owners of Transferee Borrower, (ii) the delivery of evidence that each of Transferee Senior Borrower and Transferee Borrower is a Single Purpose Entity, and that none of Transferee Senior Borrower, Transferee Borrower nor any Person that Controls any Transferee Senior Borrower or Transferee Borrower is a Disqualified Transferee, (iii) the execution and delivery by Transferee Borrower of an assumption agreement in form and substance acceptable to Lender, assuming all of Borrower's obligations under the Loan Documents, (iv) the execution and delivery by Transferee Borrower of a replacement pledge and security agreement in substantially the same form as the Pledge, (v) the delivery of a UCC policy issued by a national title company acceptable to Lender and in form and substance acceptable to Lender insuring Lender's first priority interest in 100% of the equity of the Transferee First Mezzanine Borrower, (vi) the management of the Property by a Qualified Manager or by a property manager reasonably acceptable to Lender; (vii) the satisfaction of the Guarantor Net Worth Requirements, (viii) the execution and delivery of all documentation reasonably requested by Lender, (ix) the delivery of Opinions of Counsel requested by Lender, including, without limitation, an Additional Non-Consolidation Opinion with respect to each Transferee Senior Borrower, Transferee Borrower and other entities identified by Lender and opinions with respect to the valid formation, due authority and good standing of each Transferee Senior Borrower, Transferee Borrower, Qualifying Replacement Guarantor and any additional pledgors, and the continued enforceability of the Loan Documents and any other matters requested by Lender, (x) a new owner's title insurance policy or policies on a form customarily used in the applicable state where each Property is located at the time of the Transfer, insuring no less than the fair market value of each Property and issued to the new mortgage borrower (including the mezzanine endorsement thereto in favor of Lender, to the extent available), subject only to the Permitted Encumbrances, shall be delivered to Lender, (xi) satisfaction of all requirements of the Senior Loan Documents and the Loan Documents respecting such Transfer and assumption, and confirmation to Lender and each Senior Lender that such requirements have been satisfied, (xii) the payment of all of Lender's reasonable out-of-pocket fees, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, actually incurred by Lender in connection with such assumption, and (xiii) payment to Lender of the Assumption Fee (in addition to the payments required under the foregoing clause (xii)).

8.8 Subleases.

8.8.1 New Subleases and Sublease Modifications. Borrower represents and warrants that each Individual Property is currently leased to Master Lessee pursuant to the Master Lease, is operated as one or more Restaurant Locations under a Concept or a Third-Party Brand, and is occupied and operated pursuant to a Concept Sublease, an RLP Sublease or an Unaffiliated Sublease, and may also be subject to the Specified Prior Subleases.

8.8.2 Leasing Conditions. Borrower shall not permit First Mezzanine Borrower to permit Mortgage Borrower to permit Master Lessee to sublease all or any portion of any Individual Property except in accordance with Section 8.8.2 of the Mortgage Loan Agreement; provided, that, any New Sublease or Sublease Modification that requires Mortgage Lender's consent shall be delivered to Lender for approval, not to be unreasonably withheld, conditioned or delayed, not less than ten (10) Business Days prior to the effective date of such New Sublease or Sublease Modification. If Lender fails to respond to a request for Lender's consent pursuant to this Section 8.8.2 within ten (10) Business Days of Lender's receipt of Borrower's request therefor, Borrower may deliver to Lender a second request in an envelope or under cover of a letter marked "URGENT" and including a legend in bold typeface that Lender's failure to grant or deny the requested consent within ten (10) Business Days of the receipt thereof will result in the requested consent being deemed to have been granted. If Lender fails to respond to such second request within ten (10) Business Days of its receipt thereof, Lender's consent shall be deemed granted.

8.8.3 Delivery of New Sublease or Sublease Modification. Upon the execution of any New Sublease or Sublease Modification, as applicable, Borrower shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower to deliver to Lender an executed copy of the Sublease. In addition, Borrower shall, from time to time, at the advance written request of Lender, but not more than one (1) time per calendar year unless an Event of Default has occurred and is continuing, cause First Mezzanine Borrower to cause Mortgage Borrower, to deliver to Lender a list of (a) each and every Sublease then affecting all or any part of the Property, and (b) all sublicenses or other grants of possessory interests in any portion of the Property to which Mortgage Borrower has given its consent or of which Mortgage Borrower otherwise has knowledge, said list to be certified by Mortgage Borrower as true, complete and correct in all material respects.

8.8.4 Reserved.

8.8.5 Security Deposits. All security or other deposits of Tenants of the Property (collectively, the "Security Deposits") shall be treated as trust funds and shall not be commingled with any other funds of Mortgage Borrower, and such deposits shall be deposited, upon receipt of the same by Mortgage Borrower, in a separate trust account maintained by Mortgage Borrower expressly for such purpose. Within ten (10) Business Days after written request by Lender, Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to furnish to Lender reasonably satisfactory evidence of compliance with this Section 8.8.5, together with a statement of all lease securities deposited with Mortgage Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.8.6 No Default Under Subleases. Borrower shall or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower to cause Master Lessee, to (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Mortgage Borrower or Master Lessee under the Subleases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Lender, any right to request from the Tenant under any Sublease a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Mortgage Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Sublease).

8.8.7 Reserved.

8.8.8 Reserved.

8.8.9 Reserved.

8.8.10 Reserved.

8.8.11 Leaseable Building Pads .

(a) Each of the Individual Properties described as containing a "Leaseable Building Pad" on Schedule X of the Mortgage Loan Agreement contains an unimproved building pad and unimproved land as preliminarily described on such Schedule X (each, a " Leaseable Building Pad"), but, to Borrower's knowledge, such Leaseable Building Pad cannot be subdivided from such Individual Property in accordance with Section 2.3.6(b) of the Mortgage Loan Agreement. Borrower shall be permitted to cause First Mezzanine Borrower to cause Mortgage Borrower to cause each Leaseable Building Pad to be removed from the premises demised under the Master Lease and terminate the Master Lease with respect to such Leaseable Building Pad and ground lease such Leaseable Building Pad in accordance with, and subject to satisfaction of (a) each of the conditions set forth in Section 8.8.11(a) of the Mortgage Loan Agreement as if independently set forth herein, (b) Lender shall have reasonably determined that the demise of such Leaseable Building Pad will not materially diminish the value of or impair in any material respect, or unreasonably interfere with the use or operation in any material respect of, such Individual Property, and (c) Borrower shall have delivered to Lender an Officer's Certificate (i) certifying that all of the conditions set forth in Section 8.8.11(a) of the Mortgage Loan Agreement have been complied with by Mortgage Borrower and that the demise of such Leaseable Building Pad will not materially diminish the value of or impair in any material respect, or unreasonably interfere with the use or operation in any material respect of, such Individual Property and (ii) attaching copies of each of the deliveries made to or approved by Mortgage Lender pursuant to Section 8.8.11(a) of the Mortgage Loan Agreement (including a copy of the ground lease pursuant to which such Leaseable Building Pad has been demised).

(b) In addition, and notwithstanding anything herein to the contrary, Borrower shall be permitted to permit First Mezzanine Borrower to permit Mortgage Borrower to subject any Individual Parcel containing a Leaseable Building Pad to a condominium form of ownership and,

thereafter to obtain the release of such Leaseable Building Pad as an Outparcel under the Mortgage Loan Agreement and hereunder, as provided in Section 8.8.11(c) of the Mortgage Loan Agreement, subject to satisfaction of each of the following: (a) each of the conditions set forth in, Section 8.8.11(c) of the Mortgage Loan Agreement as if independently set forth herein, (b) Borrower shall have provided Lender with endorsements to the Title Policy (Owner) reasonably required by Lender in connection with the creation of such condominium, which shall be reasonably acceptable to Lender and (c) Borrower shall have delivered to Lender an Officer's Certificate (i) certifying that all of the conditions set forth in Section 8.8.11(c) of the Mortgage Loan Agreement have been complied with by Mortgage Borrower and that the creation of the proposed Condominium Units shall not materially diminish the value of or impair in any material respect, or unreasonably interfere with the use or operation in any material respect of, such Individual Property, and (ii) attaching copies of each of the deliveries made to or approved by Mortgage Lender pursuant to Section 8.8.11(c) of the Mortgage Loan Agreement (including a copy of the Condominium Declaration).

(c) In the event that Lender fails to respond within ten (10) Business Days of receipt of any request for Lender's approval or consent pursuant to this Section 8.11, Borrower may deliver to Lender a second request in an envelope or under cover of a letter marked "URGENT" and including a legend in bold typeface that Lender's failure to grant or deny the requested consent within ten (10) Business Days of the receipt thereof will result in the requested consent being deemed to have been granted. If Lender fails to respond to such second request within ten (10) Business Days of its receipt thereof, Lender's consent to such request shall be deemed granted.

IX. RESERVED

X. RESERVED

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

11.1 Books and Records. Borrower shall keep and maintain or cause First Mezzanine Borrower, or cause First Mezzanine Borrower to cause Mortgage Borrower, or shall cause Asset Manager, to keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Note, the Mezzanine Collateral, the Property and the business and affairs of each Senior Borrower and Borrower relating to the Property and the Mezzanine Collateral which shall reflect all items of income and expense in connection with the operation of the Property and the Mezzanine Collateral and in connection with any services, equipment or furnishings provided by any Senior Borrower and/or Borrower in connection with the operation of the Property and the Mezzanine Collateral, in accordance with GAAP and, to the extent required pursuant to the Mortgage Loan Agreement, the requirements of Regulation AB. Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine such books and records relating to the operation of the Property and the Mezzanine Collateral and to make such copies or extracts thereof as Lender may reasonably require.

11.2 Financial Statements.

11.2.1 Monthly Reports. Commencing with the month ending April 30, 2012, not later than thirty (30) days following the end of such month and each calendar month thereafter, Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower to, or to cause Master Lessee or Asset Manager to deliver to, Lender the following with respect to such month and each subsequent calendar month:

(A) Monthly income statements (including sales) and determinations of Portfolio Four-Wall EBITDAR in respect of each Individual Property (except that for Individual Properties where a Restaurant Location is being operated as a Third-Party Brand, such information will only be required to the extent it is available to Borrower or any Affiliate of Borrower) for such month, for the corresponding month of the previous Fiscal Year and for the Fiscal Year to date and for the corresponding period of the prior Fiscal Year; and

(B) internally prepared, unaudited financial statements of Borrower and Mortgage Borrower for such month and, to the extent available, the Fiscal Year to date, which financial statements shall include, to the extent available, a comparison with the results for the corresponding month of the prior Fiscal Year and for the corresponding period of the prior Fiscal Year; and

(C) internally prepared, unaudited financial statements of Master Lease Guarantor for such month and the Fiscal Year to date, which financial statements shall include a comparison with the results for the corresponding month of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; and

(D) commencing with the first Annual Budget required to be delivered hereunder, monthly budget performance reports with respect to the Master Lease Annual Budget and the Asset Manager Annual Budget showing a comparison of performance of Mortgage Borrower, Borrower and the Property to the Annual Budget for such month and the Fiscal Year to date, which budget performance reports shall include, to the extent an Annual Budget was delivered in respect of the prior Fiscal Year, a comparison with the results for the corresponding month of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; and

(E) a calculation of the Lease Coverage Ratio, Master Lease Variable Additional Rent and Master Lease Scheduled Additional Rent for such month or as of the end of such month, as applicable.

Such statements and reports for each month shall be accompanied by an Officer's Certificate (or, in the case of income statements and calculations of Portfolio Four-Wall EBITDAR, a Master Lessee Officer's Certificate) certifying to the best of the signer's knowledge, that (A) such statements fairly represent the financial condition and results of operations of Mortgage Borrower, Borrower or the Property, as applicable, (B) that as of the date of such Officer's Certificate, no Event of Default exists under this Agreement, the Note or any

other Loan Document or no Senior Loan Event of Default exists under any Senior Loan Agreement, Senior Note, or any other Senior Loan Document, as applicable, or, if so, specifying the nature and status of each such Event of Default or such Senior Loan Event of Default, as applicable, and the action then being taken or proposed to be taken to remedy such Event of Default or Senior Loan Event of Default, as applicable, (C) that as of the date of each Officer's Certificate, no litigation exists involving any Senior Borrower, Borrower, Master Lessee or any Individual Property or Individual Properties in which the amount involved not covered by insurance is greater than $500,000, or, if so, specifying such litigation and the actions being taking in relation thereto and (D) the amount by which actual operating expenses were greater than or less than the operating expenses anticipated in the applicable Annual Budget. Such financial statements shall contain such other information as shall be reasonably requested by Lender for purposes of calculations to be made by Lender pursuant to the terms hereof. Notwithstanding the foregoing, Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower, to cause Master Lessee or Asset Manager to deliver promptly to Lender reports detailing any non-recurring charges of Mortgage Borrower, Borrower or Master Lessee including, among other things, any charges assessed under any Operating Agreement.

11.2.2 Quarterly Reports. Commencing with the Fiscal Quarter ending June 30, 2012, not later than sixty (60) days following the end of such Fiscal Quarter and not later forty-five (45) days following the end of each subsequent Fiscal Quarter, Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower to, or cause Master Lessee or Asset Manager to, deliver to Lender the following:

(A) quarterly income statements (including sales) and determinations of Portfolio Four-Wall EBITDAR in respect of each Individual Property (except that for Individual Properties where a Restaurant Location is being operated as a Third-Party Brand, such information will only be required to the extent it is available to Borrower or any Affiliate of Borrower) for the corresponding quarter of the previous Fiscal Year and for the Fiscal Year to date and for the corresponding period of the prior Fiscal Year; and

(B) internally prepared, unaudited financial statements of Mortgage Borrower and Borrower for such quarter and, to the extent available, the Fiscal Year to date, which financial statements shall include, to the extent available, a comparison with the results for the corresponding quarter of the prior Fiscal Year and for the corresponding period of the prior Fiscal Year; and

(C) internally prepared, unaudited financial statements of Master Lease Guarantor for such quarter and the Fiscal Year to date, which financial statements shall include a comparison with the results for the corresponding quarter of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; provided, that such financial statements of the Master Lease Guarantor shall be required only in respect the first three (3) Fiscal Quarters of each Fiscal Year; and

(D) commencing with the first Annual Budget required to be delivered hereunder, quarterly budget performance reports with respect to the Master Lease Annual Budget and the Asset Manager Annual Budget showing a comparison of performance of Mortgage

Borrower, Borrower and the Property to the Annual Budget for such quarter and the Fiscal Year to date, which budget performance reports shall include, to the extent an Annual Budget was delivered in respect of the prior Fiscal Year, a comparison with the results for the corresponding quarter of the prior Fiscal Year and a comparison of the Fiscal Year to date results with the results for the same period of the prior Fiscal Year; and

(E) a calculation of the Lease Coverage Ratio, Master Lease Variable Additional Rent and Master Lease Scheduled Additional Rent for such quarter or as of the end of such quarter, as applicable.

Such statements and reports for each quarter shall be accompanied by an Officer's Certificate (or, in the case of income statements and calculations of Portfolio Four-Wall EBITDAR, a Master Lessee Officer's Certificate) certifying to the best of the signer's knowledge, that (A) such statements fairly represent the financial condition and results of operations of Mortgage Borrower, Borrower or the Property, as applicable, (B) that as of the date of such Officer's Certificate, no Event of Default exists under this Agreement, the Note or any other Loan Document or no Senior Loan Event of Default exists under any Senior Loan Agreement, Senior Note, or any other Senior Loan Document, as applicable, or, if so, specifying the nature and status of each such Event of Default or Senior Event of Default, as applicable, and the action then being taken or proposed to be taken to remedy such Event of Default or Senior Loan Event of Default, as applicable, (C) that as of the date of each Officer's Certificate, no litigation exists involving any Senior Borrower, Borrower, Master Lessee or any Individual Property or Individual Properties in which the amount involved not covered by insurance is greater than $500,000, or, if so, specifying such litigation and the actions being taking in relation thereto and (D) the amount by which actual operating expenses were greater than or less than the operating expenses anticipated in the applicable Annual Budget. Such financial statements shall contain such other information as shall be reasonably requested by Lender for purposes of calculations to be made by Lender pursuant to the terms hereof.

11.2.3 Annual Reports. Not later than one-hundred twenty (120) days after the end of each Fiscal Year of Borrower's operations (commencing with the Fiscal Year ending on December 31, 2012), Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower, to cause Master Lessee or Asset Manager, to deliver to Lender:

(A) An income statement (including sales) and determination of Portfolio Four-Wall EBITDAR in respect of each Individual Property (except that for Individual Properties where a Restaurant Location is being operated as a Third-Party Brand, such information will only be required to the extent it is available to Borrower or any Affiliate of Borrower) for such Fiscal Year and for the prior Fiscal Year; and

(B) audited financial statements for Borrower, Mortgage Borrower and audited financial statements for Master Lease Guarantor for such Fiscal Year certified by an Independent Accountant in accordance with GAAP and the requirements of Regulation AB, each accompanied by an opinion of the applicable Person's auditors, which report and opinion shall be prepared in accordance with generally accepted auditing standards; and

(C) an unaudited, internally prepared statement of Borrower's and each Senior Borrower's net income for the Fiscal Year and for the fourth fiscal quarter thereof stating in comparative form the figures for the previous Fiscal Year (for each Fiscal Year after Fiscal Year 2013) and the fourth fiscal quarter of the previous Fiscal Year (for each Fiscal Year after Fiscal Year 2012); and

(D) a calculation of the Lease Coverage Ratio, Master Lease Variable Additional Rent and Master Lease Scheduled Additional Rent for such Fiscal Year.

Such annual financial statements and reports shall also be accompanied by an Officer's Certificate (or in the case of income statements and calculations of Portfolio Four-Wall EBITDAR with respect to the Property, a Master Lessee Officer's Certificate) in the form required pursuant to Section 11.2.1.

Notwithstanding the foregoing, the obligations in Section 11.2.2(C) and 11.2.3(B) with respect to delivery of Master Lease Guarantor financial statements may be satisfied by furnishing (A) the applicable financial statements of Guarantor (or any direct or indirect parent of Guarantor) or (B) Master Lease Guarantor's or Guarantor's (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of the preceding clauses (A) and (B), (i) to the extent such information relates to Guarantor (or a parent thereof), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Guarantor (or such parent), on the one hand, and the information relating to Master Lease Guarantor on a stand-alone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 11.2.3(B), such materials are accompanied by a report and opinion of such Person's auditors, which report and opinion shall be prepared in accordance with generally accepted auditing standards.

11.2.4 Disclosure Restrictions. Notwithstanding anything to the contrary contained in this Article XI, unless such information is otherwise disclosed publicly by Borrower, Borrower shall not be required to deliver financial information hereunder to Lender to the limited extent and only during any such period that any applicable federal or state securities laws or regulations promulgated thereunder (a) expressly prohibit such delivery or (b) permit such delivery to be made to Lender only when also disclosed publicly.

11.2.5 Capital Expenditures Summaries. Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower to, or cause Master Lessee to, within ninety (90) days after the end of each calendar year during the term of the Note, deliver to Lender an annual summary of any and all capital expenditures made at the Property during the prior twelve (12) month period.

11.2.6 Master Lease. Without duplication of any other provision of this Agreement or any other Loan Documents, Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower to, or cause Master Lessee to, deliver to Lender, within ten (10) Business Days of the receipt thereof by Borrower or any Senior Borrower, as applicable, a copy of all reports prepared by Master Lessee pursuant to the Master Lease, including, without limitation, the Master Lease Annual Budget and any inspection reports.

11.2.7 Annual Budget; Operating Agreement Annual Budgets .

(a) Borrower shall, or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower to, or cause Master Lessee or Asset Manager to, deliver to Lender the Annual Budget not more than ninety (90) days after the end of each Fiscal Year for Lender's review but not approval; provided, that, upon the occurrence and during the continuation of an Event of Default, the Annual Budget (other than the Master Lease Annual Budget) shall be subject to the review and approval of Lender, not to be unreasonably withheld, conditioned or delayed, to the same extent as Mortgage Lender as provided in Section 11.2.7(a) of the Mortgage Loan Agreement, and Lender shall have the same right to exercise any right of approval that Mortgage Borrower may have to approve the Master Lease Annual Budget under the Master Lease, subject to any constraints in the Master Lease, in its sole and absolute discretion. Borrower shall, or shall cause First Mezzanine Lender, or shall cause First Mezzanine Lender to cause Mortgage Borrower to, or cause Master Lessee to, deliver to Lender the annual budget and any modifications thereto under any Operating Agreement for Lender's review, but not approval, prior to Mortgage Borrower's or Master Lessee's approval of any such annual budget or modification; provided, that, upon the occurrence and during the continuation of an Event of Default or if there is a Master Lease Tenant Default, Lender shall have the right to exercise any right of approval that Mortgage Borrower may have to approve the annual budgets and any amendments thereto under any Operating Agreements subject to any constraints in the Operating Agreement in question, in its sole and absolute discretion.

(b) In the event that Lender fails to respond within ten (10) Business Days of receipt of any request for Lender's approval or consent pursuant to this Section 11.2.7, Borrower may deliver to Lender a second request in an envelope or under cover of a letter marked "URGENT" and including a legend in bold typeface that Lender's failure to grant or deny the requested consent within ten (10) Business Days of the receipt thereof will result in the requested consent being deemed to have been granted. If Lender fails to respond to such second request within ten (10) Business Days of its receipt thereof, Lender's consent to such request shall be deemed granted.

11.2.8 Other Information. Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to, promptly after written request by Lender, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to the Property, any Senior Borrower, the Mezzanine Collateral, Borrower, Master Lessee, Master Lease Guarantor or Guarantor.

11.2.9 Confidentiality.

(a) Lender agrees to (i) use all sales reports and other financial performance and financial results information pertaining to any Individual Property delivered to Lender on or after the date hereof, and any other proprietary information delivered to Lender on or after the date hereof pursuant to this Agreement (provided that any such other proprietary information is

clearly marked by the applicable Senior Borrower as confidential or, if provided by the Master Lessee or its Affiliates under the Master Lease, marked by Master Lessee as confidential) (collectively, "Proprietary Information") solely for purposes of its ownership of its interest in the Loan and shall not use (or permit its Affiliates to use) such information obtained in its capacity as lender in a manner to compete with any Senior Borrower or Master Lessee or Master Lease Guarantor in the business of the ownership and operation of restaurant properties similar to the Property and (ii) keep confidential all Proprietary Information.

(b) Notwithstanding the terms of Section 11.2.9(a), but subject (to the extent applicable) to Sections 11.2.9(d) and 11.2.9(e), Lender shall be permitted to disclose any Proprietary Information:

(i) to its employees, directors, agents, attorneys, accountants and other professional advisors or those of any of its Affiliates solely for the purposes described in Section 11.2.9(a);

(ii) upon the request or demand of any Governmental Authority (including without limitation, any governmental agency, regulatory authority or self-regulatory authority (including, without limitation, bank and securities examiners) having or claiming to have authority to regulate or oversee any aspect of Lender's business or that of its Affiliates in connection with the exercise of such authority or claimed authority) or as may otherwise be required pursuant to any Legal Requirement;

(iii) if requested or required to do so in connection with any litigation or similar proceeding; provided, however, prior to any person disclosing Proprietary Information pursuant to clause (ii) above or this clause (iii), such Person shall use commercially reasonable efforts to (i) if legally permitted to do so, give Borrower or Master Lessee as much prior notice thereof as is reasonably possible so that Borrower or Master Lessee may seek such protective orders or other confidentiality protection as it, in its sole discretion, may elect, and (ii) cooperate with Borrower (or Master Lessee), at Borrower's cost and expense, in protecting the confidential nature of the Proprietary Information which must be so disclosed, and the disclosure permitted by such clause shall be only to the extent required;

(iv) to any Rating Agency, underwriter or NRSRO, provided (I) each Rating Agency or underwriter to which such information is disclosed has executed its usual and customary confidentiality agreement and (II) any NRSRO desiring access to any secured website containing such information shall, as a condition to its access to, have either furnished to the Securities and Exchange Commission the certification required under Rule 17g-5(e) of the Exchange Act or be required to agree to (or "click through") such website's confidentiality provisions;

(v) to any actual or prospective investor, participant, assignee or transferee of any beneficial interest in the Loan and to any actual or prospective investor or transferee of any direct or indirect interest in the Property, in each case subject to a written agreement to comply with the provisions of this Section 11.2.9;

(vi) that has been publicly disclosed;

(vii) that was already known to Lender or any of its Affiliates prior to Borrower's disclosure to Lender (except as a result of a breach of a confidentiality requirement which breach was known to Lender or such Affiliate);

(viii) that is independently developed, discovered or arrived at by Lender or any of its Affiliates without reference to the Proprietary Information; or

(ix) in connection with the exercise of any remedy hereunder or under any other Loan Document.

(c) [reserved].

(d) Notwithstanding the reporting requirements of Sections 11.2.1(A), 11.2.2(A) and 11.2.3(A), (i) neither Borrower nor Master Lessee shall be required to provide any Store-Level Information to any holder of an interest in the Loan that is a Tenant Competitor, provided that the foregoing provisions of this Section 11.2.9(d) shall not limit any other holder of an interest in the Loan from receiving Store-Level Information. Further, Lender may not disclose any Store-Level Information to any Tenant Competitor.

(e) Borrower shall not be required to disclose, and Lender may not disclose any Store-Level Information to any holders of interests in or other beneficiaries of any CDO, trust used in connection with a Securitization or other Securitization vehicle involving the Loan. Lender may disclose, and permit the disclosure of, Store-Level Information to a trustee, servicer, manager or other fiduciary of any CDO, trust created in connection with a Securitization or other Securitization vehicle involving the Loan on the express condition that no Store-Level Information may be disclosed to any holders of interests in or other beneficiaries of such trust, CDO or other vehicle and provided that the recipient of Store-Level Information executes and delivers a confidentiality agreement in favor of Borrower, each Senior Borrower and Master Lessee affording such parties the protections and agreements set forth in this Section 11.2.9 generally and with respect to Store-Level Information.

(f) With respect to Proprietary Information provided to Lender directly or indirectly by or on behalf of Master Lessee, it is agreed and acknowledged by Lender that (i) Master Lessee is a third-party beneficiary of this Section 11.2.9 and (ii) the provisions of this Section 11.2.9 shall survive (including, without limitation, for the benefit of Master Lessee) the repayment of the Loan, any foreclosure of the lien securing the Loan, any assignment of the Collateral in lieu thereof, or the exercise of any other remedies by Lender.

(g) Not more than once in any twelve-month period, Borrower may propose one or more additions to Schedule IV, provided such additions must be Persons directly engaged in the business of owning, operating or franchising full-service restaurants. Lender shall have the right to approve such proposed additions, such approval not to be unreasonably withheld, delayed or conditioned. Borrower's proposed additions and request for such approval shall contain a legend in capitalized bold letters on the top of the first page stating: **"THIS IS A REQUEST FOR LENDER'S APPROVAL OF ONE OR MORE PROPOSED "TENANT COMPETITORS" PURSUANT TO SECTION 11.2.9(g) OF THAT CERTAIN SECOND MEZZANINE LOAN AGREEMENT, DATED AS OF MARCH 27, 2012, BETWEEN**

NEW PRP MEZZ 2, LLC, AS BORROWER, AND GERMAN AMERICAN CAPITAL CORPORATION AND BANK OF AMERICA, N.A., AS LENDER. LENDER'S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS." If Lender fails to grant, or if Lender expressly declines to grant, such approval within such ten (10) Business Day period, Borrower shall send a second request to Lender, with a copy of the first request, and bearing a legend in capitalized bold letters on the top of the first page stating: **"THIS IS A SECOND REQUEST FOR LENDER'S APPROVAL AS DESCRIBED IN THE ATTACHED. LENDER'S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS. LENDER'S FAILURE TO RESPOND WITHIN SUCH TIME PERIOD SHALL RESULT IN LENDER'S APPROVAL BEING DEEMED TO HAVE BEEN GRANTED."** If Lender fails to grant, or if Lender expressly declines to grant, such approval to such request within such ten (10) Business Day period, Lender's approval shall be deemed to have been granted.

XII. ENVIRONMENTAL MATTERS

12.1 Representations. Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Lender (the "Environmental Reports"), (i) neither Borrower nor any Senior Borrower has engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to Borrower's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to Borrower's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower or any Senior Borrower; and (v) to Borrower's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower or any Senior Borrower.

12.2 Compliance with Environmental Laws. Subject to Mortgage Borrower's right to contest under Section 7.3 of the Mortgage Loan Agreement, Borrower covenants and agrees with Lender that it shall, and shall cause First Mezzanine Borrower, and shall cause First Mezzanine Borrower to cause Mortgage Borrower to, comply with all Environmental Laws. If at any time prior to the repayment in full of the Obligations, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an " Environmental Event"), Borrower shall deliver prompt notice

of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Borrower has knowledge of the occurrence of an Environmental Event, Borrower shall deliver to Lender an Officer's Certificate (an "Environmental Certificate") explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Borrower shall promptly provide Lender with copies of all notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Borrower with such Environmental Laws.

12.3 Environmental Reports. Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. Borrower grants (and shall cause First Mezzanine Borrower to cause Mortgage Borrower to grant) Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Borrower to Lender upon demand and shall be secured by the Lien of the this Agreement and the Pledge. Lender shall not unreasonably interfere with (and shall cause First Mezzanine Borrower to cause Mortgage Borrower not to unreasonably interfere with), and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Mortgage Borrower's, Master Lessee's, any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3, Lender shall not be deemed to be exercising any control over the operations of any Senior Borrower or Borrower or the handling of any environmental matter or hazardous wastes or substances of any Senior Borrower or Borrower for purposes of incurring or being subject to liability therefor.

12.4 Environmental Indemnification. Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or out-of-pocket expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any Release, Threat of Release or the presence of any Hazardous Materials affecting the Property; and (d) the presence at, in, on or under, or the Release or Threat of Release at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Borrower. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender;

provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from any Indemnified Party's gross negligence or willful misconduct.

12.5 Recourse Nature of Certain Indemnifications. Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document, the indemnification provided in Section 12.4 shall be fully recourse to Borrower and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the this Agreement and the Pledge and/or the conveyance of title to the Collateral to Lender or any purchaser or designee in connection with a foreclosure of this Agreement and the Pledge or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. COOPERATION.

14.1 Secondary Market Transactions. Borrower hereby agrees to cooperate with Lender, at no cost, expense or liability to Borrower, Guarantor or any of their respective Affiliates, to sell, assign, participate or otherwise transfer its beneficial interest in the Loan, the Note, the Loan Documents and/or Lender's rights, title, obligations and interests therein to any Person (including to a Securitization vehicle) pursuant to Section 15.1 (such sale, assignment, participation or other transfer, a "Secondary Market Transaction"). For clarity, such cooperation shall not require Borrower to (i) make or re-make any representations or warranties, (ii) provide any updated or new opinions of counsel, (iii) agree to any additional or larger reserves, (iv) cooperate or assist Lender or any other Person with a securitization of, the creation of CDOs secured by, or a participation or financing through an "owner trust" of, the Loan (or any interest therein) (each, a "Securitization") (other than Borrower's cooperation in the transfer of the Loan itself into the Securitization vehicle on the terms set forth in this Section 14.1), (v) undertake any action requested under this Section 14.1 that would interfere with the ordinary course day-to-day operation of Borrower, Guarantor or any of their respective Affiliates in any material respect or (vi) agree to any amendments, modifications or supplementations of the Loan Documents that would increase Borrower's monetary obligations (or potential liability therefor) or increase in any respect Borrower's obligations or liabilities or decrease Borrower's rights (other than, in each case, to a de minimis degree); provided, that Borrower, at Lender's request, will execute and deliver "component" notes, so long as:

(a) the aggregate principal amount of such component notes shall equal the outstanding principal balance of the Loan immediately prior to the creation of such component notes,

(b) the weighted average interest rate of all such component notes shall on the date created and at all times thereafter equal the interest rate which was applicable to the Loan immediately prior to the creation of such component notes (i.e., under this clause (b) and the immediately following clause (c), the component notes may not effectuate a loan structure that could result in "rate creep"),

(c) the debt service payments on all such component notes shall on the date created and at all times thereafter equal the debt service payment which was due under the Loan immediately prior to the creation of such component notes,

(d) the other terms and provisions of each of the component notes shall be identical in substance and substantially similar in form to the Loan Documents, and

(e) the maturity date of any such component note shall be the same as the Scheduled Maturity Date of the Note immediately prior to the issuance of such component notes,

except that in the case of clauses (b), (c) and (d) above, after an Event of Default, an increase in the weighted average interest rate of one or more component notes may result after certain applications of principal to the Obligations have been made and applied in accordance with the terms of this Agreement.

Lender shall reimburse Borrower for all invoiced costs and expenses reasonably incurred by or on behalf of Borrower in connection with Borrower's complying with requests made under this Section 14.1, regardless whether the proposed Secondary Market Transaction is effected.

XV. [ASSIGNMENTS AND PARTICIPATIONS

15.1 Assignments and Participations. In addition to any other rights of Lender hereunder, the Loan, the Note, the Loan Documents and/or Lender's rights, title, obligations and interests therein may be sold, assigned, participated or otherwise transferred by Lender and any of its successors and assigns to any Person at any time in its sole and absolute discretion, in whole or in part, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise without notice to or consent from Borrower or any other Person (provided that it is agreed that neither the Loan nor any interest therein may be sold to (i) a natural person unless such person satisfies the requirements of an "accredited investor" under Regulation D of the Securities Act (except that, for purposes of this clause (i), the $1,000,000, $200,000 and $300,000 figures set forth in Rule 501(6) and (7) shall each be multiplied by 10), and (ii) a Tenant Competitor. Upon such assignment, all references to Lender in this Loan Agreement and in any Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of Lender in all respects. Except as expressly permitted herein, Borrower may not assign its rights, title, interests or obligations under this Loan Agreement or under any of the Loan Documents.

15.2 Register. Servicer (or in the case of assignments to participants, the applicable Lender), as non-fiduciary agent of Borrower, shall maintain a record within the meaning of U.S. Treasury Regulation 5f.103-1(c) that identifies each owner (including successors, assignees and participants) of an interest in the Loan, including the name and address of the owner, and each owner's rights to principal and stated interest (the "Register") and shall record all Secondary Market Transactions in the Register. The parties intend for the Loan to be in registered form for tax purposes and to the extent of any conflict with this Section 15.2, this Section 15.2 shall be construed in accordance with that intent

XVI. ADDITIONAL RIGHTS; COSTS

16.1 Certain Additional Rights of Lender. Notwithstanding anything to the contrary which may be contained in this Agreement, Lender shall have:

(i) the right, upon not less than fifteen (15) Business Days' prior written notice to Borrower, to request and to hold a meeting, no more often than once during each fiscal year of Borrower, and only in conjunction with one or more Senior Lenders that wishes any such meeting, at Borrower's office in Tampa, Florida, with the president and chief operating officer or the executive vice president and chief financial officer of Borrower, to discuss such significant business activities and business and financial developments of Borrower as are specified by Lender in writing in the request for such meeting;

(ii) the right, in accordance with the terms of Section 11.1, to examine the books and records of Borrower;

(iii) the right, in accordance with the terms of Section 11.2, to receive such financial data and information set forth therein;

(iv) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property or the ownership of the Collateral);

(v) the right, in accordance with the Pledge, during the continuance of an Event of Default, to vote Borrower's interests in First Mezzanine Borrower;

(vi) the right, in accordance with this Agreement and the Pledge, including, without limitation, the provisions of Article VIII, to restrict the Transfer of interests in First Mezzanine Borrower, it being understood that no such restrictions can be made on such Transfers to the extent such Transfers are permitted by the terms of this Agreement or the Pledge.

The rights described above may be exercised by Lender until the Principal Amount and all other Obligations hereunder have been repaid in full.

16.2 Costs. Lender shall reimburse Borrower for all reasonable out-of-pocket expenses incurred by Borrower in connection with Borrower's compliance with the provisions of Section 16.1 unless Borrower would otherwise have incurred such costs pursuant to any other provision of this Agreement or the other Loan Documents.

16.3 Retention of Servicer. Lender reserves the right to retain the Servicer; provided, that Borrower shall have reasonable approval rights over the initial designation of the Servicer as of the Closing Date (but will not have any approval rights over any replacements or substitutions of the Servicer occurring after the Closing Date). Borrower hereby approves TriMont Real Estate Advisors as the initial Servicer as of the date hereof. Borrower shall pay any reasonable

costs and expenses of the Servicer and any reasonable third party costs and expenses of the Servicer, any customary special servicing and customary work-out fees, and reasonable attorney's fees and disbursements, in connection with a prepayment, release of the Property, assumption or modification of the Loan, or following an Event of Default, special servicing or work-out of the Loan or enforcement of the Loan Documents. In addition, Borrower shall pay an annual servicing fee to the Servicer equal to 2.5 basis points of the Principal Amount outstanding from time to time, which fee shall be paid in monthly installments for the period from the first day of each Interest Period through last day of each Interest Period and payable on or prior to each Payment Date, with each such monthly installment equal to 2.5 basis points of the outstanding Principal Amount from time to time multiplied by a fraction, the denominator of which shall be three hundred sixty (360) and the numerator of which shall be the actual number of days in the relevant Interest Period.

16.4 Reserve Accounts. If each Senior Lender waives any reserves or escrow accounts required in accordance with the terms of the Senior Loan Agreements, or if the each Senior Loan is refinanced or paid off in full (without a prepayment of the Loan), then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Senior Loan Agreements to be transferred to and deposited with Lender. Lender shall maintain such reserve accounts in substantially the same manner as the applicable reserve under the Senior Loan Agreements and upon Lender's request, Borrower shall execute such amendments to the Loan Documents necessary to reflect Lender's holding such reserves in the manner described herein

XVII. DEFAULTS

17.1 Event of Default.

(a) Each of the following events shall constitute an event of default hereunder (an " Event of Default"):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date, (B) any regularly scheduled monthly payment of principal or interest due hereunder is not paid in full on the applicable Payment Date, (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Yield Maintenance Premium is not paid when due, (E) any deposit to the Collateral Account is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D) and/or (E) of this subsection (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document, with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(ii) the occurrence of any Senior Loan Event of Default; or any other event shall occur or condition shall exist, if the effect of such event or condition is to accelerate or permit any Senior Lender to accelerate the maturity of any portion of any Senior Loan;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect or if Borrower fails to deliver to Lender evidence of the insurance required by

Section 6.1 at the times required in such Section 6.1 with such failure continuing for five (5) Business Days after Lender delivers written notice thereof to Borrower, provided, that Borrower shall not be deemed to be in default hereunder in the event funds sufficient for a required payment of the premiums required to keep the insurance policies in full force and effect are held in the Insurance Reserve Account and Mortgage Lender or Mortgage Cash Management Bank fails to timely make payment from such Sub-Account as contemplated by the Mortgage Loan Agreement unless due to the negligence or willful misconduct of Mortgage Borrower;

(iv) if (a) any Transfer prohibited by Article VIII occurs, or (b) Mortgage Borrower files a declaration of condominium with respect to the Property other than the Condominium Properties;

(v) if any representation or warranty made by Borrower herein (including any representation or warranty of Mortgage Borrower or First Mezzanine Borrower that is incorporated herein by reference pursuant to Section 4.1.44 hereof and made by Borrower hereunder) or by Borrower or any Affiliate of Borrower in any other Loan Document or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided, however, that if (A) any representation or warranty made by Borrower relating to Section 4.1.24 of the Mortgage Loan Agreement shall have been false or misleading in any material respect as of the date the representation or warranty was made, the same shall not constitute an Event of Default unless such incorrect, false or misleading statement is not cured within thirty (30) days after receipt by Borrower of notice from Lender in writing of such breach or a longer period of time not to exceed thirty (30) additional days if Borrower has commenced to cure but cannot cure within the initial thirty (30) day period, and (B) if any other representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the best of Borrower's knowledge, false or misleading in any material respect when made, then same shall not constitute an Event of Default unless Borrower has not cured same within ten (10) days after receipt by Borrower of notice from Lender in writing of such breach;

(vi) if Borrower, any Senior Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, any Senior Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity or Borrower, any Senior Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, any Senior Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity, or if any proceeding for the dissolution or liquidation of Borrower, any Senior Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, any Senior Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower, any Senior Borrower, Master Lessee, Guarantor, Master Lease Guarantor or any SPE Component Entity, as applicable, attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if any of the assumptions contained in the Non-Consolidation Opinion, in any Additional Non-Consolidation Opinion or in any other non-consolidation opinion delivered to Lender in connection with the Loan, or in any other non-consolidation opinion delivered subsequent to the closing of the Loan, is untrue in any material respect;

(x) if any of the assumptions contained in the True Lease Opinion (other than any assumption that relies upon factual information provided by Cushman & Wakefield or any other third party) is untrue in any material respect;

(xi) if Borrower shall fail to comply in any material respect with any covenants set forth in 5.3 or 5.4;

(xii) except as provided in subsection (xi) above, if Borrower shall fail to comply with any covenants set forth in Article V (other than Section 5.1.1) or Article XI with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xiii) intentionally omitted;

(xiv) if this Agreement or any other Loan Document or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Guarantor, or any Lien securing the Indebtedness shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender);

(xv) except as expressly permitted pursuant to the Loan Documents or any of the Senior Loan Documents, if Borrower allows First Mezzanine Borrower to allow Mortgage Borrower to grant any easement, covenant or restriction (other than the Permitted Encumbrances) over the Property;

(xvi) if Borrower allows First Mezzanine Borrower to allow Mortgage Borrower or First Mezzanine Borrower allows Mortgage Borrower to allow Master Lessee to permit any event within its control to occur that would cause any REA to terminate without notice or action by any party thereto or would entitle any party to terminate any REA and the term thereof by giving notice to Mortgage Borrower or Master Lessee; or any REA shall be surrendered, terminated or canceled for any reason or under any circumstance whatsoever except as provided for in such REA; or any material term of any REA shall be modified or supplemented (other than in accordance with its terms) and such modification or

supplementation is reasonably likely to have a Material Adverse Effect; or Borrower shall fail or shall permit Master Lessee to fail to exercise its option to renew or extend the term of any REA or shall fail or neglect to pursue diligently all actions necessary to exercise such renewal rights pursuant to such REA except as provided for in such REA, in all of the foregoing cases, where such surrender, termination, cancellation, modification, supplement or failure to renew or extend is not cured within ten (10) Business Days after receipt by Borrower of notice from Lender in writing;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document not specified in subsections (i) to (xvi) above, for thirty (30) days after notice from Lender; provided, however, that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in subsections (a)(vi), (vii) or (viii) above in respect of Borrower) Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action that Lender deems advisable to protect and enforce its rights against Borrower and the Collateral, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Borrower under the Loan Documents, (ii) collecting interest on the Principal Amount at the Default Rate whether or not Lender elects to accelerate the Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents against Borrower and the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above in respect of Borrower, the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Lender of its right to pursue any other remedies available to it under this Agreement, the Pledge or any other Loan Document. Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Lender in the Loan Documents.

(c) Upon the occurrence of a Mortgage Event of Default, Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to deliver to Lender within five (5) Business Days after the first to occur of (i) receipt by Mortgage Borrower of notice of such Mortgage Event of Default from Mortgage Lender or (ii) the date Mortgage Borrower obtains actual knowledge of the occurrence of such Mortgage Event of Default, a detailed description of the actions to be taken by Mortgage Borrower to cure such Mortgage Event of Default and the dates by which each such action shall occur. Such schedule shall be subject to the approval of Lender. Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to take all such

actions as are necessary to cure such Mortgage Event of Default by the date approved by Lender and shall deliver to Lender not less frequently than weekly thereafter written updates concerning the status of Mortgage Borrower's efforts to cure such Mortgage Event of Default. Lender shall have the right, but not the obligation, to pay any sums or to take any action which Lender deems necessary or advisable to cure any default or alleged default under the Mortgage Loan Documents (whether or not Mortgage Borrower is undertaking efforts to cure such default), and such payment or such action is hereby authorized by Borrower, and any sum so paid and any expense incurred by Lender in taking any such action shall be evidenced by this Agreement and secured by this Agreement and the Pledge and shall be immediately due and payable by Borrower to Lender with interest at the Default Rate until paid. Borrower shall cause First Mezzanine Borrower to cause Mortgage Borrower to permit Lender to enter upon the Property for the purpose of curing any default or alleged default under the Mortgage Loan Documents or hereunder. Borrower hereby transfers and assigns any excess proceeds arising from any foreclosure or sale under power pursuant to the Mortgage Loan Documents or any instrument evidencing the indebtedness secured thereby, and Borrower hereby authorizes and directs the holder or holders of the Mortgage Loan Documents to pay such excess proceeds directly to Lender up to the amount of the Obligations (subject to the rights of the First Mezzanine Lender pursuant to the First Mezzanine Loan Documents). In the event that Lender cures any Mortgage Loan Event of Default, any such cure by Lender shall not waive or be deemed to have cured such Mortgage Loan Event of Default and shall constitute an immediate Event of Default under this Agreement without any notice, grace or cure period otherwise applicable under this Agreement.

(d) Upon the occurrence of a First Mezzanine Event of Default, Borrower shall cause First Mezzanine Borrower to deliver to Lender within five (5) Business Days after the first to occur of (i) receipt by First Mezzanine Borrower of notice of such First Mezzanine Event of Default from First Mezzanine Lender or (ii) the date First Mezzanine Borrower obtains actual knowledge of the occurrence of such First Mezzanine Event of Default, a detailed description of the actions to be taken by First Mezzanine Borrower to cure such First Mezzanine Event of Default and the dates by which each such action shall occur. Such schedule shall be subject to the approval of Lender. Borrower shall cause First Mezzanine Borrower to take all such actions as are necessary to cure such First Mezzanine Event of Default by the date approved by Lender and shall deliver to Lender not less frequently than weekly thereafter written updates concerning the status of First Mezzanine Borrower's efforts to cure such First Mezzanine Event of Default. Lender shall have the right, but not the obligation, to pay any sums or to take any action which Lender deems necessary or advisable to cure any default or alleged default under the First Mezzanine Loan Documents (whether or not First Mezzanine Borrower is undertaking efforts to cure such default), and such payment or such action is hereby authorized by Borrower, and any sum so paid and any expense incurred by Lender in taking any such action shall be evidenced by this Agreement and secured by this Agreement and the Pledge and shall be immediately due and payable by Borrower to Lender with interest at the Default Rate until paid. Borrower hereby transfers and assigns any excess proceeds arising from any foreclosure or sale under power pursuant to the First Mezzanine Loan Documents or any instrument evidencing the indebtedness secured thereby, and Borrower hereby authorizes and directs the holder or holders of the First Mezzanine Loan Documents to pay such excess proceeds directly to Lender up to the amount of the Obligations. In the event that Lender cures any First Mezzanine Event of Default, any such cure by Lender shall not waive or be deemed to have cured such First Mezzanine Event of Default and shall constitute an immediate Event of Default under this Agreement without any notice, grace or cure period otherwise applicable under this Agreement.

17.2 Remedies.

(a) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Pledge has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, take any action to cure such Event of Default. Lender may appear in, defend, or bring any action or proceeding to protect its interests in the Collateral or to foreclose its security interest under this Agreement and the Pledge or under any of the other Loan Documents or collect the Indebtedness.

(c) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral, Lender may:

(i) without notice to Borrower, except as required by law, and subject to Section 3.1.10, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Account Collateral against the Obligations, operating expenses and/or capital expenditures for the Property or any part thereof;

(ii) in Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(d) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Collateral for the satisfaction of any of the Indebtedness, and Lender may seek satisfaction out of the Collateral or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Lender shall have the right from time to time to partially foreclose this Agreement and the Pledge in any manner and for any amounts secured by this Agreement or the Pledge then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Lender may foreclose this Agreement and the Pledge to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Agreement and the Pledge to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Agreement or the Pledge as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to this Agreement and the Pledge to secure payment of sums secured by this Agreement and the Pledge and not previously recovered.

17.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement and the Pledge shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or Guarantor shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or Guarantor or to impair any remedy, right or power consequent thereon.

17.4 Costs of Collection. In the event that after an Event of Default: (i) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents; or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge or any of the Loan Documents; then Borrower shall pay to Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate (collectively, "Enforcement Costs").

17.5 Distribution of Collateral Proceeds. In the event that, following the occurrence and during the continuance of any Event of Default, any monies are received in connection with the enforcement of any of the Loan Documents, or otherwise with respect to the realization upon any of the Collateral, such monies shall be distributed for application as follows:

(a) First, to the payment of, or (as the case may be) the reimbursement of, Lender for or in respect of all reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been incurred or sustained by Lender to protect or preserve the Collateral or in connection with the collection of such monies by Lender (including without limitation, Enforcement Costs), for the exercise, protection or enforcement by Lender of all or any of the rights, remedies, powers and privileges of Lender under this Agreement or any of the other Loan Documents or in respect of the Collateral or in support of any provision of adequate indemnity to Lender against any taxes or liens which by law shall have, or may have, priority over the rights of Lender to such monies;

(b) Second, to all other Obligations in such order or preference as Lender shall determine in its sole discretion;

(c) Third, the excess, if any, shall be distributed to Borrower.

XVIII. SPECIAL PROVISIONS

18.1 Exculpation.

18.1.1 Exculpated Parties. Except as set forth in this Section 18.1, the Recourse Guaranty and/or the Environmental Indemnity, no personal liability shall be asserted, sought or obtained by Lender or enforceable against (i) Borrower, (ii) any Affiliate of Borrower, (iii) any Person owning, directly or indirectly, any legal or beneficial interest in Borrower or any Affiliate of Borrower or (iv) any direct or indirect partner, member, principal, officer, Controlling Person, beneficiary, trustee, advisor, shareholder, employee, agent, Affiliate or director of any Persons described in clauses (i) through (iii) above (collectively, the "Exculpated Parties") and none of the Exculpated Parties shall have any personal liability (whether by suit deficiency judgment or otherwise) in respect of the Obligations, this Agreement, the Pledge, the Note, the Collateral or any other Loan Document, or the making, issuance or transfer thereof, all such liability, if any, being expressly waived by Lender. The foregoing limitation shall not in any way limit or affect Lender's right to any of the following and Lender shall not be deemed to have waived any of the following:

(a) Foreclosure of the lien of this Agreement and the Pledge in accordance with the terms and provisions set forth herein and in the Pledge;

(b) Action against any other security at any time given to secure the payment of the Note and the other Obligations;

(c) Exercise of any other remedy set forth in this Agreement or in any other Loan Document which is not inconsistent with the terms of this Section 18.1;

(d) Any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Agreement and the Pledge or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents; or

(e) The liability of any given Exculpated Party with respect to any separate written guaranty or agreement given by any such Exculpated Party in connection with the Loan (including, without limitation, the Recourse Guaranty and the Environmental Indemnity).

18.1.2 Loss Carveouts From Non-Recourse Limitations. Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents to the contrary, there shall at no time be any limitation on Borrower's or Guarantor's liability for the payment, in accordance with the terms of this Agreement, the Note, the Pledge and the other Loan Documents, to Lender of any Losses incurred by or on behalf of Lender by reason of:

(a) any fraudulent acts, willful misconduct or intentional misrepresentations by any Senior Borrower or Guarantor;

(b) Proceeds which any Senior Borrower, Borrower or Guarantor has received and to which Lender is entitled pursuant to the terms of this Agreement or any of the Loan Documents to the extent the same have not been applied toward payment of the Indebtedness or otherwise applied in a manner permitted by the Loan Documents, or used for or in connection with the repair or replacement of the Property in accordance with the provisions of the Mortgage Loan Agreement;

(c) any misappropriation of Rents or security deposits by any Senior Borrower, Borrower or Guarantor;

(d) Borrower's failure to cause First Mezzanine Borrower to cause Mortgage Borrower to instruct Master Lessee to deposit all Master Lease Rent directly into the Holding Account as and to the extent required under Section 3.1.9 of the Mortgage Loan Agreement, or, if Borrower or any Affiliate of Borrower receives any Rents, then Borrower's failure to deposit or cause to be deposited such amounts into the Holding Account in accordance with Section 3.1.9 of the Mortgage Loan Agreement;

(e) any Rents collected by any Senior Borrower, Borrower or Guarantor (other than Rents sent to the Holding Account pursuant to the Mortgage Loan Agreement or paid directly to Mortgage Lender pursuant to any notice of direction delivered to tenants of the Property) and not applied to payment of the Senior Obligations, the Obligations or used to pay normal and verifiable operating expenses of the Property or otherwise applied in a manner permitted under the Loan Documents or the Senior Loan Documents;

(f) any physical damage to the Property caused by the willful misconduct of any Senior Borrower, Borrower or Guarantor or by affirmative physical actions taken by any Senior Borrower, Borrower or Guarantor constituting arson or waste;

(g) Borrower's or any Senior Borrower's failure to return all Personal Property owned by Mortgage Borrower (or to reimburse Lender for the value thereof), which is wrongfully and in violation of the Mortgage Loan Documents taken from the Property by or on behalf of any Senior Borrower or Borrower;

(h) Borrower's failure to comply with any of the provisions of Article XII;

(i) a breach by Borrower or any SPE Component Entity (if any) of any of the covenants set forth in Sections 5.3 or 5.4 hereof (other than any Excluded SPE Breach);

(j) Borrower's failure to cause First Mezzanine Borrower to cause Mortgage Borrower to deliver to Mortgage Lender the net sales proceeds of a Transfer of an Individual Property described in Section 5.1.9(b) of the Mortgage Loan Agreement together with any shortfall necessary to pay and/or defease in full the Release Price or Combined Release Price, as applicable, for such Individual Property, in accordance with the provisions of Section 5.1.9(b) of the Mortgage Loan Agreement (and, to the extent applicable, defease a portion of the Loan and the First Mezzanine Loan as required pursuant to Section 2.3.6 of the Mortgage Loan Agreement);

(k) Borrower's failure to pay Taxes (except to the extent that (A) Lender has exercised its rights under Section 3.1.7, sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms hereof in the event each Senior Loan has been fully repaid there exists no impediment to Lender's utilization thereof or (B) there is insufficient cash flow from the operation of the Property);

(l) Borrower's setting forth of any claim, counterclaim and/or defense in response to a proceeding instituted by Lender (whether judicial or otherwise) for the foreclosure of the Pledge or other enforcement action following an Event of Default which is found by a court of competent jurisdiction to have been raised by Borrower in bad faith;

(m) any Involuntary Lien, except to the extent that there is insufficient cash flow from the operation of the Property to pay the Person holding such Involuntary Lien;

(n) a breach by Borrower of Section 5.2.7 hereof; or

(o) reasonable attorney's fees and expenses actually incurred by Lender in connection with any successful suit filed on account of any of the foregoing clauses (a) through (n) above.

18.1.3 Full Recourse Carveouts From Non-Recourse Limitations. Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents to the contrary, the agreement of Lender not to pursue recourse liability as set forth in Section 18.1.1 above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Indebtedness shall be fully recourse to Borrower and Guarantor on a joint and several basis in the event (i) of a breach by Borrower of any of the covenants set forth in Sections 5.3 or 5.4 hereof (other than any Excluded SPE Breach), and as a result thereof, Borrower is substantively consolidated with any other Person; (ii) a voluntary Transfer by Mortgage Borrower of Mortgage Borrower's interest in any Individual Property or any portion thereof in violation of Article VIII hereof or a Transfer by Borrower or First Mezzanine Borrower of its interest in any Mezzanine Collateral or any portion thereof in violation of Article VIII hereof, (iii) any voluntary Transfer of an Equity Interest in any Restricted Party in violation of Article VIII hereof, (iv) Borrower or any Senior Borrower filing a voluntary petition under the Bankruptcy Code or any federal or state bankruptcy or insolvency law, (v) Borrower or any Senior Borrower or any Affiliate, officer, director, or representative which Controls, directly or indirectly, Borrower or any Senior Borrower, files, or joins in the filing of, an involuntary

petition against Borrower and/or any Senior Borrower under any Creditors Rights Laws, or solicits or causes to be solicited, or colludes with, petitioning creditors for any involuntary petition against Borrower and/or any Senior Borrower from any Person; (vi) Borrower files an answer consenting to or joining in, or otherwise acquiesces to, any involuntary petition filed against it, by any other Person under any Creditors Rights Laws; provided, that Borrower will be deemed to have acquiesced to an involuntary bankruptcy petition only if Borrower did not contest such petition, notwithstanding that (A) Borrower had sufficient funds available for use to contest such petition, (B) there was a good faith basis to contest such petition and (C) contesting such petition would not violate the fiduciary duties owed to Borrower by the Persons that Control Borrower (which fiduciary duties shall not consider, to the maximum extent permissible by applicable law, the interests of any equity owners of Borrower or any other Affiliate of Borrower; provided, however, if applicable law requires that such fiduciary duties consider the interests of the equity owners of Borrower, such interests shall be considered only to the extent of such equity owners' respective economic interest in Borrower); (vii) any Senior Borrower files an answer consenting to or joining in or otherwise acquiesces to, any involuntary petition filed against it, by any other Person under any Creditors Rights Laws; provided, that such Senior Borrower will be deemed to have acquiesced to an involuntary bankruptcy petition only if such Senior Borrower did not contest such petition notwithstanding that (x) such Senior Borrower had sufficient funds available for use to contest such petition, (y) there was a good faith basis to contest such petition and (z) contesting such petition would not violate the fiduciary duties owed to such Senior Borrower by the Persons that Control such Senior Borrower (which fiduciary duties shall not consider, to the maximum extent permissible by applicable law, the interests of any equity owners of such Senior Borrower or any other Affiliate of such Senior Borrower; provided, however, if applicable law requires that such fiduciary duties consider the interests of the equity owners of such Senior Borrower, such interests shall be considered only to the extent of such equity owners' respective economic interest in such Senior Borrower); (viii) any Affiliate, officer, director, or representative which Controls Borrower or any Senior Borrower consents to or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any Senior Borrower or any portion of any Individual Property or the Collateral (except at the written request of Lender); (ix) Borrower or any Senior Borrower incurs indebtedness for borrowed money in violation of the Loan Documents; or (x) Borrower or any Senior Borrower fails to obtain Lender's prior written consent to any voluntary Lien encumbering all or any portion of the Property, the Collateral or any direct or indirect equity interests in Borrower, if such consent is required by the Loan Documents.

18.1.4 Limitation of Liability of Borrower.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or any Affiliate of Borrower, of the direct Equity Interests in any Senior Borrower, Borrower or any SPE Component Entity pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a "Mezzanine Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Borrower or any Affiliate of Borrower) shall hold any direct or indirect Equity Interests in, or Control, Mortgage Borrower (Mortgage Borrower in such case may be referred to as "Divested Borrower");

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Borrower shall not have any liability for any obligations under Section 18.1.2 or Section 18.1.3 (collectively, the "Recourse Obligations") (i) to the extent arising from: (A) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Borrower or any Affiliate of Borrower, (B) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (C) any action taken by any successor owner of such Divested Property, (D) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (E) any action taken by any receiver for such Receivership Property during the Receivership Period, or (F) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (ii) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Borrower or any Affiliate of Borrower); provided that Borrower shall remain liable hereunder for any Recourse Obligations to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the "Controlling Mezzanine Lender"), Borrower shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation, and/or consent and/or cooperation from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies)

XIX. MISCELLANEOUS

19.1 Survival. This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Indebtedness is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the successors and assigns of Lender. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents shall be joint and several.

19.2 Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

19.3 Governing Law.

(A) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF

THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CT CORPORATION SYSTEM
111 8TH AVENUE
NEW YORK, NEW YORK 10011

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

19.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

19.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

19.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) for notices other than notices of the occurrence of a Default or an Event of Default only, telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bank of America, N.A.
Real Estate Structured Finance—Servicing
900 West Trade Street, Suite 650
Mail Code: NC1-026-06-01
Charlotte, North Carolina 28255
Attn: Servicing Manager
Telecopy No.: (704) 317-4501
Confirmation No: (866) 531-0957

and to: German American Capital Corporation
60 Wall Street, 10th floor
New York, NY 10005
Attention: John Beacham and General Counsel
Telecopy No.: (732) 578-4639
Confirmation No.: (212) 250-0164

With a copy to: Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Charles Schrank, Esq.
Telecopy No.: (312) 853-7036
Confirmation No.: (312) 853-7000

If to Borrower: New PRP Mezz 2, LLC
2202 North West Shore Blvd., Suite 470C
Tampa, FL 33607
Attention: Vice President Real Estate
Telecopy No.: (813) 830-2497
Confirmation No.: (813) 387-8000

With a copy to: Bain Capital Partners, LLC
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Dave Humphrey
Telecopy No.: (617) 652-3112
Confirmation No.: (617) 516-2112

With a copy to: Ropes and Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
Attention: Richard E. Gordet, Esq.
Telecopy No.: (617) 951-7491
Confirmation No.: (617) 235-0480

With a copy to: Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

19.7 TRIAL BY JURY. BORROWER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE PLEDGE, THE NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE PLEDGE, THE NOTE OR ANY OTHER LOAN DOCUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR

OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

19.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

19.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

19.10 Preferences. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to 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 payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

19.11 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

19.12 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements), except as may be otherwise expressly provided in this Agreement or the Loan Documents, incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender pursuant to this Agreement); (ii) Lender's ongoing performance of and compliance with all agreements and conditions contained in this Agreement and the other

Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters as required herein or under the other Loan Documents; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the Pledge; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Collateral, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Collateral or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.11; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Collateral Account subject to the provisions of Section 3.1.10(a).

(b) Subject to the non-recourse provisions of Section 18.1, Borrower shall protect, indemnify and save harmless Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the " Indemnified Parties") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties or the Collateral or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the acceptance by Lender or its designee of a transfer-in-lieu of foreclosure with respect to the Collateral, or (ii) an Indemnified Party or its designee taking possession or control of the Collateral or (iii) the foreclosure of the Pledge, except to the extent caused by the actual willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Collateral): (1) ownership of Borrower's interest in First Mezzanine Borrower, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Property or any Appurtenances thereto, (3) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender, any claim the insurance as to which is inadequate, and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents or any failure on the part of Borrower to perform or comply, or to cause First Mezzanine Borrower, or to cause First Mezzanine Borrower to cause Mortgage Borrower, as applicable, to perform or comply with any of the terms of any Operating Agreement within the applicable

notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 of the Mortgage Loan Agreement, (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Subleases or the Master Lease, or (9) the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties or Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by the Pledge. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower shall at Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's reasonable expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by Lender promptly after Lender has been notified of such counsel); provided, however, that nothing herein shall compromise the right of Lender (or any Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Lender and Borrower that would make such separate representation advisable; provided further that if Lender shall have appointed separate counsel pursuant to the foregoing, Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Lender a conflict or potential conflict exists between such Indemnified Party and Lender. So long as Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Lender and the Indemnified Parties shall not be entitled to settle such action, suit or proceeding without Borrower's consent which shall not be unreasonably withheld or delayed, and claim the benefit of this Section with respect to such action, suit or proceeding and Lender agrees that it will not settle any such action, suit or proceeding without the consent of Borrower; provided, however, that if Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, and Lender has provided Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified under this Section 19.12 without notice to and reasonable consent of Borrower.

19.13 Exhibits and Schedules Incorporated. The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

19.14 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

19.15 Liability of Assignees of Lender. No assignee of Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document or any amendment or amendments hereto made at any time or times, heretofore or hereafter, any different than the liability of Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or the Collateral or to which the Property or the Collateral is now or hereafter subject any different than the liability of Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

19.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

19.17 Publicity. Each party shall endeavor to permit the other to review the initial press release relating to the Loan in order to provide the other with a reasonable opportunity to comment thereon.

19.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets

of Borrower, Borrower's members and others with interests in Borrower and of the Collateral, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Collateral for the collection of the Indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the Indebtedness out of the net proceeds of the Collateral in preference to every other claimant whatsoever.

19.19 Waiver of Counterclaim and other Actions. Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, the Note, the Pledge or any Loan Document, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement, the Note, the Pledge or any Loan Document and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

19.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

19.21 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents and unless specifically set forth in a writing contemporaneous herewith the terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

19.22 Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, to the extent Lender or any Person who Controls Lender is a "venture capital operating company" within the meaning of 29 C.F.R. Section 2510.3-101, Lender shall have:

(a) upon not less than fifteen (15) Business Days' prior written notice to Borrower, the right to request and to hold a meeting at mutually agreeable times, and not more than four (4) times during any calendar year to consult with an officer of Borrower that is familiar with the financial condition of Borrower, each Senior Borrower and the operation of the Individual Properties and is otherwise reasonably acceptable to Lender regarding such significant business activities and business and financial developments of Borrower as are specified by Lender in writing in the request for such meeting; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances; and provided further that neither Borrower nor its designated representative shall be under any obligation to follow or implement any advice or recommendations of Lender. The rights of Lender provided in this Agreement are expressly limited to consultation, and shall not include any other rights or obligations, including without limitation, any right or obligation to supervise or conduct any aspect of Borrower's business or operations; and

(b) the right, in accordance with the terms of Section 11.1 of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice, provided that any such examination shall be conducted so as not to unreasonably interfere with the business of Borrower, any Senior Borrower or any Tenants or other occupants of any Individual Property.

19.23 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

19.24 Direction of Senior Borrower with Respect to the Property or the First Mezzanine Collateral . Borrower and Lender acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause First Mezzanine Borrower or Mortgage Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower, to act or to refrain from acting in any manner, or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to any Senior Borrower, the First Mezzanine Collateral or the Property, or (iii) other similar effect, such clause or provisions, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower's capacity as the direct or indirect sole member of Mortgage Borrower, or First Mezzanine Borrower, as applicable (which Mortgage Borrower, in turn, is the fee owner of the Property, and First Mezzanine Borrower, in turn, owns one hundred percent (100%) of the direct Equity Interests in Mortgage Borrower) but not directly with respect to any Senior Borrower, the First Mezzanine Collateral or the Property or in any other manner which would violate any of the covenants contained in Section 5.3 hereof or other similar covenants contained in Borrower's organizational documents.

19.25 Senior Loan Estoppels. Borrower shall (or shall cause First Mezzanine Borrower, or shall cause First Mezzanine Borrower to cause Mortgage Borrower, to), from time to time, use reasonable efforts to obtain from the applicable Senior Lender such certificates of estoppel with respect to compliance by such Senior Borrower with the terms of the applicable Senior Loan Documents as may be reasonably requested by Lender. In the event or to the extent that such Senior Lender is not legally obligated to deliver such certificates of estoppel and is unwilling to deliver the same, or is legally obligated to deliver such certificates of estoppel but breaches such obligation, then Borrower shall not be in breach of this provision so long as Borrower furnishes to Lender an estoppel executed by Borrower and the applicable Senior

Borrower expressly representing to Lender the information requested by Lender regarding compliance by such Senior Borrower with the terms of the applicable Senior Loan Documents. Borrower hereby indemnifies Lender from and against all liabilities, obligations, losses, damages, penalties, assessments, actions, or causes of action, judgments, suits, claims, demands, costs, expenses (including attorneys' and other professional fees, whether or not suit is brought and settlement costs) and disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Lender based in whole or in part upon any fact, event, condition, or circumstances relating to any Senior Loan which was misrepresented in, or which warrants disclosure and was omitted from such estoppel executed by Borrower and the applicable Senior Borrower.

19.26 Intercreditor Agreement.

(a) Lender and each Senior Lender are parties to a certain Intercreditor Agreement dated as of the date hereof (the " Intercreditor Agreement") memorializing their relative rights and obligations with respect to the Loan, each Senior Loan, Borrower, each Senior Borrower, the Mezzanine Collateral and the Property. Borrower on behalf of itself and each Senior Borrower hereby acknowledges and agrees that (i) such Intercreditor Agreement is intended solely for the benefit of Lender and each Senior Lender and (ii) Borrower and each Senior Borrower are not intended third-party beneficiaries of any of the provisions therein and shall not be entitled to rely on any of the provisions contained therein. Lender and each Senior Lender shall have no obligation to disclose to Borrower the contents of the Intercreditor Agreement. Borrower's obligations hereunder are independent of such Intercreditor Agreement and remain unmodified by the terms and provisions thereof.

(b) In the event Lender is required pursuant to the terms of the Intercreditor Agreement to pay over to any Senior Lender any payment or distribution of assets, whether in cash, property or securities which otherwise would have been applied to the Indebtedness, including, without limitation, any proceeds of the Property previously received by Lender on account of the Loan, then Borrower agrees that (i) any amount so paid shall be reinstated and shall continue to be owing pursuant to the Loan Documents as part of the Obligations, and (ii) to the extent that any amounts so paid cannot, by operation of law, be reinstated as set forth in clause (i) above, Borrower will indemnify Lender for such amounts; provided, however, that such reinstatement or indemnity will only apply to the extent that such amounts paid over to any Senior Lender are applied to the payment or performance of the applicable Senior Loan in accordance with the applicable Senior Loan Documents.

19.27 Discussions with Senior Lenders. In connection with the exercise of its rights set forth in the Loan Documents, Lender shall have the right at any time to discuss the Properties, the First Mezzanine Collateral, any Senior Loan, the Loan or any other matter directly with any Senior Lender or any Senior Lender's consultants, agents or representatives without notice to or permission from Borrower or any other Loan Party, nor shall Lender have any obligation to disclose such discussions or the contents thereof with Borrower or any other Loan Party.

19.28 Independent Approval Rights. If any action, proposed action or other decision is consented to or approved by any Senior Lender, such consent or approval shall not be binding or controlling on Lender. Borrower hereby acknowledges and agrees that (i) the risks of each

Senior Lender in making the applicable Senior Loan are different from the risks of Lender in making the Loan, (ii) in determining whether to grant, deny, withhold or condition any requested consent or approval each Senior Lender and Lender may reasonably reach different conclusions, and (iii) Lender has an absolute independent right to grant, deny, withhold or condition any requested consent or approval based on its own point of view.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

NEW PRP MEZZ 2, LLC, a
Delaware limited liability company

By: /s/Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

[Lender's signature appears on following page]

LENDER:

GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation

By: /s/J. Robert Brown
Name: J. Robert Brown
Title: Vice President

By: /s/Mary Brundage
Name: Mary Brundage
Title: Director

BANK OF AMERICA, N.A., a national banking association

By: /s/David S. Fallick
Name: David S. Fallick
Title: Managing Director

EXHIBIT A

Borrower Organizational Structure

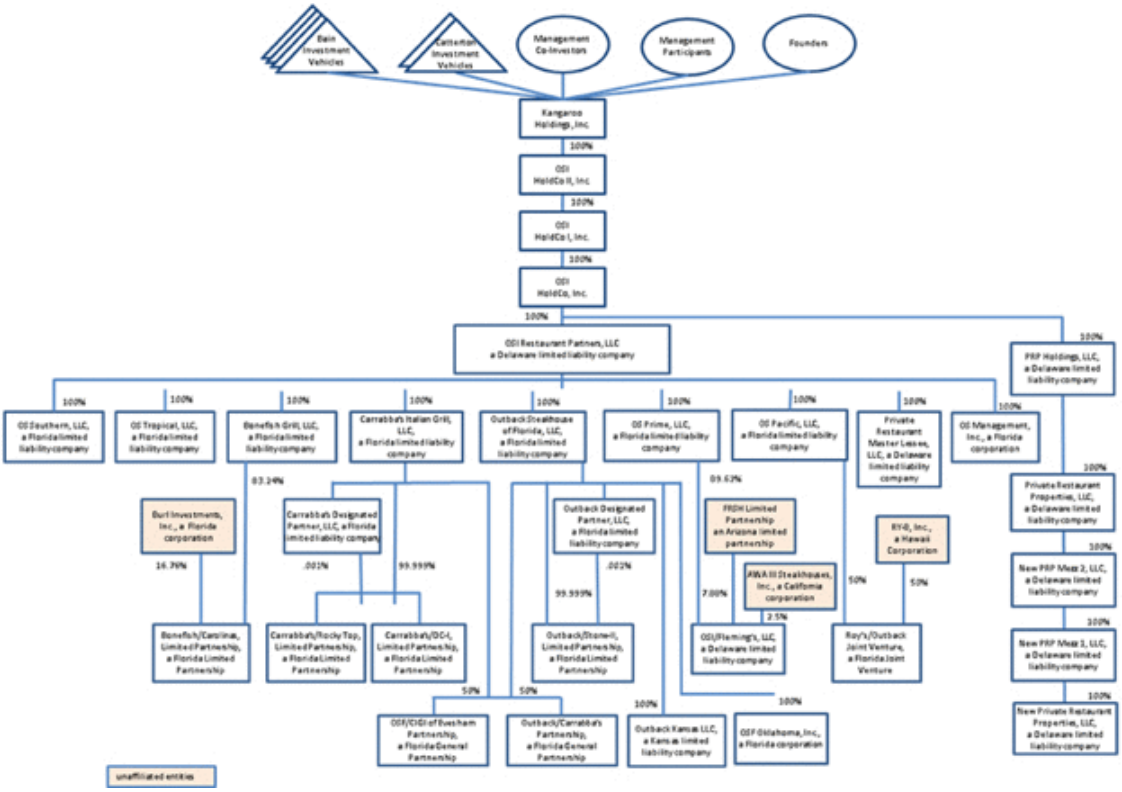

Exhibit A

EXHIBIT B

Article 8 "Opt In" Language

Certification of Limited Liability Company Interests.

Shares. The name and address of, and the percentage of limited liability company interests held by the Member are set forth on **Schedule B** hereto, as the same may be amended from time to time. Each limited liability company interest in the Company shall constitute a "security" within the meaning of, and shall be governed by, (i) Article 8 (including Section 8-102(a)(15)) of the Uniform Commercial Code as in effect from time to time in the State of Delaware (the "DEUCC") and (ii) the corresponding provisions of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the DEUCC, such provision of Article 8 of the DEUCC shall be controlling.

Share Certificates.

A Member's limited liability company interest in the Company shall be represented by a Share Certificate substantially in the form of **Exhibit I** hereto (a "Share Certificate") issued to such Member by the Company. All of a Member's Shares, in the aggregate, represent such Member's entire limited liability company interest in the Company. The Member hereby agrees that its interest in the Company and in its Shares shall for all purposes be personal property. A Member has no interest in specific Company property.

Upon the issuance of Shares to any Member in accordance with the provisions of this Agreement, without any further act, vote or approval of the Member, any Officer or any other Person, the Company, and the Member or any Officer on behalf of the Company, shall issue one or more Share Certificates in the name of such Member. Each such Share Certificate shall be denominated in terms of the percentage of Shares evidenced by such Share Certificate and shall be signed by the Member or an Officer on behalf of the Company. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in New PRP Mezz 1, LLC and shall be a security for purposes of Article 8 of the Uniform Commercial Code of the State of Delaware and the Uniform Commercial Code of any other jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

Without any further act, vote or approval of the Member, any Officer or any other Person, the Company shall issue a new Share Certificate in place of any

Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the Company:

makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Share Certificate has been lost, stolen or destroyed;

requests the issuance of a new Share Certificate before the Company has notice that such previously issued Share Certificate has been acquired by a protected purchaser;

if requested by the Company, delivers to the Company a bond, in form and substance satisfactory to the Company, with such surety or sureties as the Company may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

satisfies any other reasonable requirements imposed by the Company.

Subject to the restrictions set forth in the Loan Documents, upon a Member's Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the Company for cancellation (executed by such Transferee on the reverse side thereof), and the Company shall thereupon issue a new Share Certificate to such Transferee for the percentage of Shares being Transferred and, if applicable, cause to be issued to such Member a new Share Certificate for that percentage of Shares that were represented by the canceled Share Certificate and that are not being Transferred. The Company shall maintain books for the purpose of registering the transfer of limited liability company interests. Notwithstanding any provision of this Agreement to the contrary, a Transfer of Shares requires delivery of an endorsed Share Certificate.

Free Transferability. Except as limited by the Basic Documents (for so long as the Loan is outstanding and subject to Section 21), to the fullest extent permitted by the Act, any Member may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the Basic Documents (for so long as the Loan is outstanding and subject to Sections 21 and 23), the Transferee of any Shares shall be admitted to the Company as a substitute member of the Company on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the Company of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a substitute member on the books and records of the Company; provided, however, that if the Member Transfers all of its Shares pursuant to this Agreement, such admission shall be deemed

effective immediately prior to the Transfer, and immediately following such admission the transferor Member shall cease to be a member of the Company. Any Transfer of any Shares in accordance with the provisions of this Agreement shall be effective upon registration of such Transfer in the books and records of the Company.

Exhibit B

Mezzanine Loan Agreement
(Second Mezzanine)

SCHEDULE I

Amortization Schedule

(see attached)

Month of Payment Date	Year	Principal
May	2012	$53,207.85
June	2012	$26,348.30
July	2012	$53,953.69
August	2012	$27,126.23
September	2012	$27,389.01
October	2012	$54,970.59
November	2012	$28,186.87
December	2012	$55,750.19
January	2013	$29,000.01
February	2013	$29,280.95
March	2013	$111,328.47
April	2013	$30,643.10
May	2013	$58,150.21
June	2013	$31,503.29
July	2013	$58,990.71
August	2013	$32,379.95
September	2013	$32,693.63
October	2013	$60,153.82
November	2013	$33,593.09
December	2013	$61,032.69
January	2014	$34,509.78
February	2014	$34,844.09
March	2014	$116,401.92
April	2014	$36,309.28
May	2014	$63,686.73
June	2014	$37,278.00
July	2014	$64,633.28
August	2014	$38,265.26
September	2014	$38,635.96
October	2014	$65,960.17
November	2014	$39,649.23
December	2014	$66,950.25
January	2015	$40,681.91
February	2015	$41,076.02
March	2015	$122,085.29
April	2015	$42,656.65
May	2015	$69,888.85
June	2015	$43,746.93
July	2015	$70,954.18
August	2015	$44,858.10
September	2015	$45,292.66
October	2015	$72,464.54
November	2015	$46,433.43
December	2015	$73,579.21

Schedule I

January	2016	$47,596.05
February	2016	$48,057.14
March	2016	$101,808.83
April	2016	$49,508.97
May	2016	$76,584.37
June	2016	$50,730.50
July	2016	$77,777.95
August	2016	$51,975.42
September	2016	$52,478.93
October	2016	$79,486.37
November	2016	$53,757.35
December	2016	$80,735.53
January	2017	$55,060.25
February	2017	$55,593.64
March	2017	$135,325.01
April	2017	$84,336,999.32

Schedule I

SCHEDULE II

Litigation; Condemnation; Work Stoppages

1. Litigation

None.

2. Condemnation

Store Number	Address	Condemnation
3458	8280 Valley Boulevard Blowing Rock, NC 28605	Right of way easement and ongoing litigation to release right of way area to the State.
8705	1101 Seminole Trail Charlottesville, VA 22901	Notice of right of way taking and construction easement received.

3. Work Stoppages

None.

SCHEDULE III

Allocated Loan Amounts and Combined Allocated Loan Amounts

Unit #	Property Name	Allocated Junior Mezzanine Loan Amount	Combined Loan Amount
311	OSI Restaurant Portfolio-Outback Steakhouse	$ 343,632	$ 1,961,372
312	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
314	OSI Restaurant Portfolio-Outback Steakhouse	$ 330,157	$ 1,884,456
316	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
317	OSI Restaurant Portfolio-Outback Steakhouse	$ 307,248	$ 1,753,698
323	OSI Restaurant Portfolio-Outback Steakhouse	$ 361,151	$ 2,061,364
325	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
326	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
453	OSI Restaurant Portfolio-Outback Steakhouse	$ 295,120	$ 1,684,473
455	OSI Restaurant Portfolio-Outback Steakhouse	$ 249,302	$ 1,422,957
601	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 256,040	$ 1,461,415
602	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 249,302	$ 1,422,957
605	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 245,259	$ 1,399,882
606	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 273,558	$ 1,561,406
611	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$ 1,692,165
612	OSI Restaurant Portfolio-Outback Steakhouse	$ 234,479	$ 1,338,348
613	OSI Restaurant Portfolio-Outback Steakhouse	$ 243,912	$ 1,392,190
614	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
615	OSI Restaurant Portfolio-Outback Steakhouse	$ 281,644	$ 1,607,556
616	OSI Restaurant Portfolio-Outback Steakhouse	$ 273,558	$ 1,561,406
617	OSI Restaurant Portfolio-Outback Steakhouse	$ 312,638	$ 1,784,464
619	OSI Restaurant Portfolio-Outback Steakhouse	$ 243,912	$ 1,392,190
628	OSI Restaurant Portfolio-Outback Steakhouse	$ 221,003	$ 1,261,432
1001	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 471,652	$ 2,692,080
1002	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 592,934	$ 3,384,329
1006	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 242,564	$ 1,384,498
1008	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 431,225	$ 2,461,330
1022	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747
1023	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1024	OSI Restaurant Portfolio-Outback Steakhouse	$ 458,177	$ 2,615,163
1025	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1026	OSI Restaurant Portfolio-Outback Steakhouse	$ 458,177	$ 2,615,163
1027	OSI Restaurant Portfolio-Outback Steakhouse	$ 552,507	$ 3,153,579
1028	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1029	OSI Restaurant Portfolio-Outback Steakhouse	$ 512,080	$ 2,922,830
1030	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1031	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$ 1,845,998
1033	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1034	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
1035	OSI Restaurant Portfolio-Outback Steakhouse	$ 512,080	$ 2,922,830
1036	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747

1060	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1061	OSI Restaurant Portfolio-Outback Steakhouse	$ 404,273	$ 2,307,497
1063	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
1101	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 433,920	$ 2,476,714
1102	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 382,712	$ 2,184,431
1108	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 382,712	$ 2,184,431
1116	OSI Restaurant Portfolio-Outback Steakhouse	$ 378,669	$ 2,161,356
1119	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,066	$ 2,015,214
1120	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
1121	OSI Restaurant Portfolio-Outback Steakhouse	$ 320,724	$ 1,830,614
1122	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
1123	OSI Restaurant Portfolio-Outback Steakhouse	$ 313,986	$ 1,792,156
1124	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
1125	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1133	OSI Restaurant Portfolio-Outback Steakhouse	$ 313,986	$ 1,792,156
1134	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
1135	OSI Restaurant Portfolio-Outback Steakhouse	$ 284,339	$ 1,622,940
1137	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1201	OSI Restaurant Portfolio-Bonefish Grill	$ 316,681	$ 1,807,539
1264	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$ 1,845,998
1410	OSI Restaurant Portfolio-Outback Steakhouse	$ 282,991	$ 1,615,248
1411	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
1412	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$1,692,165
1414	OSI Restaurant Portfolio-Outback Steakhouse	$ 336,895	$ 1,922,914
1416	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1418	OSI Restaurant Portfolio-Outback Steakhouse	$ 282,991	$ 1,615,248
1419	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
1424	OSI Restaurant Portfolio-Outback Steakhouse	$ 270,863	$ 1,546,023
1450	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1452	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1453	OSI Restaurant Portfolio-Outback Steakhouse	$ 242,564	$ 1,384,498
1516	OSI Restaurant Portfolio-Outback Steakhouse	$ 331,504	$ 1,892,148
1518	OSI Restaurant Portfolio-Outback Steakhouse	$ 303,205	$ 1,730,623
1519	OSI Restaurant Portfolio-Outback Steakhouse	$ 346,328	$1,976,756
1520	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
1521	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1522	OSI Restaurant Portfolio-Outback Steakhouse	$ 249,302	$ 1,422,957
1550	OSI Restaurant Portfolio-Outback Steakhouse	$ 384,060	$ 2,192,122
1611	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
1614	OSI Restaurant Portfolio-Outback Steakhouse	$ 226,393	$ 1,292,198
1715	OSI Restaurant Portfolio-Outback Steakhouse	$ 331,504	$ 1,892,148
1716	OSI Restaurant Portfolio-Outback Steakhouse	$ 246,607	$ 1,407,573
1813	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,739	$ 2,019,060
1851	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
1901	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,937	$ 1,945,989
1912	OSI Restaurant Portfolio-Outback Steakhouse	$ 371,932	$ 2,122,897
1914	OSI Restaurant Portfolio-Outback Steakhouse	$ 324,766	$ 1,853,689
1921	OSI Restaurant Portfolio-Outback Steakhouse	$ 369,236	$ 2,107,514
1941	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
1951	OSI Restaurant Portfolio-Outback Steakhouse	$ 396,188	$ 2,261,347

1961	OSI Restaurant Portfolio-Outback Steakhouse	$ 413,707	$ 2,361,339
1971	OSI Restaurant Portfolio-Outback Steakhouse	$ 394,840	$ 2,253,655
2001	OSI Restaurant Portfolio-Fleming's Prime Steakhouse and Wine Bar	$ 687,265	$ 3,922,745
2014	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
2015	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
2017	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
2134	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
2139	OSI Restaurant Portfolio-Outback Steakhouse	$525,556	$ 2,999,746
2315	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
2319	OSI Restaurant Portfolio-Outback Steakhouse	$ 272,211	$ 1,553,715
2320	OSI Restaurant Portfolio-Outback Steakhouse	$ 305,900	$ 1,746,006
2321	OSI Restaurant Portfolio-Outback Steakhouse	$ 316,681	$ 1,807,539
2325	OSI Restaurant Portfolio-Outback Steakhouse	$ 278,949	$ 1,592,173
2326	OSI Restaurant Portfolio-Outback Steakhouse	$ 308,595	$ 1,761,389
2411	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$1,692,165
2415	OSI Restaurant Portfolio-Outback Steakhouse	$ 276,254	$ 1,576,790
2420	OSI Restaurant Portfolio-Outback Steakhouse	$ 229,088	$ 1,307,582
2619	OSI Restaurant Portfolio-Outback Steakhouse	$ 278,949	$ 1,592,173
3002	OSI Restaurant Portfolio-Roy's Restaurant	$ 485,128	$2,768,996
3101	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 313,312	$ 1,788,310
3102	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 316,681	$ 1,807,539
3110	OSI Restaurant Portfolio-Outback Steakhouse	$ 326,788	$ 1,865,227
3114	OSI Restaurant Portfolio-Outback Steakhouse	$ 486,476	$ 2,776,688
3116	OSI Restaurant Portfolio-Outback Steakhouse	$ 296,467	$1,692,165
3117	OSI Restaurant Portfolio-Outback Steakhouse	$ 287,034	$ 1,638,323
3120	OSI Restaurant Portfolio-Outback Steakhouse	$ 287,034	$ 1,638,323
3122	OSI Restaurant Portfolio-Outback Steakhouse	$ 326,788	$ 1,865,227
3211	OSI Restaurant Portfolio-Outback Steakhouse	$ 273,558	$ 1,561,406
3212	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,937	$ 1,945,989
3213	OSI Restaurant Portfolio-Outback Steakhouse	$ 355,761	$ 2,030,597
3214	OSI Restaurant Portfolio-Outback Steakhouse	$ 388,103	$ 2,215,197
3215	OSI Restaurant Portfolio-Outback Steakhouse	$ 204,832	$ 1,169,132
3217	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,937	$ 1,945,989
3220	OSI Restaurant Portfolio-Outback Steakhouse	$ 745,211	$ 4,253,486
3357	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
3402	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 316,681	$ 1,807,539
3403	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 304,553	$ 1,738,314
3420	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 274,906	$ 1,569,098
3444	OSI Restaurant Portfolio-Outback Steakhouse	$ 381,365	$ 2,176,739
3446	OSI Restaurant Portfolio-Outback Steakhouse	$ 402,926	$ 2,299,805
3447	OSI Restaurant Portfolio-Outback Steakhouse	$ 398,883	$ 2,276,730
3448	OSI Restaurant Portfolio-Outback Steakhouse	$ 389,450	$ 2,222,889
3450	OSI Restaurant Portfolio-Outback Steakhouse	$ 276,254	$ 1,576,790
3451	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,066	$ 2,015,214
3452	OSI Restaurant Portfolio-Outback Steakhouse	$ 382,712	$ 2,184,431
3453	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747
3454	OSI Restaurant Portfolio-Outback Steakhouse	$ 334,199	$ 1,907,531
3455	OSI Restaurant Portfolio-Outback Steakhouse	$ 315,333	$ 1,799,848
3458	OSI Restaurant Portfolio-Outback Steakhouse	$ 238,521	$ 1,361,423
3460	OSI Restaurant Portfolio-Outback Steakhouse	$ 327,462	$ 1,869,073

3461	OSI Restaurant Portfolio-Outback Steakhouse	$ 305,900	$ 1,746,006
3462	OSI Restaurant Portfolio-Outback Steakhouse	$ 262,778	$ 1,499,873
3463	OSI Restaurant Portfolio-Outback Steakhouse	$ 362,499	$2,069,056
3464	OSI Restaurant Portfolio-Outback Steakhouse	$ 335,547	$ 1,915,223
3621	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
3633	OSI Restaurant Portfolio-Outback Steakhouse	$ 373,279	$ 2,130,589
3635	OSI Restaurant Portfolio-Outback Steakhouse	$ 366,541	$ 2,092,131
3636	OSI Restaurant Portfolio-Outback Steakhouse	$ 272,211	$1,553,715
3640	OSI Restaurant Portfolio-Outback Steakhouse	$ 361,151	$ 2,061,364
3658	OSI Restaurant Portfolio-Outback Steakhouse	$ 286,360	$ 1,634,477
3662	OSI Restaurant Portfolio-Outback Steakhouse	$ 266,147	$ 1,519,102
3663	OSI Restaurant Portfolio-Outback Steakhouse	$ 340,264	$ 1,942,143
3713	OSI Restaurant Portfolio-Outback Steakhouse	$ 388,103	$2,215,197
3715	OSI Restaurant Portfolio-Outback Steakhouse	$ 353,066	$ 2,015,214
3716	OSI Restaurant Portfolio-Outback Steakhouse	$ 256,040	$ 1,461,415
3915	OSI Restaurant Portfolio-Outback Steakhouse	$ 303,205	$ 1,730,623
3917	OSI Restaurant Portfolio-Outback Steakhouse	$ 332,852	$1,899,839
3951	OSI Restaurant Portfolio-Outback Steakhouse	$ 336,895	$ 1,922,914
3952	OSI Restaurant Portfolio-Outback Steakhouse	$ 195,399	$ 1,115,290
4117	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
4118	OSI Restaurant Portfolio-Outback Steakhouse	$ 363,846	$ 2,076,747
4119	OSI Restaurant Portfolio-Outback Steakhouse	$ 382,712	$ 2,184,431
4120	OSI Restaurant Portfolio-Outback Steakhouse	$ 401,578	$ 2,292,114
4121	OSI Restaurant Portfolio-Outback Steakhouse	$ 235,826	$ 1,346,040
4122	OSI Restaurant Portfolio-Outback Steakhouse	$ 287,034	$ 1,638,323
4123	OSI Restaurant Portfolio-Outback Steakhouse	$ 392,145	$ 2,238,272
4124	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$1,999,831
4127	OSI Restaurant Portfolio-Outback Steakhouse	$ 366,541	$ 2,092,131
4210	OSI Restaurant Portfolio-Outback Steakhouse	$ 261,430	$ 1,492,181
4314	OSI Restaurant Portfolio-Outback Steakhouse	$ 402,926	$2,299,805
4318	OSI Restaurant Portfolio-Outback Steakhouse	$ 304,553	$ 1,738,314
4319	OSI Restaurant Portfolio-Outback Steakhouse	$ 375,974	$ 2,145,972
4320	OSI Restaurant Portfolio-Outback Steakhouse	$ 389,450	$ 2,222,889
4324	OSI Restaurant Portfolio-Outback Steakhouse	$ 253,345	$ 1,446,031
4350	OSI Restaurant Portfolio-Outback Steakhouse	$ 355,761	$ 2,030,597
4401	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 533,641	$ 3,045,896
4403	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 301,858	$ 1,722,931
4404	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 456,829	$ 2,607,472
4405	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 365,194	$ 2,084,439
4406	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 402,926	$2,299,805
4407	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 512,080	$ 2,922,830
4416	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$1,845,998
4417	OSI Restaurant Portfolio-Outback Steakhouse	$ 242,564	$ 1,384,498
4418	OSI Restaurant Portfolio-Outback Steakhouse	$ 256,040	$ 1,461,415
4422	OSI Restaurant Portfolio-Outback Steakhouse	$ 301,858	$ 1,722,931
4423	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
4424	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
4426	OSI Restaurant Portfolio-Outback Steakhouse	$ 242,564	$ 1,384,498
4429	OSI Restaurant Portfolio-Outback Steakhouse	$ 354,413	$ 2,022,906
4454	OSI Restaurant Portfolio-Outback Steakhouse	$ 268,168	$ 1,530,640

4455	OSI Restaurant Portfolio-Outback Steakhouse	$ 284,339	$ 1,622,940
4456	OSI Restaurant Portfolio-Outback Steakhouse	$ 216,960	$ 1,238,357
4457	OSI Restaurant Portfolio-Outback Steakhouse	$ 305,900	$ 1,746,006
4458	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
4459	OSI Restaurant Portfolio-Outback Steakhouse	$ 324,766	$ 1,853,689
4461	OSI Restaurant Portfolio-Outback Steakhouse	$ 319,376	$ 1,822,923
4462	OSI Restaurant Portfolio-Outback Steakhouse	$ 512,080	$ 2,922,830
4463	OSI Restaurant Portfolio-Outback Steakhouse	$ 415,054	$ 2,369,030
4464	OSI Restaurant Portfolio-Outback Steakhouse	$ 390,798	$ 2,230,580
4466	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
4467	OSI Restaurant Portfolio-Outback Steakhouse	$ 297,815	$ 1,699,856
4468	OSI Restaurant Portfolio-Outback Steakhouse	$ 265,473	$ 1,515,256
4469	OSI Restaurant Portfolio-Outback Steakhouse	$ 274,906	$ 1,569,098
4470	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
4473	OSI Restaurant Portfolio-Outback Steakhouse	$ 295,120	$ 1,684,473
4474	OSI Restaurant Portfolio-Outback Steakhouse	$ 261,430	$ 1,492,181
4475	OSI Restaurant Portfolio-Outback Steakhouse	$ 253,345	$ 1,446,031
4476	OSI Restaurant Portfolio-Outback Steakhouse	$ 289,729	$ 1,653,706
4478	OSI Restaurant Portfolio-Outback Steakhouse	$ 274,906	$ 1,569,098
4510	OSI Restaurant Portfolio-Outback Steakhouse	$ 323,419	$ 1,845,998
4511	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
4716	OSI Restaurant Portfolio-Outback Steakhouse	$ 498,604	$ 2,845,913
4724	OSI Restaurant Portfolio-Outback Steakhouse	$ 350,370	$ 1,999,831
4728	OSI Restaurant Portfolio-Outback Steakhouse	$ 336,895	$ 1,922,914
4756	OSI Restaurant Portfolio-Outback Steakhouse	$ 377,322	$ 2,153,664
4758	OSI Restaurant Portfolio-Outback Steakhouse	$ 374,627	$ 2,138,281
4762	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
4801	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 322,071	$ 1,838,306
4810	OSI Restaurant Portfolio-Outback Steakhouse	$ 278,949	$ 1,592,173
4813	OSI Restaurant Portfolio-Outback Steakhouse	$ 282,991	$ 1,615,248
4910	OSI Restaurant Portfolio-Outback Steakhouse	$269,516	$ 1,538,331
4961	OSI Restaurant Portfolio-Outback Steakhouse	$ 249,302	$ 1,422,957
5010	OSI Restaurant Portfolio-Outback Steakhouse	$ 309,943	$ 1,769,081
5113	OSI Restaurant Portfolio-Outback Steakhouse	$ 322,071	$ 1,838,306
5301	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 330,157	$ 1,884,456
5302	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 303,205	$ 1,730,623
5303	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
5501	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 374,627	$ 2,138,281
5502	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 381,365	$ 2,176,739
5505	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 265,473	$ 1,515,256
5506	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 339,590	$ 1,938,298
6006	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 350,370	$ 1,999,831
6007	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 363,846	$ 2,076,747
6013	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
6015	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 458,177	$ 2,615,163
6020	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 539,031	$ 3,076,663
6021	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 417,749	$ 2,384,414
6029	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 350,370	$ 1,999,831
6035	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
6048	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 363,846	$ 2,076,747

6052	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 336,895	$ 1,922,914
6116	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 254,692	$ 1,453,723
6302	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 229,088	$ 1,307,582
6402	OSI Restaurant Portfolio-Roy's Restaurant	$ 303,205	$ 1,730,623
6502	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 382,712	$ 2,184,431
6903	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 276,254	$ 1,576,790
7101	OSI Restaurant Portfolio-Carrabba's Italian Grill	$525,556	$2,999,746
8001	OSI Restaurant Portfolio-Lee Roy Selmon's	$ 727,692	$ 4,153,495
8002	OSI Restaurant Portfolio-Lee Roy Selmon's	$ 377,322	$ 2,153,664
8109	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 276,254	$ 1,576,790
8302	OSI Restaurant Portfolio-Sterling's Bistro	$ 80,855	$ 461,499
8609	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 596,977	$ 3,407,404
8705	OSI Restaurant Portfolio-Cheeseburger In Paradise	$ 282,991	$ 1,615,248
8908	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 309,943	$ 1,769,081
9301	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 406,969	$ 2,322,880
9407	OSI Restaurant Portfolio-Bonefish Grill	$ 258,735	$ 1,476,798
9410	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 401,578	$ 2,292,114
9414	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 278,949	$ 1,592,173
9704	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 336,895	$ 1,922,914
9802	OSI Restaurant Portfolio-Carrabba's Italian Grill	$ 278,949	$ 1,592,173

SCHEDULE IV

Specified Tenant Competitors

1. DineEquity Inc.
2. Brinker International Inc.
3. Darden Restaurants Inc.
4. Denny's Corp
5. Cracker Barrel Old Country Store Inc.
6. T.G.I. Friday's Casual Dining Carlson Restaurants Worldwide Inc.
7. Buffalo Wild Wings Inc.
8. Golden Corral Buffet Investors Management Corp.
9. The Cheesecake Factory Inc.
10. Ruby Tuesday Inc.
11. Texas Roadhouse Inc.
12. Red Robin Gourmet Burgers Inc
13. Bob Evans Farms Inc.
14. P.F. Chang's China Bistro Inc.
15. Hooters Casual Dining Chanticleer Holdings Inc.
16. Steak & Shake
17. Western Sizzlin'
18. California Pizza Kitchen Inc.
19. Romano's Macaroni Grill Casual Dining Golden Gate Capital
20. Logan's Roadhouse Casual Dining Kelso & Co./LRI Holdings
21. O'Charley's Inc.
22. BJ's Restaurants Inc.
23. Landry's Inc.
24. Apple American Group - Applebees
25. B.J.'s Restaurants, Inc.
26. Pappas Restaurant Group
27. Hooters of America, Inc.
28. Lettuce Entertain You Enterprises
29. Ruth's Hospitality
30. Bravo Brio Restaurant Group
31. Sullivan's Steakhouse
32. Del Frisco's Steakhouse
33. Lone Star Steakhouse
34. Texas Land & Cattle Steakhouse
35. Smokey Bones Bar & Fire Grill
36. Bar Louie

Exhibit 10.13

ENVIRONMENTAL INDEMNITY

ENVIRONMENTAL INDEMNITY, is made as of March 27, 2012 (this "Agreement"), by OSI HOLDCO I, INC., a Delaware corporation ("Indemnitor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a "Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Borrower"), is the owner of a portfolio of restaurant properties more particularly described in the Security Instrument (as defined in the Loan Agreement (hereinafter defined));

WHEREAS, on the date hereof, in accordance with the terms of a Loan and Security Agreement, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $324,800,000 (the " Loan"), which Loan is evidenced by that certain Note in the principal amount of the Loan, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Note"), made by Borrower in favor of Lender and secured by the Security Instrument (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Indemnitor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. (a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether

now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Note": Shall have the meaning provided in the Recitals.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, unless otherwise expressly provided herein. All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly

permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower or Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower or Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws . Subject to Borrower's right to contest under Section 7.3 of the Loan Agreement, Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver (or cause Borrower to deliver) prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver (or cause Borrower to deliver) to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide (or cause Borrower to provide) Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower or Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Borrower with such Environmental Laws. If the Security Instrument is foreclosed, Borrower shall deliver the Property in compliance with all applicable Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of de minimis quantities, Indemnitor or Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any

Individual Property in excess of de minimis quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports. Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Borrower's, Master Lessee's or any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Borrower or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Borrower or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property (except to the extent arising out of the gross negligence or willful

misconduct of any Indemnified Party) and arising from or out of the following, but, in all cases, only to the extent caused by the activities of Borrower or any other Person (other than Master Tenant or Master Lease Guarantor) on any Individual Property: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of the Borrower; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Borrower, whether or not caused by or within the control of Indemnitor; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Borrower or Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the other Loan Documents, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Subject to the limitations herein contained, Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Borrower or Indemnitor, or any principal, officer, member or partner of Borrower or Indemnitor, in its capacity as an indirect owner of direct or indirect beneficial interests in Borrower, or any other Person (other than Master Tenant or Master Lease Guarantor). Without limiting the generality of the foregoing, Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from any such Indemnified Party's gross negligence or willful misconduct or the acts or omissions of Master Lessee or Master Lease Guarantor (or anyone claiming by, through or under Master Lessee) on or with respect to any Individual Property. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Limitation on Liability of Indemnitor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or an Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Indemnitor nor any Affiliate of Indemnitor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Indemnitor shall not have any liability hereunder for any Losses arising solely from any circumstance, condition, action or event with respect to any such Divested Borrower, Divested Property or Receivership Property (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor, (2) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer

Controlled by Indemnitor or any Affiliate of Indemnitor); provided that Indemnitor shall remain liable hereunder for any Losses to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Indemnitor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

6. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

7. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of any portion of any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of any Individual Property (except as provided in Section 5 hereof); (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 7(e)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance - Servicing 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Indemnitor:	OSI Holdco I, Inc. 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125

With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by

Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

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IN WITNESS WHEREOF, Indemnitor has executed and delivered this Agreement as of the day and year first written above.

OSI HOLDCO I, INC.,
a Delaware corporation

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.14

ENVIRONMENTAL INDEMNITY

ENVIRONMENTAL INDEMNITY, is made as of March 27, 2012 (this "Agreement"), by OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("OSI"), and PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company ("Master Lessee," and collectively with OSI, the "Indemnitor"), each having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Borrower"), is the owner of a portfolio of restaurant properties more particularly described in the Security Instrument (as defined in the Loan Agreement (hereinafter defined));

WHEREAS, on the date hereof, in accordance with the terms of a Loan and Security Agreement, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $324,800,000 (the " Loan"), which Loan is evidenced by that certain Note in the principal amount of the Loan, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Note"), made by Borrower in favor of Lender and secured by the Security Instrument (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Master Lessee leases the Property pursuant to that certain Master Lease Agreement, dated as of the date hereof (the " Master Lease"), between Master Lessee and Borrower;

WHEREAS, OSI is the owner of a direct or indirect beneficial interest in Master Lessee and has guaranteed the obligations of Master Lessee under the Master Lease pursuant to that certain Guaranty, dated as of the date hereof (the " Master Lease Guaranty") made by OSI to and for the benefit of Borrower;

WHEREAS, Indemnitor will derive substantial benefit from the Master Lease;

WHEREAS, as a condition to entering into the Master Lease, Borrower has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the foregoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. (a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined,

determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Master Lease": Shall have the meaning provided in the Recitals.

"Master Lease Guaranty": Shall have the meaning provided in the Recitals.

"Master Lessee": Shall have the meaning provided in the first paragraph.

"Note": shall have the meaning provided in the Recitals.

"OSI": Shall have the meaning provided in the first paragraph.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, unless otherwise expressly provided herein. All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws . Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days

after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Indemnitor with such Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of de minimis quantities, Indemnitor or Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any Individual Property in excess of de minimis quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site

assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Indemnitor's or any other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Borrower or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Borrower or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property with respect to events occurring prior to the date of termination of the Master Lease or Master Lessee's loss of possession or use thereof, if earlier, as to the applicable Individual Property arising out of any of the following, except, in any such case, to the extent arising out of any acts of Borrower or any Indemnified Party: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas, regardless of whether or not caused by or within the control of Indemnitor (except as otherwise provided herein) first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed at, of or from any Individual Property by or on behalf of the Indemnitor; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Indemnitor with respect to activities at any Individual Property, whether or not caused by or within the control of Indemnitor, first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials, first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise, on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the Master Lease and Master Lease Guaranty, applicable, and Lender's and the other Indemnified Parties' rights under

this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Indemnitor, or any principal, officer, member or partner Indemnitor from and after the date hereof, subject to the limitations herein contained. Without limiting the generality of the foregoing, Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from Borrower's or any Indemnified Party's activities on any Individual Property or any such Person's gross negligence or willful misconduct or first occurring after the termination of the Master Lease as to the affected Individual Property or first occurring after Lender or its nominee acquires title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise, whichever is earlier; provided that Indemnitor shall remain liable hereunder for any Losses arising from any circumstance, condition, action or event occurring prior to the date of such termination of the Master Lease or acquisition of title, even to the extent the applicable Losses do not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such termination of the Master Lease or acquisition of title. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

6. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or

modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of any portion of any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of any Individual Property; (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF ITS OR BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as

follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 6(e)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance - Servicing 900 West Trade Street, Suite 650 NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Indemnitor:	OSI Restaurant Partners, LLC [[2202 N. West Shore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000]]
and to:	Private Restaurant Master Lessee, LLC 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000

With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and

permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR

THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Exhibit 10.15

ENVIRONMENTAL INDEMNITY

ENVIRONMENTAL INDEMNITY, is made as of March 27, 2012 (this "Agreement"), by PRP HOLDINGS, LLC, a Delaware limited liability company ("Indemnitor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a "Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Borrower"), is the owner of a portfolio of restaurant properties more particularly described in the Security Instrument (as defined in the Loan Agreement (hereinafter defined));

WHEREAS, on the date hereof, in accordance with the terms of a Loan and Security Agreement, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $324,800,000 (the " Loan"), which Loan is evidenced by that certain Note in the principal amount of the Loan, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Note"), made by Borrower in favor of Lender and secured by the Security Instrument (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Indemnitor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether

now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Note": Shall have the meaning provided in the Recitals.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, unless otherwise expressly provided herein. All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly

permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower or Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower or Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws . Subject to Borrower's right to contest under Section 7.3 of the Loan Agreement, Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver (or cause Borrower to deliver) prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver (or cause Borrower to deliver) to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide (or cause Borrower to provide) Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower or Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Borrower with such Environmental Laws. If the Security Instrument is foreclosed, Borrower shall deliver the Property in compliance with all applicable Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of de minimis quantities, Indemnitor or Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any

Individual Property in excess of de minimis quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports. Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Borrower's, Master Lessee's or any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Borrower or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Borrower or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property (except to the extent arising out of the gross negligence or willful

misconduct of any Indemnified Party) and arising from or out of: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower or Indemnitor; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of the Borrower; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Borrower, whether or not caused by or within the control of Borrower or Indemnitor; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Borrower or Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials, on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the other Loan Documents, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Subject to the limitations herein contained, Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Borrower or Indemnitor, or any principal, officer, member or partner of Borrower or Indemnitor. Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from such Indemnified Party's gross negligence or willful misconduct on or with respect to any Individual Property. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Limitation on Liability of Indemnitor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or an Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Indemnitor nor any Affiliate of Indemnitor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Indemnitor shall not have any liability hereunder for any Losses arising solely from any circumstance, condition, action or event with respect to any such Divested Borrower, Divested Property or Receivership Property (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor, (2) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor); provided that Indemnitor shall remain liable hereunder for any Losses to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not

occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Indemnitor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

6. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

7. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or

modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of any portion of any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of any Individual Property (except as provided in Section 5 hereof; (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as

follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 7(e)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance - Servicing 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Indemnitor:	PRP Holdings, LLC 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President of Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000]
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125

With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by

Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

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IN WITNESS WHEREOF, Indemnitor has executed and delivered this Agreement as of the day and year first written above.

PRP HOLDINGS, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Exhibit 10.16

ENVIRONMENTAL INDEMNITY
(First Mezzanine)

This ENVIRONMENTAL INDEMNITY (First Mezzanine) (this "Agreement"), is made as of March 27, 2012, by OSI HOLDCO I, INC., a Delaware corporation ("Indemnitor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a "Co-Lender", and collectively, " Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Mortgage Borrower"), is the owner of a portfolio of restaurant properties;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company (" Borrower") is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (First Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the individual promissory notes, in the aggregate principal amount of the Loan, dated as of the date hereof and making up the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Indemnitor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. (a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Mortgage Borrower": Shall have the meaning provided in the Recitals.

"Note": Shall have the meaning provided in the Recitals.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement (as defined in the Loan Agreement). All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws. Subject to Mortgage Borrower's right to contest under Section 7.3 of the Mortgage Loan Agreement, Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver (or cause Mortgage Borrower to deliver) prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver (or cause Mortgage Borrower to deliver) to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide (or cause Mortgage Borrower or the applicable Mezzanine Borrower to provide) Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term " notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Mortgage Borrower with such Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of *de minimis* quantities, Indemnitor or Mortgage Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any Individual Property in excess of *de minimis* quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Mortgage Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Mortgage Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Mortgage Borrower's, Master Lessee's, or any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property (except to the extent arising out of the gross negligence or willful misconduct of any Indemnified Party) and arising from or out of the following, but, in all cases, only to the extent caused by the activities of Mortgage Borrower or any other Person (other than Master Tenant or Master Lease Guarantor) on any Individual Property: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of Mortgage Borrower; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Mortgage Borrower, whether or not caused by or within the control of Indemnitor; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Mortgage Borrower or Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the other Loan Documents, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Subject to the limitations herein contained, Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Mortgage Borrower or Indemnitor, or any principal, officer, member or partner of Mortgage Borrower or Indemnitor, in its capacity as an indirect owner of direct or indirect beneficial interests in Mortgage Borrower, or any other Person including Borrower (other than Master Tenant or Master Lease Guarantor). Without limiting the generality of the foregoing, Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from any such Indemnified Party's gross negligence or willful misconduct or the acts or omissions of Master Lessee or Master Lease Guarantor (or anyone claiming by, through or under Master Lessee) on or with respect to any Individual Property. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to

Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Limitation on Liability of Indemnitor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or an Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any other Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Indemnitor nor any Affiliate of Indemnitor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Indemnitor shall not have any liability hereunder for any Losses arising solely from any circumstance, condition, action or event with respect to any such Divested Borrower, Divested Property or Receivership Property (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor, (2) any circumstance, condition,

action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor); provided that Indemnitor shall remain liable hereunder for any Losses to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Indemnitor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

6. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

7. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of any portion of the Collateral or any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of the Collateral or any Individual Property (except as provided in Section 5 hereof); (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other

party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 7(e)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance — Servicing 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Indemnitor:	OSI Holdco I, Inc. 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000

With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and

permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

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IN WITNESS WHEREOF, Indemnitor has executed and delivered this Agreement as of the day and year first written above.

OSI HOLDCO I, INC.,
a Delaware corporation

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.17

ENVIRONMENTAL INDEMNITY
(First Mezzanine)

ENVIRONMENTAL INDEMNITY (First Mezzanine) (this "Agreement"), is made as of March 27, 2012, by OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (" OSI"), and PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company ("Master Lessee," and collectively with OSI, the "Indemnitor"), each having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Mortgage Borrower"), is the owner of a portfolio of restaurant;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company ("Borrower") is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (First Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the individual promissory notes, in the aggregate principal amount of the Loan, dated as of the date hereof and making up the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Master Lessee leases the Property pursuant to that certain Master Lease Agreement, dated as of the date hereof (the " Master Lease"), between Master Lessee and Borrower;

WHEREAS, OSI is the owner of a direct or indirect beneficial interest in Master Lessee and has guaranteed the obligations of Master Lessee under the Master Lease pursuant to that certain Guaranty, dated as of the date hereof (the " Master Lease Guaranty") made by OSI to and for the benefit of Borrower;

WHEREAS, Indemnitor will derive substantial benefit from the Master Lease;

WHEREAS, as a condition to entering into the Master Lease, Borrower has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the foregoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. (a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Master Lease": Shall have the meaning provided in the Recitals.

"Master Lease Guaranty": Shall have the meaning provided in the Recitals.

"Master Lessee": Shall have the meaning provided in the first paragraph.

"Mortgage Borrower": Shall have the meaning provided in the Recitals.

"Note": shall have the meaning provided in the Recitals.

"OSI": Shall have the meaning provided in the first paragraph.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement (as defined in the Loan Agreement). All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws. Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term " notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Indemnitor with such Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans.

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of *de minimis* quantities, Indemnitor or Mortgage Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any Individual Property in excess of *de minimis* quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Mortgage Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Mortgage Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports. Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the

right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Indemnitor's or any other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property with respect to events occurring prior to the date of termination of the Master Lease or Master Lessee's loss of possession or use thereof, if earlier, as to the applicable Individual Property arising out of any of the following, except, in any such case, to the extent arising out of any acts of Mortgage Borrower or any Indemnified Party: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas, regardless of whether or not caused by or within the control of Indemnitor (except as otherwise provided herein) first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed at, of or from any Individual Property by or on behalf of the Indemnitor; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Indemnitor with respect to activities at any Individual Property, whether or not caused by or within the control of Indemnitor, first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials, first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise, on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or

threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the Master Lease and Master Lease Guaranty, applicable, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Indemnitor, or any principal, officer, member or partner Indemnitor from and after the date hereof, subject to the limitations herein contained. Without limiting the generality of the foregoing, Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from Borrower's or any Indemnified Party's activities on any Individual Property or any such Person's gross negligence or willful misconduct or first occurring after the termination of the Master Lease as to the affected Individual Property or first occurring after Lender or its nominee acquires title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise, whichever is earlier; provided that Indemnitor shall remain liable hereunder for any Losses arising from any circumstance, condition, action or event occurring prior to the date of such termination of the Master Lease or acquisition of title, even to the extent the applicable Losses do not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such termination of the Master Lease or acquisition of title. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

6. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of the Collateral or any portion of any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of the Collateral or any Individual Property; (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF ITS OR BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 6(e)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance — Servicing 900 West Trade Street, Suite 650 NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Indemnitor:	OSI Restaurant Partners, LLC [[2202 N. West Shore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000]]

and to:	Private Restaurant Master Lessee, LLC 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought

to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER. INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW

EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

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

OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Exhibit 10.18

ENVIRONMENTAL INDEMNITY
(First Mezzanine)

This ENVIRONMENTAL INDEMNITY (First Mezzanine) (this "Agreement") is made as of March 27, 2012, by PRP HOLDINGS, LLC, a Delaware limited liability company ("Indemnitor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Mortgage Borrower"), is the owner of a portfolio of restaurant properties;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company ("Borrower") is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (First Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the individual promissory notes, in the aggregate principal amount of the Loan, dated as of the date hereof and making up the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Indemnitor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Mortgage Borrower": Shall have the meaning provided in the Recitals.

"Note": Shall have the meaning provided in the Recitals.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement (as defined in the Loan Agreement). All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws. Subject to Mortgage Borrower's right to contest under Section 7.3 of the Mortgage Loan Agreement, Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver (or cause Borrower to deliver) prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver (or cause Mortgage Borrower to deliver) to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide (or cause Mortgage Borrower or the applicable Mezzanine Borrower to provide) Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term " notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Borrower with such Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of *de minimis* quantities, Indemnitor or Mortgage Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any Individual Property in excess of *de minimis* quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Mortgage Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Mortgage Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Mortgage Borrower's, Master Lessee's, or any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property (except to the extent arising out of the gross negligence or willful misconduct of any Indemnified Party) and arising from or out of: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower or Indemnitor; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of Mortgage Borrower; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Mortgage Borrower, whether or not caused by or within the control of Borrower or Indemnitor; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Mortgage Borrower or Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials, on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the other Loan Documents, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Subject to the limitations herein contained, Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Mortgage Borrower or Indemnitor, or any principal, officer, member or partner of Mortgage Borrower or Indemnitor. Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from such Indemnified Party's gross negligence or willful misconduct on or with respect to any Individual Property. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate

counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Limitation on Liability of Indemnitor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or an Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any other Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Indemnitor nor any Affiliate of Indemnitor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Indemnitor shall not have any liability hereunder for any Losses arising solely from any circumstance, condition, action or event with respect to any such Divested Borrower, Divested Property or Receivership Property (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor, (2) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any

circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor); provided that Indemnitor shall remain liable hereunder for any Losses to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Indemnitor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

6. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To

the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

7. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of any portion of the Collateral or any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of the Collateral or any Individual Property (except as provided in Section 5 hereof; (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 7(e)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance — Servicing 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Indemnitor:	PRP Holdings, LLC 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President of Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000]

With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and

permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

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IN WITNESS WHEREOF, Indemnitor has executed and delivered this Agreement as of the day and year first written above.

PRP HOLDINGS, LLC,
a Delaware limited liability company

By: /s/Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Exhibit 10.19

ENVIRONMENTAL INDEMNITY
(Second Mezzanine)

This ENVIRONMENTAL INDEMNITY (Second Mezzanine) (this "Agreement"), is made as of March 27, 2012, by OSI HOLDCO I, INC., a Delaware corporation ("Indemnitor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a "Co-Lender", and collectively, " Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Mortgage Borrower"), is the owner of a portfolio of restaurant properties;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company (" First Mezzanine Borrower") is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, New PRP Mezz 2, LLC, a Delaware limited liability company (" Borrower") is the owner of 100% of the membership interests in First Mezzanine Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (Second Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Indemnitor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. (a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Mortgage Borrower": Shall have the meaning provided in the Recitals.

"Note": Shall have the meaning provided in the Recitals.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement (as defined in the Loan Agreement). All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws. Subject to Mortgage Borrower's right to contest under Section 7.3 of the Mortgage Loan Agreement, Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver (or cause Mortgage Borrower to deliver) prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver (or cause Mortgage Borrower to deliver) to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide (or cause Mortgage Borrower or the applicable Mezzanine Borrower to provide) Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Mortgage Borrower with such Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of *de minimis* quantities, Indemnitor or Mortgage Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any Individual Property in excess of *de minimis* quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Mortgage Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Mortgage Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Mortgage Borrower's, Master Lessee's, or any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property (except to the extent arising out of the gross negligence or willful misconduct of any Indemnified Party) and arising from or out of the following, but, in all cases, only to the extent caused by the activities of Mortgage Borrower or any other Person (other than Master Tenant or Master Lease Guarantor) on any Individual Property: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of Mortgage Borrower; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Mortgage Borrower, whether or not caused by or within the control of Indemnitor; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Mortgage Borrower or Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the other Loan Documents, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Subject to the limitations herein contained, Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Mortgage Borrower or Indemnitor, or any principal, officer, member or partner of Mortgage Borrower or Indemnitor, in its capacity as an indirect owner of direct or indirect beneficial interests in Mortgage Borrower, or any other Person including Borrower (other than Master Tenant or Master Lease Guarantor). Without limiting the generality of the foregoing, Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from any such Indemnified Party's gross negligence or willful misconduct or the acts or omissions of Master Lessee or Master Lease Guarantor (or anyone claiming by, through or under Master Lessee) on or with respect to any Individual Property. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to

Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Limitation on Liability of Indemnitor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or an Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any other Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Indemnitor nor any Affiliate of Indemnitor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Indemnitor shall not have any liability hereunder for any Losses arising solely from any circumstance, condition, action or event with respect to any such Divested Borrower, Divested Property or Receivership Property (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor, (2) any circumstance, condition,

action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor); provided that Indemnitor shall remain liable hereunder for any Losses to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Indemnitor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

6. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

7. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of any portion of the Collateral or any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of the Collateral or any Individual Property (except as provided in Section 5 hereof); (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 7(e)):

If to Lender: Bank of America, N.A.
Real Estate Structured Finance - Servicing
900 West Trade Street, Suite 650
Mail Code: NC1-026-06-01
Charlotte, North Carolina 28255
Attn: Servicing Manager
Facsimile No.: (704) 317-4501
Confirmation No: (866) 531-0957

and to: German American Capital Corporation
60 Wall Street, 10th floor
New York, NY 10005
Attention: John Beacham and General Counsel
Telecopy No.: (732) 578-4639
Confirmation No.: (212) 250-0164

With a copy to: Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Charles Schrank, Esq.
Telecopy No.: (312) 853-7036
Confirmation No.: (312) 853-7000

If to Indemnitor: OSI Holdco I, Inc.
2202 North WestShore Blvd., Suite 470C
Tampa, Florida 33607
Attention: Chief Financial Officer and Vice President Real Estate
Telecopy No.: (813) 830-2497
Confirmation No.: (813) 387-8000

With a copy to: Bain Capital Partners, LLC
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Mr. Dave Humphrey
Telecopy No.: (617) 516-2124
Confirmation No.: (617) 516-2125

With a copy to: Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Richard Gordet, Esq.
Telecopy No.: 617-235-0480 or 617-951-7050
Confirmation No.: 617-951-7491

With a copy to: Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

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IN WITNESS WHEREOF, Indemnitor has executed and delivered this Agreement as of the day and year first written above.

OSI HOLDCO I, INC.,
a Delaware corporation

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.20

ENVIRONMENTAL INDEMNITY
(Second Mezzanine)

ENVIRONMENTAL INDEMNITY (Second Mezzanine) (this "Agreement"), is made as of March 27, 2012, by OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (" OSI"), and PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company ("Master Lessee," and collectively with OSI, the "Indemnitor"), each having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Mortgage Borrower"), is the owner of a portfolio of restaurant;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company (" First Mezzanine Borrower") is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, New PRP Mezz 2, LLC, a Delaware limited liability company (" Borrower") is the owner of 100% of the membership interests in First Mezzanine Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (Second Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Master Lessee leases the Property pursuant to that certain Master Lease Agreement, dated as of the date hereof (the " Master Lease"), between Master Lessee and Borrower;

WHEREAS, OSI is the owner of a direct or indirect beneficial interest in Master Lessee and has guaranteed the obligations of Master Lessee under the Master Lease pursuant to that certain Guaranty, dated as of the date hereof (the " Master Lease Guaranty") made by OSI to and for the benefit of Borrower;

WHEREAS, Indemnitor will derive substantial benefit from the Master Lease;

WHEREAS, as a condition to entering into the Master Lease, Borrower has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the foregoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. (a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Master Lease": Shall have the meaning provided in the Recitals.

"Master Lease Guaranty": Shall have the meaning provided in the Recitals.

"Master Lessee": Shall have the meaning provided in the first paragraph.

"Mortgage Borrower": Shall have the meaning provided in the Recitals.

"Note": shall have the meaning provided in the Recitals.

"OSI": Shall have the meaning provided in the first paragraph.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement (as defined in the Loan Agreement). All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws

(b) . Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term " notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Indemnitor with such Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of *de minimis* quantities, Indemnitor or Mortgage Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any Individual Property in excess of *de minimis* quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Mortgage Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Mortgage Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports. Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Indemnitor's or any other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property with respect to events occurring prior to the date of termination of the Master Lease or Master Lessee's loss of possession or use thereof, if earlier, as to the applicable Individual Property arising out of any of the following, except, in any such case, to the extent arising out of any acts of Mortgage Borrower or any Indemnified Party: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas, regardless of whether or not caused by or within the control of Indemnitor (except as otherwise provided herein) first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed at, of or from any Individual Property by or on behalf of the Indemnitor; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Indemnitor with respect to activities at any Individual Property, whether or not caused by or within the control of Indemnitor, first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials, first occurring prior to Lender or its nominee acquiring title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise, on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or

threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the Master Lease and Master Lease Guaranty, applicable, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Indemnitor, or any principal, officer, member or partner Indemnitor from and after the date hereof, subject to the limitations herein contained. Without limiting the generality of the foregoing, Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from Borrower's or any Indemnified Party's activities on any Individual Property or any such Person's gross negligence or willful misconduct or first occurring after the termination of the Master Lease as to the affected Individual Property or first occurring after Lender or its nominee acquires title to the affected Individual Property by foreclosure, conveyance in lieu thereof or otherwise, whichever is earlier; provided that Indemnitor shall remain liable hereunder for any Losses arising from any circumstance, condition, action or event occurring prior to the date of such termination of the Master Lease or acquisition of title, even to the extent the applicable Losses do not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such termination of the Master Lease or acquisition of title. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

6. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of the Collateral or any portion of any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of the Collateral or any Individual Property; (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF ITS OR BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 6(e)):

If to Lender: Bank of America, N.A.
Real Estate Structured Finance—Servicing
900 West Trade Street, Suite 650
NC1-026-06-01
Charlotte, North Carolina 28255
Attn: Servicing Manager
Facsimile No.: (704) 317-4501
Confirmation No: (866) 531-0957

and to: German American Capital Corporation
60 Wall Street, 10th floor
New York, NY 10005
Attention: John Beacham and General Counsel
Telecopy No.: (732) 578-4639
Confirmation No.: (212) 250-0164

With a copy to: Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Charles Schrank, Esq.
Telecopy No.: (312) 853-7036
Confirmation No.: (312) 853-7000

If to Indemnitor: OSI Restaurant Partners, LLC
2202 N. West Shore Blvd., Suite 470C
Tampa, Florida 33607
Attention: Chief Financial Officer and Vice President Real Estate
Telecopy No.: (813) 830-2497
Confirmation No.: (813) 387-8000

and to: Private Restaurant Master Lessee, LLC
2202 North WestShore Blvd., Suite 470C
Tampa, Florida 33607
Attention: Chief Financial Officer and Vice President Real Estate
Telecopy No.: (813) 830-2497
Confirmation No.: (813) 387-8000

With a copy to: Bain Capital Partners, LLC
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Mr. Dave Humphrey
Telecopy No.: (617) 516-2124
Confirmation No.: (617) 516-2125

With a copy to: Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Richard Gordet, Esq.
Telecopy No.: 617-235-0480 or 617-951-7050
Confirmation No.: 617-951-7491

With a copy to: Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW

EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Exhibit 10.21

ENVIRONMENTAL INDEMNITY
(Second Mezzanine)

This ENVIRONMENTAL INDEMNITY (Second Mezzanine) (this "Agreement") is made as of March 27, 2012, by PRP HOLDINGS, LLC, a Delaware limited liability company ("Indemnitor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Mortgage Borrower"), is the owner of a portfolio of restaurant properties;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company (" First Mezzanine Borrower") is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, New PRP Mezz 2, LLC, a Delaware limited liability company (" Borrower") is the owner of 100% of the membership interests in First Mezzanine Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (Second Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Indemnitor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Indemnitor to deliver this Agreement for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. a) The following terms shall have the meaning ascribed thereto:

"Agreement": Shall have the meaning provided in the first paragraph.

"Borrower": Shall have the meaning provided in the Recitals.

"Environmental Law": Shall mean any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to the protection of human health from any environmental hazards, or the environment, or any Hazardous Materials, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, lead-based paint or wells. Without limiting the generality of the foregoing, the term shall include, but not be limited to, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. §2061 et seq.); (v) the Clean Water Act (33 U.S.C. §1251 et seq.); (vi) the Clean Air Act (42 U.S.C. §7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 et seq.); (xi) those portions of the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. that relate to Hazardous Materials; and (xii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq . The term "Environmental Law" also includes, but is not limited to, any federal, state or local statute, regulation, rule, common law or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of the presence or release of Hazardous Materials or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; relating to nuisance, trespass or other causes of action related to the environmental condition of property; and relating to wrongful death, personal injury or property or other damage in connection with any environmental condition of property.

"Hazardous Materials": Shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the Property, and which are otherwise in compliance with Environmental Laws;

(ii) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(iii) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(iv) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Indemnified Parties": Shall mean Lender, its parent, subsidiaries and affiliates, each of their respective shareholders, members, partners, directors, officers, employees and agents, and the successors and assigns of any of them; and " Indemnified Party" shall mean any one of the Indemnified Parties.

"Indemnitor": Shall have the meaning provided in the first paragraph.

"Lender": Shall have the meaning provided in the first paragraph.

"Loan Agreement": Shall have the meaning provided in the Recitals.

"Losses": Shall mean any and all liens, damages, losses, liabilities, obligations, actions, causes of actions, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, but subject to the provisions hereof, reasonable attorneys', consultants' and experts' fees and disbursements reasonably incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding).

"Mortgage Borrower": Shall have the meaning provided in the Recitals.

"Note": Shall have the meaning provided in the Recitals.

"Release": Shall mean any releasing, depositing, seeping, migrating, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

"Security Instrument": Shall have the meaning provided in the Recitals.

"Threat of Release": Shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement (as defined in the Loan Agreement). All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Environmental Representations. Indemnitor hereby represents and warrants that except as set forth in the Environmental Reports, (a) Indemnitor has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (b) to Indemnitor's knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of maintenance, renovation, construction, repair and other legitimate business operations at the Property; (c) no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (d) to Indemnitor's knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor; and (e) to Indemnitor's knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor.

3. Environmental Covenants.

(a) Compliance with Environmental Laws. Subject to Mortgage Borrower's right to contest under Section 7.3 of the Mortgage Loan Agreement, Indemnitor covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, an Environmental Event occurs, Indemnitor shall deliver (or cause Borrower to deliver) prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Indemnitor has knowledge of the occurrence of an Environmental Event, Indemnitor shall deliver (or cause Mortgage Borrower to deliver) to Lender an Environmental Certificate explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Indemnitor shall promptly provide (or cause Mortgage Borrower or the applicable Mezzanine Borrower to provide) Lender with copies of all material notices which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Mortgage Borrower, any Mezzanine Borrower, or Indemnitor in connection with any Environmental Law. For purposes of this paragraph, the term " notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials pertinent to compliance of the Property and Borrower with such Environmental Laws.

(b) Lead Based Paint, Asbestos and O& M Plans .

(i) If prior to the date hereof, it was determined that any Individual Property contains exposed Lead Based Paint in excess of *de minimis* quantities, Indemnitor or Mortgage Borrower shall prepare a Lead Based Paint Report if one does not already exist, or if at any time hereafter, exposed Lead Based Paint is identified as being present on any Individual Property in excess of *de minimis* quantities, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Lender.

(ii) If prior to the date hereof, it was determined that any Individual Property contains Asbestos, Indemnitor or Mortgage Borrower shall prepare an Asbestos Report if one does not already exist, or if at any time hereafter, potentially Asbestos containing material is identified as being present on any Individual Property, Indemnitor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, acceptable to Lender.

(iii) If it has been, or if at any time hereafter it is, determined that any Individual Property contains Lead Based Paint or Asbestos, on or before thirty (30) days following the date of such determination, Indemnitor shall (or shall cause Mortgage Borrower to), at its sole cost and expense, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an O&M Plan, and if an O&M Plan has been prepared prior to the date hereof, Indemnitor agrees to diligently carry out (or cause to be carried out) the provisions thereof, it being understood and agreed that compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Law.

(c) Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or any Event of Default, Lender shall have the right to have its consultants perform an environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. The reasonable cost of such studies shall be due and payable by Indemnitor to Lender upon demand. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Mortgage Borrower's, Master Lessee's, or any Tenant's or other occupant's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 3(c), Lender shall not be deemed to be exercising any control over the operations of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor or the handling of any environmental matter or hazardous wastes or substances of Mortgage Borrower, any Mezzanine Borrower, or Indemnitor for purposes of incurring or being subject to liability.

4. Indemnity Agreement. Indemnitor covenants and agrees, at its sole cost and expense, to protect, indemnify, save, defend (at trial and appellate levels and with attorneys, consultants and experts selected by Indemnitor and reasonably acceptable to Lender) and hold each Indemnified Party harmless against and from any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or any Individual Property (except to the extent arising out of the gross negligence or willful misconduct of any Indemnified Party) and arising from or out of: (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of any Individual Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower or Indemnitor; (B) the Release or Threat of Release of Hazardous Materials at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of Mortgage Borrower; (C) the material violation of any Environmental Laws relating to or affecting any Individual Property or Mortgage Borrower, whether or not caused by or within the control of Borrower or Indemnitor; (D) the failure of Indemnitor to comply fully with the terms and conditions of this Agreement; (E) the violation of any Environmental Laws in connection with other real property of Mortgage Borrower or Indemnitor which gives or may give rise to any rights whatsoever in any party with respect to any Individual Property by virtue of any Environmental Laws; or (F) the enforcement of this Agreement, including, without limitation, (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of any Individual Property or any adjacent areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials, on, in, under or affecting all or any portion of any Individual Property, any adjacent areas, or any other areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of any Individual Property, any adjacent areas, or any other areas for violations first occurring prior to Lender or its nominee acquiring title to the affected Individual Property. Indemnitor's obligations hereunder are separate and distinct from its obligations under the other Loan Documents, and Lender's and the other Indemnified Parties' rights under this Agreement shall be in addition to all rights of Lender under the other Loan Documents. Subject to the limitations herein contained, Indemnitor shall be liable for any and all Losses incurred by the Lender relating to the presence, Release, or Threatened Release of any Hazardous Materials on or about any Individual Property as a result of the acts or negligent omissions of Mortgage Borrower or Indemnitor, or any principal, officer, member or partner of Mortgage Borrower or Indemnitor. Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party for Losses that result from such Indemnified Party's gross negligence or willful misconduct on or with respect to any Individual Property. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitor to Lender (given reasonably promptly following Lender's notice to Indemnitor of such action or proceeding), Indemnitor shall be entitled to assume the defense thereof, at Indemnitor's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitor expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Indemnitor's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Indemnitor that would make such separate representation advisable.

5. Limitation on Liability of Indemnitor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or an Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any other Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Indemnitor nor any Affiliate of Indemnitor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Indemnitor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Indemnitor shall not have any liability hereunder for any Losses arising solely from any circumstance, condition, action or event with respect to any such Divested Borrower, Divested Property or Receivership Property (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor, (2) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any

circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Indemnitor or any Affiliate of Indemnitor); provided that Indemnitor shall remain liable hereunder for any Losses to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during the Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Indemnitor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

6. Survival.

(a) This Agreement and the indemnities provided herein shall survive the repayment of the Loan and, subject to the terms of such indemnity, shall survive the exercise of any remedies under the Loan Documents, including, without limitation, any remedy in the nature of foreclosure, and shall not merge with any assignment or conveyance given by Borrower to Lender in lieu of foreclosure.

(b) It is agreed and intended by Indemnitor and Lender that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Loan by, through or under Lender, without notice to Indemnitor and without any further consent of Indemnitor. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Indemnitor in order to maximize the extent and effect of the indemnity given hereby.

7. Miscellaneous; No Waiver.

(a) The liabilities of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any Person who succeeds Borrower or any other Person as owner of any portion of the Collateral or any Individual Property. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or the Loan Documents or any sale or transfer of all or part of the Collateral or any Individual Property (except as provided in Section 5 hereof; (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Loan Documents or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Loan; or (vii) Lender's failure to record the Security Instrument or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

(b) MARSHALLING. INDEMNITOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST INDEMNITOR OR TO PROCEED AGAINST INDEMNITOR OR BORROWER IN ANY PARTICULAR ORDER. INDEMNITOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. INDEMNITOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO INDEMNITOR.

(c) Joint and Several Obligation. If Indemnitor consists of more than one Person or entity, each shall be jointly and severally liable to perform the obligations of Indemnitor hereunder. Any one of Borrower or one or more parties constituting Indemnitor or any other party liable upon or in respect of this Agreement or the Loan may be released without affecting the liability of any party not so released.

(d) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(e) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 7(e)):

If to Lender: Bank of America, N.A.
Real Estate Structured Finance—Servicing
900 West Trade Street, Suite 650
Mail Code: NC1-026-06-01
Charlotte, North Carolina 28255
Attn: Servicing Manager
Facsimile No.: (704) 317-4501
Confirmation No.: (866) 531-0957

and to: German American Capital Corporation
60 Wall Street, 10th floor
New York, NY 10005
Attention: John Beacham and General Counsel
Telecopy No.: (732) 578-4639
Confirmation No.: (212) 250-0164

With a copy to: Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Charles Schrank, Esq.
Telecopy No.: (312) 853-7036
Confirmation No: (312) 853-7000

If to Indemnitor: PRP Holdings, LLC
2202 North WestShore Blvd., Suite 470C
Tampa, Florida 33607
Attention: Chief Financial Officer and Vice President of Real Estate
Telecopy No.: (813) 830-2497
Confirmation No.: (813) 387-8000]

With a copy to: Bain Capital Partners, LLC
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Mr. Dave Humphrey
Telecopy No.: (617) 516-2124
Confirmation No.: (617) 516-2125

With a copy to: Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Richard Gordet, Esq.
Telecopy No.: 617-235-0480 or 617-951-7050
Confirmation No.: 617-951-7491

With a copy to: Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(f) Entire Agreement. This Agreement constitutes the entire and final agreement between Indemnitor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Indemnitor and Lender.

(g) No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Agreement or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(h) Successors and Assigns. This Agreement shall be binding upon Indemnitor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(i) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Agreement.

(k) Severability. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. INDEMNITOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON INDEMNITOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. INDEMNITOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER INDEMNITOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR OR LENDER WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. INDEMNITOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Indemnitor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

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IN WITNESS WHEREOF, Indemnitor has executed and delivered this Agreement as of the day and year first written above.

PRP HOLDINGS, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Exhibit 10.22

GUARANTY OF RECOURSE OBLIGATIONS

This GUARANTY OF RECOURSE OBLIGATIONS (this "Guaranty"), is made as of March 27, 2012, by OSI HOLDCO I, INC., a Delaware corporation, ("Guarantor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, to and for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co-Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company (" Borrower"), is the owner of a portfolio of restaurant properties more particularly described in the Security Instrument (as defined in the Loan Agreement (hereinafter defined));

WHEREAS, on the date hereof, in accordance with the terms of a Loan and Security Agreement, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $324,800,000 (the " Loan"), which Loan is evidenced by that certain Note in the aggregate principal amount of the Loan, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Note"), made by Borrower in favor of Lender and secured by the Security Instrument (as defined in the Loan Agreement) and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Guarantor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Guarantor to deliver this Guaranty for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Guaranty.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Definitions. Capitalized terms used herein and not defined herein shall have the meaning provided in the Loan Agreement.

2. Guaranty.

(a) Subject to Section 3 below, Guarantor hereby absolutely and unconditionally guarantees to Lender the prompt and unconditional payment of all obligations and liabilities of Borrower for which Borrower shall be personally liable pursuant to Section 18.1 of the Loan Agreement, when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise (collectively, the " Guaranteed Obligations").

(b) Notwithstanding anything to the contrary in this Guaranty or in any of the other Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Obligations or to require that all collateral shall continue to secure all of the Obligations owing to Lender in accordance with the Loan Documents.

3. Limitation on Liability of Guarantor .

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or any Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Guarantor nor any Affiliate of Guarantor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Guarantor shall not have any liability hereunder for any Guaranteed Obligations (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor, (2) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any

action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor); provided that Guarantor shall remain liable hereunder for any Guaranteed Obligations to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during such Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Guarantor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

4. Nature of Guaranty.

(a) Guaranty of Payment. This Guaranty is of payment and not merely a guaranty of collection and upon any failure of Borrower to pay the Guaranteed Obligations, Lender may, at its option, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount of the liability to pay the Guaranteed Obligations hereunder or any portion thereof, without proceeding against Borrower or any other Person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any of the collateral for the Loan.

(b) Continuing Guaranty. This is a continuing guaranty and the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Note, the Loan Agreement, the Security Instrument or any other Loan Document, a true copy of each of said documents Guarantor hereby acknowledges having received and reviewed. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor.

(c) Guaranteed Obligations Not Reduced by Offset. The Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender hereunder shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Borrower or any other party against Lender or against payment of the Guaranteed Obligations (other than the defense of payment or that the obligations are not as claimed), whether such offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.

(d) Payment by Guarantor. If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at demand, maturity, acceleration or otherwise, Guarantor shall, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth herein. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions hereof.

(e) No Duty to Pursue Others. It shall not be necessary for Lender (and Guarantor hereby waives any rights which Guarantor may have to require Lender), in order to enforce the obligations of Guarantor hereunder, first to (i) institute suit or exhaust its remedies against Borrower or others liable on the Loan or the Guaranteed Obligations or any other Person, (ii) enforce Lender's rights against any collateral which shall ever have been given to secure the Loan, (iii) enforce Lender's rights against any other guarantors of the Guaranteed Obligations, (iv) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, (v) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Loan, or (vi) resort to any other means of obtaining payment of the Guaranteed Obligations. Lender shall not be required to mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations.

5. Subordination.

(a) Guarantor Claims Subordinated and Deferred. Any indebtedness and liabilities of Borrower to Guarantor now or hereafter existing, including without limitation, any rights to subrogation, contribution, indemnification or any other form of reimbursement which

Guarantor may have as a result of any payment by Guarantor under this Guaranty, together with any interest thereon (collectively, the " Guarantor Claims"), shall be, and such Guarantor Claims are hereby, deferred, postponed and subordinated to the prior payment in full of the Obligations. Until payment in full of the Obligations, including interest accruing on the Note after the commencement of a proceeding by or against Borrower under the Bankruptcy Code which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally, Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right to file proofs of claim and to vote thereon in connection with any such proceeding under the Bankruptcy Code and the right to vote on any plan of reorganization.

(b) Claims in Bankruptcy. In the event of any receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceeding involving Guarantor as a debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims. Guarantor hereby assigns such dividends and payments to Lender. Should Lender receive, for application against the Guaranteed Obligations, any dividend or payment which is otherwise payable to Guarantor and which, as between Borrower and Guarantor, shall constitute a credit against the Guarantor Claims, then, upon payment to Lender in full of the Obligations and the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Lender to the extent that such payments to Lender on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that proportion of the Guaranteed Obligations which would have been unpaid if Lender had not received dividends or payments upon the Guarantor Claims.

(c) Payments Held in Trust. Notwithstanding anything to the contrary contained in this Guaranty, in the event that Guarantor should receive any funds, payments, claims and/or distributions which are prohibited by this Guaranty, Guarantor agrees to hold in trust for Lender until the Loan is repaid in full an amount equal to the amount of all funds, payments, claims and/or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims and/or distributions so received except to pay such funds, payments, claims and/or distributions promptly to Lender, and Guarantor covenants promptly to pay the same to Lender.

(d) Liens Subordinate. Guarantor agrees that any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or Lender presently exist or are hereafter created or attach. Without the prior written consent of Lender, until the Loan is repaid in full, Guarantor shall not (i) exercise or enforce any creditor's rights it may have against Borrower, or (ii) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including, without limitation, the commencement of, or the joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interests,

collateral rights, judgments or other encumbrances on the assets of Borrower held by Guarantor. The foregoing shall in no manner vitiate or amend, nor be deemed to vitiate or amend, any prohibition in the Loan Documents against Borrower granting liens or security interests in any of its assets to any Person other than Lender.

6. Expenses. In the event that Guarantor should breach or fail to timely perform any provisions of this Guaranty, Guarantor agrees that, promptly after notice or demand, Guarantor will reimburse Lender, to the extent that such reimbursement is not made by Borrower, for all reasonable out-of-pocket expenses incurred by Lender, including, without limitation, reasonable counsel fees and disbursements, incurred by Lender in connection with the collection of the Guaranteed Obligations or any portion thereof.

7. Waivers.

(a) Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of non-payment, non-performance or non-observance, or other proof, or notice or demand with respect to this Guaranty.

(b) Subject to Section 3 above, Guarantor agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired by reason of:

(i) (A) the assertion by Lender of any rights or remedies which it may have under or with respect to any of the Note, the Loan Agreement, the Security Instrument or any other Loan Documents against any Person obligated thereunder; (B) any failure to file or record any of such instruments or to take or perfect any security intended to be provided thereby; (C) the release or exchange of any property or interest covered by the Loan Agreement or the Security Instrument or any other collateral for the Loan, or the taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations; (D) the failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any collateral, property or security, including Lender's failure to exercise, or delay in exercising, any such right or remedy or any right or remedy which Lender may have hereunder or in respect to this Guaranty; (E) the commencement of a case under the Bankruptcy Code by or against any Person obligated under the Note, the Loan Agreement, the Security Instrument or any other Loan Document; or (F) any payment made on the Guaranteed Obligations or any other indebtedness arising under the Note, the Loan Agreement, the Security Instrument or any other Loan Document, whether made by Borrower or Guarantor or any other Person, which is required to be refunded pursuant to any bankruptcy or insolvency law; it being understood that no payment so refunded shall be considered as a payment of any portion of the Guaranteed Obligations, nor shall it have the effect of reducing the liability of Guarantor hereunder; it being further understood, that if Borrower shall have taken advantage of, or be subject to the protection of, any provision in the Bankruptcy Code, the effect of which is to prevent or delay Lender from taking any remedial action against Borrower, including the exercise of any option Lender has to declare the Guaranteed Obligations due and payable on the happening of any Default or Event of Default under the terms of the Note, the Loan Agreement,

the Security Instrument or any other Loan Document, then the Guaranteed Obligations shall become due and payable and Lender may, as against Guarantor, declare the Guaranteed Obligations to be due and payable and enforce any or all of its rights and remedies against Guarantor provided for herein; or

(ii) (A) the Guaranteed Obligations or any part thereof exceeding the amount permitted by law, (B) the act of creating the Guaranteed Obligations or any part thereof being ultra vires, (C) the officers or representatives executing the Note, the Security Instrument, the Loan Agreement or the other Loan Documents or otherwise creating the Guaranteed Obligations acting in excess of their authority, (D) the Guaranteed Obligations violating applicable usury laws, (E) Borrower having valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially uncollectible from Borrower (other than the defense of payment or that the obligations are not as claimed), (F) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection with the Guaranteed Obligations or given to secure the repayment of the Guaranteed Obligations) being illegal, uncollectible or unenforceable, or (G) the Note, the Security Instrument, the Loan Agreement or any of the other Loan Documents having been forged or otherwise being irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person is found not liable on the Guaranteed Obligations or any part thereof for any reason (other than the defense of payment or that the obligations are not as claimed); or

(iii) any full or partial release of the liability of Borrower for the Guaranteed Obligations or any part thereof, or of any co-guarantors, or of any other Person now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support from any other Person, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other Persons (including Borrower) will be liable to pay or perform the Guaranteed Obligations or that Lender will look to other Persons (including Borrower) to pay or perform the Guaranteed Obligations; or

(iv) the reorganization, merger or consolidation of Borrower or Guarantor into or with any other Person; or

(v) any other action taken or omitted to be taken with respect to the Loan Documents, the Guaranteed Obligations or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations pursuant to the terms hereof, it being the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether contemplated or uncontemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations.

(c) This Guaranty shall remain and continue in full force and effect as to any modification, extension or renewal of the Note, the Loan Agreement, the Security Instrument or any other Loan Document except as may be expressly set forth in the Loan Documents. Lender shall not be under a duty to protect, secure or insure any security or lien provided by the Loan Agreement or the Security Instrument or any other collateral, and Guarantor acknowledges that other indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done or suffered without notice to, or further consent of, Guarantor.

(d) Guarantor hereby waives the pleading of any statute of limitations as a defense to the obligation hereunder.

8. Representations and Warranties.

(a) Benefit. Guarantor is an Affiliate of Borrower, is the owner of a direct or indirect interest in Borrower and has received, or will receive, direct or indirect benefit from the making of this Guaranty with respect to the Guaranteed Obligations.

(b) Familiarity and Reliance. Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment of the Note or Guaranteed Obligations; however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty.

(c) No Representation By Lender. Neither Lender nor any other party has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty.

(d) Guarantor's Financial Condition. As of the date hereof, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor (i) is and will be solvent, (ii) has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and (iii) has and will have property and assets sufficient to satisfy and repay its obligations and liabilities, including the Guaranteed Obligations.

(e) Legality. The execution, delivery and performance by Guarantor of this Guaranty and the consummation of the transactions contemplated hereunder do not and will not contravene or conflict with any law, statute or regulation whatsoever to which Guarantor is subject, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the breach of, any indenture, mortgage, charge, lien, contract, agreement or other instrument to which Guarantor is a party or which may be applicable to Guarantor. This Guaranty is a legal and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

(f) Survival. All representations and warranties made by Guarantor herein shall survive the execution hereof.

9. Financial Covenants; Transfers.

(a) Financial and Transfer Covenants. Guarantor hereby covenants and agrees that:

(i) for any period of time during which the Guarantor Net Worth Requirements are imposed upon Guarantor pursuant to Sections 8.1 through 8.7, inclusive, of the Loan Agreement (such sections, the "Indebtedness and Transfer Provisions"), Guarantor shall maintain a Net Worth of not less than the Minimum Net Worth, and promptly upon the Guarantor Net Worth Requirements being so imposed, Guarantor shall confirm in writing to Lender that Guarantor's obligations under this clause (i) have been triggered and are in full force and effect as ongoing covenants of Guarantor for so long as the Guarantor Net Worth Requirements are so imposed on Guarantor;

(ii) unless and until the Guarantor Net Worth Requirements are imposed upon Guarantor or the Qualifying Replacement Guarantor, as applicable, pursuant to Section 8.5 of the Loan Agreement, it shall not cause, suffer or permit any distribution or transfer of any of its assets to any Person, including its direct or indirect parent entities or their Affiliates unless as of the date of such distribution the Master Lease Guarantor Total Leverage Ratio is less than 3.50:1.00 (as certified by an Officer's Certificate and certificate of Guarantor provided to Lender, together with the related background financial statements and calculations in reasonable detail, delivered to Lender within five Business Days after such distribution or transfer); provided, however, that the foregoing restrictions shall not apply to the following distributions and transfers, which shall be expressly permitted pursuant to this Section 9(a)(ii):

(1) following a Qualifying IPO of an Upper Tier Entity (other than Guarantor), distributions of assets to such Upper Tier Entity for payment by such Upper Tier Entity of reasonable out-of-pocket costs and expenses incurred by such Upper Tier Entity in connection with consummating such Qualifying IPO and ongoing compliance by such Upper Tier Entity with federal and state securities laws and regulations, SEC rules and regulations and the Sarbanes–Oxley Act of 2002 (as amended from time to time and any successor statute thereto);

(2) distributions of assets to Holdings for payment by Holdings of its franchise taxes and for payment by Holdings of Income Taxes that are attributable to the income of Holdings to the extent such income is attributable to the operations of Holdings, Guarantor and/or its direct or indirect Subsidiaries (but not any Subsidiary of Holdings that is not also a Subsidiary of Guarantor);

(3) distributions of assets to a direct or indirect parent of Guarantor for payment of the operating expenses (including administrative, legal, accounting and similar expenses provided by third parties) incurred by such parent in the ordinary course of business to the extent such operating expenses are directly related to the ownership of the direct or indirect Equity Interests in Guarantor and/or to the operations of Guarantor and/or its direct or indirect Subsidiaries;

(4) transfers of assets to Guarantor's direct or indirect Subsidiaries; and

(5) distribution of the proceeds of the Guarantor Subsequent Intercompany Loans to its parent entity.

(iii) Guarantor shall continue to own, directly or indirectly, 100% of the Equity Interests in Master Lease Guarantor, unless such covenant is expressly terminated pursuant to the Indebtedness and Transfer Provisions as a result of the imposition of the Guarantor Net Worth Requirements;

(iv) Guarantor shall not incur any Debt other than the Permitted Debt applicable to Guarantor; and

(v) Guarantor shall otherwise comply with the Indebtedness and Transfer Provisions applicable to Guarantor.

(b) Financial Statements. Guarantor shall deliver to Lender:

(i) within 120 days after the end of each fiscal year of Guarantor, a complete copy of Guarantor's audited annual financial statements certified by an Independent Accountant, prepared in accordance with GAAP and the requirements of Regulation AB, including statements of income and expense and cash flow and a balance sheet for Guarantor, together with a certificate of the chief financial officer of Guarantor (A) during any period for which the Guarantor Net Worth Requirements are applicable to Guarantor, setting forth in reasonable detail Guarantor's Net Worth as of the end of such prior calendar year and based on such annual financial statements, and (B) certifying to the best of such chief financial officer's knowledge, that such annual financial statements fairly present the financial condition and results of the operations of Guarantor;

(ii) within 60 days after the end of each fiscal quarter of Guarantor other than the last quarter of each fiscal year, financial statements (including a balance sheet as of the end of such fiscal quarter and a statement of income and expense for such fiscal quarter) certified by the chief financial officer of Guarantor and in form, content, level of detail and scope reasonably satisfactory to Lender, together with a certificate of the chief financial officer of Guarantor (A) during any period for which the Guarantor Net Worth Requirements are applicable to Guarantor, setting forth in reasonable detail Guarantor's Net Worth as of the end of such prior calendar quarter and based on the foregoing quarterly financial statements, and (B) certifying to the best of such chief financial officer's knowledge, that such quarterly financial statements fairly present the financial condition and results of the operations of Guarantor in a manner consistent with GAAP and the requirements of Regulation AB; and

(iii) promptly after written request by Lender or, if a Securitization shall have occurred, the Rating Agencies, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to Guarantor.

10. Miscellaneous.

(a) MARSHALLING. GUARANTOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS GUARANTY AGAINST BORROWER OR TO PROCEED AGAINST GUARANTOR IN ANY PARTICULAR ORDER. GUARANTOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE FIFTEEN (15) DAYS AFTER WRITTEN DEMAND. EXCEPT AS PERMITTED PURSUANT TO SECTION 5 HEREOF, GUARANTOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO GUARANTOR.

(b) Joint and Several Obligation. If Guarantor consists of more than one person or entity, each shall be jointly and severally liable to perform the obligations of Guarantor hereunder. Any one of Borrower or one or more parties constituting Guarantor or any other party liable upon or in respect of this Guaranty or the Loan may be released without affecting the liability of any party not so released.

(c) Further Assurances. Guarantor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Guaranty, to protect and further the validity and enforceability of this Guaranty or otherwise carry out the purposes of this Guaranty.

(d) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 10(d)):

If to Lender:

Bank of America, N.A.
Real Estate Structured Finance - Servicing
900 West Trade Street, Suite 650
Mail Code: NC1-026-06-01
Charlotte, North Carolina 28255
Attn: Servicing Manager
Facsimile No.: (704) 317-4501
Confirmation No: (866) 531-0957

and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Guarantor:	OSI Holdco I, Inc. 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Guaranty shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier

service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(e) Entire Agreement. This Guaranty constitutes the entire and final agreement between Guarantor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Guarantor and Lender.

(f) No Waiver. No waiver of any term or condition of this Guaranty, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Guaranty or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(g) Successors and Assigns. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Guarantor shall have the right to assign or transfer its rights or obligations under this Guaranty without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(h) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Guaranty.

(i) Counterparts. This Guaranty may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Guaranty.

(j) Severability. The provisions of this Guaranty are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Guaranty.

(k) GOVERNING LAW; JURISDICTION; SERVICE OF PROCESS. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK. EACH OF THE LENDER AND GUARANTOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS GUARANTY MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON GUARANTOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS GUARANTY. EACH OF LENDER AND GUARANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(l) JURY TRIAL WAIVER EACH OF LENDER AND GUARANTOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF GUARANTOR OR LENDER WITH RESPECT TO THIS GUARANTY (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH OF LENDER AND GUARANTOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. EACH OF LENDER AND GUARANTOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(m) Counterclaims and Other Actions. Guarantor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender in connection with this Guaranty, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Guaranty and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

(n) Cooperation. Guarantor acknowledges that Lender and its successors and assigns may (i) sell this Guaranty, the Note and the other Loan Documents to one or more investors as a whole loan, (ii) participate the Loan secured by this Guaranty to one or more investors, (iii) deposit this Guaranty, the Note and the other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, or (iv) otherwise sell the Loan or one or more interests therein to investors (the transactions referred to in clauses (i) through (iv) are hereinafter each referred to as "Secondary Market Transaction"). Subject to the terms, conditions and limitations set forth in the Loan Agreement, Guarantor shall cooperate with Lender in effecting any such Secondary Market Transaction, shall cooperate to implement all requirements imposed by any of the Rating Agencies involved in any Secondary Market Transaction and shall provide (or cause Borrower to provide) such information and materials as may be required or necessary pursuant to Article XIV of the Loan Agreement.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty of Recourse Obligations as of the date first set forth above.

OSI HOLDCO I, INC.,
a Delaware corporation

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.23

GUARANTY OF RECOURSE OBLIGATIONS
(First Mezzanine)

This GUARANTY OF RECOURSE OBLIGATIONS (First Mezzanine) (this "Guaranty"), is made as of March 27, 2012, by OSI HOLDCO I, INC., a Delaware corporation, ("Guarantor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, to and for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co- Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company ("Mortgage Borrower") is the owner of a portfolio of restaurant properties;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company (" Borrower"), is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (First Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the individual promissory notes, in the aggregate principal amount of the Loan, dated as of the date hereof and making up the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and by the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Guarantor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Guarantor to deliver this Guaranty for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Guaranty.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Definitions. Capitalized terms used herein and not defined herein shall have the meaning provided in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement.

2. Guaranty.

(a) Subject to Section 3 below, Guarantor hereby absolutely and unconditionally guarantees to Lender the prompt and unconditional payment of all obligations and liabilities of Borrower for which Borrower shall be personally liable pursuant to Section 18.1 of the Loan Agreement, when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise (collectively, the " Guaranteed Obligations").

(b) Notwithstanding anything to the contrary in this Guaranty or in any of the other Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Obligations or to require that all collateral shall continue to secure all of the Obligations owing to Lender in accordance with the Loan Documents.

3. Limitation on Liability of Guarantor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or any Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any other Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Guarantor nor any Affiliate of Guarantor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Guarantor shall not have any liability hereunder for any Guaranteed Obligations (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor, (2) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor); provided that Guarantor shall remain liable hereunder for any Guaranteed Obligations to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during such Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Guarantor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

4. Nature of Guaranty.

(a) Guaranty of Payment. This Guaranty is of payment and not merely a guaranty of collection and upon any failure of Borrower to pay the Guaranteed Obligations, Lender may, at its option, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount of the liability to pay the Guaranteed Obligations hereunder or any portion thereof, without proceeding against Borrower or any other Person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any of the collateral for the Loan.

(b) Continuing Guaranty. This is a continuing guaranty and the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Note, the Loan Agreement, the Pledge or any other Loan Document, a true copy of each of said documents Guarantor hereby acknowledges having received and reviewed. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor.

(c) Guaranteed Obligations Not Reduced by Offset. The Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender hereunder shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Borrower or any other party against Lender or against payment of the Guaranteed Obligations (other than the defense of payment or that the obligations are not as claimed), whether such offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.

(d) Payment by Guarantor. If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at demand, maturity, acceleration or otherwise, Guarantor shall, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth herein. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions hereof.

(e) No Duty to Pursue Others. It shall not be necessary for Lender (and Guarantor hereby waives any rights which Guarantor may have to require Lender), in order to enforce the obligations of Guarantor hereunder, first to (i) institute suit or exhaust its remedies against Borrower or others liable on the Loan or the Guaranteed Obligations or any other Person, (ii) enforce Lender's rights against any collateral which shall ever have been given to secure the Loan, (iii) enforce Lender's rights against any other guarantors of the Guaranteed Obligations, (iv) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, (v) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Loan, or (vi) resort to any other means of obtaining payment of the Guaranteed Obligations. Lender shall not be required to mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations.

5. Subordination.

(a) Guarantor Claims Subordinated and Deferred. Any indebtedness and liabilities of Borrower to Guarantor now or hereafter existing, including without limitation, any rights to subrogation, contribution, indemnification or any other form of reimbursement which Guarantor may have as a result of any payment by Guarantor under this Guaranty, together with any interest thereon (collectively, the "Guarantor Claims"), shall be, and such Guarantor Claims are hereby, deferred, postponed and subordinated to the prior payment in full of the Obligations. Until payment in full of the Obligations, including interest accruing on the Note after the commencement of a proceeding by or against Borrower under the Bankruptcy Code which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally, Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right to file proofs of claim and to vote thereon in connection with any such proceeding under the Bankruptcy Code and the right to vote on any plan of reorganization.

(b) Claims in Bankruptcy. In the event of any receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceeding involving Guarantor as a debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims. Guarantor hereby assigns such dividends and payments to Lender. Should Lender receive, for application against the Guaranteed Obligations, any dividend or payment which is otherwise payable to Guarantor and which, as between Borrower and Guarantor, shall constitute a credit against the Guarantor Claims, then, upon payment to Lender in full of the Obligations and the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Lender to the extent that such payments to Lender on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that proportion of the Guaranteed Obligations which would have been unpaid if Lender had not received dividends or payments upon the Guarantor Claims.

(c) Payments Held in Trust. Notwithstanding anything to the contrary contained in this Guaranty, in the event that Guarantor should receive any funds, payments, claims and/or distributions which are prohibited by this Guaranty, Guarantor agrees to hold in trust for Lender until the Loan is repaid in full an amount equal to the amount of all funds, payments, claims and/or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims and/or distributions so received except to pay such funds, payments, claims and/or distributions promptly to Lender, and Guarantor covenants promptly to pay the same to Lender.

(d) Liens Subordinate. Guarantor agrees that any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests,

judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or Lender presently exist or are hereafter created or attach. Without the prior written consent of Lender, until the Loan is repaid in full, Guarantor shall not (i) exercise or enforce any creditor's rights it may have against Borrower, or (ii) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including, without limitation, the commencement of, or the joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interests, collateral rights, judgments or other encumbrances on the assets of Borrower held by Guarantor. The foregoing shall in no manner vitiate or amend, nor be deemed to vitiate or amend, any prohibition in the Loan Documents against Borrower granting liens or security interests in any of its assets to any Person other than Lender.

6. Expenses. In the event that Guarantor should breach or fail to timely perform any provisions of this Guaranty, Guarantor agrees that, promptly after notice or demand, Guarantor will reimburse Lender, to the extent that such reimbursement is not made by Borrower, for all reasonable out-of-pocket expenses incurred by Lender, including, without limitation, reasonable counsel fees and disbursements, incurred by Lender in connection with the collection of the Guaranteed Obligations or any portion thereof.

7. Waivers.

(a) Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of non-payment, non-performance or non-observance, or other proof, or notice or demand with respect to this Guaranty.

(b) Subject to Section 3 above, Guarantor agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired by reason of:

(i) (A) the assertion by Lender of any rights or remedies which it may have under or with respect to any of the Note, the Loan Agreement, the Pledge or any other Loan Documents against any Person obligated thereunder; (B) any failure to file or record any of such instruments or to take or perfect any security intended to be provided thereby; (C) the release or exchange of any property or interest covered by the Loan Agreement or the Pledge or any other collateral for the Loan, or the taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations; (D) the failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any collateral, property or security, including Lender's failure to exercise, or delay in exercising, any such right or remedy or any right or remedy which Lender may have hereunder or in respect to this Guaranty; (E) the commencement of a case under the Bankruptcy Code by or against any Person obligated under the Note, the Loan Agreement, the Pledge or any other Loan Document; or (F) any payment made on the Guaranteed Obligations or any other indebtedness arising under the Note, the Loan Agreement, the Pledge or any other Loan Document, whether made by Borrower or Guarantor or any other Person, which is required to be refunded pursuant to any bankruptcy or insolvency law;

it being understood that no payment so refunded shall be considered as a payment of any portion of the Guaranteed Obligations, nor shall it have the effect of reducing the liability of Guarantor hereunder; it being further understood, that if Borrower shall have taken advantage of, or be subject to the protection of, any provision in the Bankruptcy Code, the effect of which is to prevent or delay Lender from taking any remedial action against Borrower, including the exercise of any option Lender has to declare the Guaranteed Obligations due and payable on the happening of any Default or Event of Default under the terms of the Note, the Loan Agreement, the Pledge or any other Loan Document, then the Guaranteed Obligations shall become due and payable and Lender may, as against Guarantor, declare the Guaranteed Obligations to be due and payable and enforce any or all of its rights and remedies against Guarantor provided for herein; or

(ii) (A) the Guaranteed Obligations or any part thereof exceeding the amount permitted by law, (B) the act of creating the Guaranteed Obligations or any part thereof being *ultra vires*, (C) the officers or representatives executing the Note, the Pledge, the Loan Agreement or the other Loan Documents or otherwise creating the Guaranteed Obligations acting in excess of their authority, (D) the Guaranteed Obligations violating applicable usury laws, (E) Borrower having valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially uncollectible from Borrower (other than the defense of payment or that the obligations are not as claimed), (F) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection with the Guaranteed Obligations or given to secure the repayment of the Guaranteed Obligations) being illegal, uncollectible or unenforceable, or (G) the Note, the Pledge, the Loan Agreement or any of the other Loan Documents having been forged or otherwise being irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person is found not liable on the Guaranteed Obligations or any part thereof for any reason (other than the defense of payment or that the obligations are not as claimed); or

(iii) any full or partial release of the liability of Borrower for the Guaranteed Obligations or any part thereof, or of any co-guarantors, or of any other Person now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support from any other Person, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other Persons (including Borrower) will be liable to pay or perform the Guaranteed Obligations or that Lender will look to other Persons (including Borrower) to pay or perform the Guaranteed Obligations; or

(iv) the reorganization, merger or consolidation of Borrower or Guarantor into or with any other Person; or

(v) any other action taken or omitted to be taken with respect to the Loan Documents, the Guaranteed Obligations or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will

be required to pay the Guaranteed Obligations pursuant to the terms hereof, it being the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether contemplated or uncontemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations.

(c) This Guaranty shall remain and continue in full force and effect as to any modification, extension or renewal of the Note, the Loan Agreement, the Pledge or any other Loan Document except as may be expressly set forth in the Loan Documents. Lender shall not be under a duty to protect, secure or insure any security or lien provided by the Loan Agreement or the Pledge or any other collateral, and Guarantor acknowledges that other indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done or suffered without notice to, or further consent of, Guarantor.

(d) Guarantor hereby waives the pleading of any statute of limitations as a defense to the obligation hereunder.

8. Representations and Warranties.

(a) Benefit. Guarantor is an Affiliate of Borrower, is the owner of a direct or indirect interest in Borrower and has received, or will receive, direct or indirect benefit from the making of this Guaranty with respect to the Guaranteed Obligations.

(b) Familiarity and Reliance. Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment of the Note or Guaranteed Obligations; however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty.

(c) No Representation By Lender. Neither Lender nor any other party has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty.

(d) Guarantor's Financial Condition. As of the date hereof, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor (i) is and will be solvent, (ii) has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and (iii) has and will have property and assets sufficient to satisfy and repay its obligations and liabilities, including the Guaranteed Obligations.

(e) Legality. The execution, delivery and performance by Guarantor of this Guaranty and the consummation of the transactions contemplated hereunder do not and will not contravene or conflict with any law, statute or regulation whatsoever to which Guarantor is subject, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the breach of, any indenture, mortgage, charge, lien, contract, agreement or other instrument to which Guarantor is a party or which may be applicable to Guarantor. This Guaranty is a legal and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

(f) Survival. All representations and warranties made by Guarantor herein shall survive the execution hereof.

9. Financial Covenants; Transfers.

(a) Financial and Transfer Covenants. Guarantor hereby covenants and agrees that:

(i) for any period of time during which the Guarantor Net Worth Requirements are imposed upon Guarantor pursuant to Sections 8.1 through 8.7, inclusive, of the Loan Agreement (such sections, the "Indebtedness and Transfer Provisions"), Guarantor shall maintain a Net Worth of not less than the Minimum Net Worth, and promptly upon the Guarantor Net Worth Requirements being so imposed, Guarantor shall confirm in writing to Lender that Guarantor's obligations under this clause (i) have been triggered and are in full force and effect as ongoing covenants of Guarantor for so long as the Guarantor Net Worth Requirements are so imposed on Guarantor;

(ii) unless and until the Guarantor Net Worth Requirements are imposed upon Guarantor or the Qualifying Replacement Guarantor, as applicable, pursuant to Section 8.5 of the Loan Agreement, it shall not cause, suffer or permit any distribution or transfer of any of its assets to any Person, including its direct or indirect parent entities or their Affiliates unless as of the date of such distribution the Master Lease Guarantor Total Leverage Ratio is less than 3.50:1.00 (as certified by an Officer's Certificate and certificate of Guarantor provided to Lender, together with the related background financial statements and calculations in reasonable detail, delivered to Lender within five Business Days after such distribution or transfer); provided, however, that the foregoing restrictions shall not apply to the following distributions and transfers, which shall be expressly permitted pursuant to this Section 9(a)(ii):

(1) following a Qualifying IPO of an Upper Tier Entity (other than Guarantor), distributions of assets to such Upper Tier Entity for payment by such Upper Tier Entity of reasonable out-of-pocket costs and expenses incurred by such Upper Tier Entity in connection with consummating such Qualifying IPO and ongoing compliance by such Upper Tier Entity with federal and state securities laws and regulations, SEC rules and regulations and the Sarbanes–Oxley Act of 2002 (as amended from time to time and any successor statute thereto);

(2) distributions of assets to Holdings for payment by Holdings of its franchise taxes and for payment by Holdings of Income Taxes that are attributable to the income of Holdings to the extent such income is attributable to the operations of Holdings, Guarantor and/or its direct or indirect Subsidiaries (but not any Subsidiary of Holdings that is not also a Subsidiary of Guarantor);

(3) distributions of assets to a direct or indirect parent of Guarantor for payment of the operating expenses (including administrative, legal, accounting and similar expenses provided by third parties) incurred by such parent in the ordinary course of business to the extent such operating expenses are directly related to the ownership of the direct or indirect Equity Interests in Guarantor and/or to the operations of Guarantor and/or its direct or indirect Subsidiaries;

(4) transfers of assets to Guarantor's direct or indirect Subsidiaries; and

(5) distribution of the proceeds of the Guarantor Subsequent Intercompany Loans to its parent entity.

(iii) Guarantor shall continue to own, directly or indirectly, 100% of the Equity Interests in Master Lease Guarantor, unless such covenant is expressly terminated pursuant to the Indebtedness and Transfer Provisions as a result of the imposition of the Guarantor Net Worth Requirements;

(iv) Guarantor shall not incur any Debt other than the Permitted Debt applicable to Guarantor; and

(v) Guarantor shall otherwise comply with the Indebtedness and Transfer Provisions applicable to Guarantor.

(b) Financial Statements. Guarantor shall deliver to Lender:

(i) within 120 days after the end of each fiscal year of Guarantor, a complete copy of Guarantor's audited annual financial statements certified by an Independent Accountant, prepared in accordance with GAAP and the requirements of Regulation AB, including statements of income and expense and cash flow and a balance sheet for Guarantor, together with a certificate of the chief financial officer of Guarantor (A) during any period for which the Guarantor Net Worth Requirements are applicable to Guarantor, setting forth in reasonable detail Guarantor's Net Worth as of the end of such prior calendar year and based on such annual financial statements, and (B) certifying to the best of such chief financial officer's knowledge, that such annual financial statements fairly present the financial condition and results of the operations of Guarantor;

(ii) within 60 days after the end of each fiscal quarter of Guarantor other than the last quarter of each fiscal year, financial statements (including a balance sheet as of the end of such fiscal quarter and a statement of income and expense for such fiscal quarter) certified by the chief financial officer of Guarantor and in form, content, level of detail and scope reasonably satisfactory to Lender, together with a certificate of the chief financial officer of Guarantor (A) during any period for which the Guarantor Net Worth Requirements are applicable to Guarantor, setting forth in reasonable detail Guarantor's Net Worth as of the end of such prior calendar quarter and based on the foregoing quarterly financial statements, and (B) certifying to the best of such chief financial officer's knowledge, that such quarterly financial statements fairly present the financial condition and results of the operations of Guarantor in a manner consistent with GAAP and the requirements of Regulation AB; and

(iii) promptly after written request by Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to Guarantor.

10. Miscellaneous.

(a) MARSHALLING. GUARANTOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS GUARANTY AGAINST BORROWER OR TO PROCEED AGAINST GUARANTOR IN ANY PARTICULAR ORDER. GUARANTOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE FIFTEEN (15) DAYS AFTER WRITTEN DEMAND. EXCEPT AS PERMITTED PURSUANT TO SECTION 5 HEREOF, GUARANTOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO GUARANTOR.

(b) Joint and Several Obligation. If Guarantor consists of more than one person or entity, each shall be jointly and severally liable to perform the obligations of Guarantor hereunder. Any one of Borrower or one or more parties constituting Guarantor or any other party liable upon or in respect of this Guaranty or the Loan may be released without affecting the liability of any party not so released.

(c) Further Assurances. Guarantor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Guaranty, to protect and further the validity and enforceability of this Guaranty or otherwise carry out the purposes of this Guaranty.

(d) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 10(d)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance - Servicing 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Guarantor:	OSI Holdco I, Inc. 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491

With a copy to: Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Guaranty shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(e) Entire Agreement. This Guaranty constitutes the entire and final agreement between Guarantor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Guarantor and Lender.

(f) No Waiver. No waiver of any term or condition of this Guaranty, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Guaranty or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(g) Successors and Assigns. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Guarantor shall have the right to assign or transfer its rights or obligations under this Guaranty without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(h) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Guaranty.

(i) Counterparts. This Guaranty may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Guaranty.

(j) Severability. The provisions of this Guaranty are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Guaranty.

(k) GOVERNING LAW; JURISDICTION; SERVICE OF PROCESS. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK. EACH OF THE LENDER AND GUARANTOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS GUARANTY MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON GUARANTOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS GUARANTY. EACH OF LENDER AND GUARANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(l) JURY TRIAL WAIVER. EACH OF LENDER AND GUARANTOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF GUARANTOR OR LENDER WITH RESPECT TO THIS GUARANTY (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH OF LENDER AND GUARANTOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. EACH OF LENDER AND GUARANTOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(m) Counterclaims and Other Actions. Guarantor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender in connection with this Guaranty, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Guaranty and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

(n) Cooperation. Guarantor acknowledges that Lender and its successors and assigns may (i) sell this Guaranty, the Note and the other Loan Documents to one or more investors as a whole loan, (ii) participate the Loan secured by this Guaranty to one or more investors, or (iii) otherwise sell the Loan or one or more interests therein to investors (the

transactions referred to in clauses (i) through (iii) are hereinafter each referred to as " Secondary Market Transaction"). Subject to the terms, conditions and limitations set forth in the Loan Agreement, Guarantor shall cooperate with Lender in effecting any such Secondary Market Transaction.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty of Recourse Obligations as of the date first set forth above.

OSI HOLDCO I, INC.,
a Delaware corporation

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.24

GUARANTY OF RECOURSE OBLIGATIONS
(Second Mezzanine)

This GUARANTY OF RECOURSE OBLIGATIONS (Second Mezzanine) (this "Guaranty"), is made as of March 27, 2012, by OSI HOLDCO I, INC., a Delaware corporation, ("Guarantor"), having an office at 2202 North WestShore Blvd., Suite 470C, Tampa, Florida 33607, to and for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, New York, New York 10005, and BANK OF AMERICA, N.A., a national banking association, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 (each, together with their respective successors and assigns, a " Co- Lender", and collectively, "Lender").

RECITALS:

WHEREAS, New Private Restaurant Properties, LLC, a Delaware limited liability company ("Mortgage Borrower") is the owner of a portfolio of restaurant properties;

WHEREAS, New PRP Mezz 1, LLC, a Delaware limited liability company (" First Mezzanine Borrower"), is the owner of 100% of the membership interests in Mortgage Borrower;

WHEREAS, New PRP Mezz 2, LLC, a Delaware limited liability company (" Borrower"), is the owner of 100% of the membership interests in First Mezzanine Borrower;

WHEREAS, on the date hereof, in accordance with the terms of that certain Mezzanine Loan and Security Agreement (Second Mezzanine), dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the " Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the principal amount of $87,600,000 (the " Loan"), which Loan is evidenced by the Note (as defined in the Loan Agreement), made by Borrower in favor of Lender and secured by, the Pledge (as defined in the Loan Agreement) and by the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Guarantor is the owner of a direct or indirect beneficial interest in Borrower and will derive substantial benefit from the Loan;

WHEREAS, as a condition to making the Loan, Lender has required Guarantor to deliver this Guaranty for the benefit of Lender; and

WHEREAS, the forgoing recitals are intended to form an integral part of this Guaranty.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars ($10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Definitions. Capitalized terms used herein and not defined herein shall have the meaning provided in the Loan Agreement, including by reference, for terms not defined in the Loan Agreement, in the Mortgage Loan Agreement.

2. Guaranty.

(a) Subject to Section 3 below, Guarantor hereby absolutely and unconditionally guarantees to Lender the prompt and unconditional payment of all obligations and liabilities of Borrower for which Borrower shall be personally liable pursuant to Section 18.1 of the Loan Agreement, when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise (collectively, the " Guaranteed Obligations").

(b) Notwithstanding anything to the contrary in this Guaranty or in any of the other Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Obligations or to require that all collateral shall continue to secure all of the Obligations owing to Lender in accordance with the Loan Documents.

3. Limitation on Liability of Guarantor.

(a) Notwithstanding anything to the contrary herein, in the event of:

(i) any foreclosure (or a transfer in lieu of foreclosure) by a Mezzanine Lender that is not Borrower or any Affiliate of Borrower, of the direct Equity Interests in Borrower, any SPE Component Entity or any other Mezzanine Borrower pledged as collateral for a Mezzanine Loan pursuant to the Mezzanine Loan Documents (any such foreclosure or transfer-in-lieu thereof, a " Mezzanine Foreclosure Divestment"), with the result that neither Guarantor nor any Affiliate of Guarantor (excluding, however, any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor) shall hold any direct or indirect Equity Interests in, or Control, Borrower (Borrower in such case may be referred to as "Divested Borrower"); or

(ii) any foreclosure (whether judicially or non-judicially by private sale or trustee's sale) or deed in lieu of foreclosure or similar transfer under any Security Instrument (any such foreclosure, foreclosure sale or deed in lieu thereof, a " Foreclosure Divestment"), with the result that neither Borrower nor any Affiliate of Borrower shall hold any direct or indirect interest in, or the power to direct the management of, any Individual Property thereby foreclosed or transferred, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property, a "Divested Property"); or

(iii) the appointment of a receiver by a court of competent jurisdiction with respect to an Individual Property (any such appointment, a "Receivership Event", and the period during which such Individual Property remains under a receivership, the " Receivership Period"), with the result that neither Borrower nor any Affiliate of Borrower shall have any possession of, or hold the power to direct the management of, such Individual Property that is subject to such Receivership Event during the Receivership Period, excluding Guarantor's, HoldCo's or any Intermediate HoldCo Entity's direct or indirect Equity Interests in Master Lessee (each such Individual Property subject to a Receivership Event, a " Receivership Property"),

then, in such cases, Guarantor shall not have any liability hereunder for any Guaranteed Obligations (A) to the extent arising from: (1) any action taken by any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor, (2) any circumstance, condition, action or event with respect to the Property or any Loan Party first occurring after the date of such Mezzanine Foreclosure Divestment, (3) any action taken by any successor owner of such Divested Property, (4) any circumstance, condition, action or event with respect to such Divested Property first occurring after the date of such Foreclosure Divestment, (5) any action taken by any receiver for such Receivership Property during the Receivership Period, or (6) any circumstance, condition, action or event with respect to such Receivership Property first occurring after the occurrence of such Receivership Event and during the continuance of such Receivership Period; and (B) not caused by Borrower or any Affiliate of Borrower (excluding any Loan Party who as a result of such Mezzanine Foreclosure Divestment is no longer Controlled by Guarantor or any Affiliate of Guarantor); provided that Guarantor shall remain liable hereunder for any Guaranteed Obligations to the extent arising from any circumstance, condition, action or event occurring (x) with respect such Divested Borrower, prior to the date of such Mezzanine Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Mezzanine Foreclosure Divestment, (y) with respect to such Divested Property, prior to the date of such Foreclosure Divestment, even to the extent the applicable liability, loss, cost, or expense does not occur, or the occurrence of the applicable circumstance, condition, action or event is not discovered, until after the date of such Foreclosure Divestment, and (z) with respect to such Receivership Property, prior to such Receivership Event or after the expiration of such Receivership Period, even to the extent the applicable liability, loss, cost, or expense occurs, or the occurrence of the applicable circumstance, condition, action or event is first discovered, during such Receivership Period.

(b) In the event that an "Event of Default" under a Mezzanine Loan shall exist with respect to a Mezzanine Loan and the related Mezzanine Lender is not Borrower or an Affiliate of Borrower and exercises, pursuant to the exercise of remedies under the Mezzanine Loan Documents, direct voting Control, by power of attorney or other exercise of voting power with respect to the Equity Interests of the applicable Borrower, SPE Component Entity or Mezzanine Borrower pledged to such Mezzanine Lender as collateral for its Mezzanine Loan under the related Mezzanine Loan Documents, of such Equity Interests in the applicable Borrower, SPE Component Entity or Mezzanine Borrower so pledged as collateral for such Mezzanine Loan (the " Direct Control Remedies", and such Mezzanine Lender exercising such Direct Control Remedies, the " Controlling Mezzanine Lender"), Guarantor shall not have liability hereunder for the actions that such Controlling Mezzanine Lender, in the exercise of its Direct Control Remedies, causes Borrower, any SPE Component Entity or any Mezzanine Borrower to take ("Mezzanine Lender Controlled Actions") if such Mezzanine Lender Controlled Actions are taken without inducement, solicitation and/or consent from, or in collusion with, Borrower or any Affiliate of Borrower (other than Loan Parties to the extent Controlled by the Controlling Mezzanine Lender in the exercise of its Direct Control Remedies).

4. Nature of Guaranty.

(a) Guaranty of Payment. This Guaranty is of payment and not merely a guaranty of collection and upon any failure of Borrower to pay the Guaranteed Obligations, Lender may, at its option, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount of the liability to pay the Guaranteed Obligations hereunder or any portion thereof, without proceeding against Borrower or any other Person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any of the collateral for the Loan.

(b) Continuing Guaranty. This is a continuing guaranty and the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Note, the Loan Agreement, the Pledge or any other Loan Document, a true copy of each of said documents Guarantor hereby acknowledges having received and reviewed. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor.

(c) Guaranteed Obligations Not Reduced by Offset. The Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender hereunder shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Borrower or any other party against Lender or against payment of the Guaranteed Obligations (other than the defense of payment or that the obligations are not as claimed), whether such offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.

(d) Payment by Guarantor. If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at demand, maturity, acceleration or otherwise, Guarantor shall, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth herein. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions hereof.

(e) No Duty to Pursue Others. It shall not be necessary for Lender (and Guarantor hereby waives any rights which Guarantor may have to require Lender), in order to enforce the obligations of Guarantor hereunder, first to (i) institute suit or exhaust its remedies against Borrower or others liable on the Loan or the Guaranteed Obligations or any other Person, (ii) enforce Lender's rights against any collateral which shall ever have been given to secure the Loan, (iii) enforce Lender's rights against any other guarantors of the Guaranteed Obligations, (iv) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, (v) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Loan, or (vi) resort to any other means of obtaining payment of the Guaranteed Obligations. Lender shall not be required to mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations.

5. Subordination.

(a) Guarantor Claims Subordinated and Deferred. Any indebtedness and liabilities of Borrower to Guarantor now or hereafter existing, including without limitation, any rights to subrogation, contribution, indemnification or any other form of reimbursement which Guarantor may have as a result of any payment by Guarantor under this Guaranty, together with any interest thereon (collectively, the "Guarantor Claims"), shall be, and such Guarantor Claims are hereby, deferred, postponed and subordinated to the prior payment in full of the Obligations. Until payment in full of the Obligations, including interest accruing on the Note after the commencement of a proceeding by or against Borrower under the Bankruptcy Code which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally, Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right to file proofs of claim and to vote thereon in connection with any such proceeding under the Bankruptcy Code and the right to vote on any plan of reorganization.

(b) Claims in Bankruptcy. In the event of any receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceeding involving Guarantor as a debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims. Guarantor hereby assigns such dividends and payments to Lender. Should Lender receive, for application against the Guaranteed Obligations, any dividend or payment which is otherwise payable to Guarantor and which, as between Borrower and Guarantor, shall constitute a credit against the Guarantor Claims, then, upon payment to Lender in full of the Obligations and the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Lender to the extent that such payments to Lender on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that proportion of the Guaranteed Obligations which would have been unpaid if Lender had not received dividends or payments upon the Guarantor Claims.

(c) Payments Held in Trust. Notwithstanding anything to the contrary contained in this Guaranty, in the event that Guarantor should receive any funds, payments, claims and/or distributions which are prohibited by this Guaranty, Guarantor agrees to hold in trust for Lender until the Loan is repaid in full an amount equal to the amount of all funds, payments, claims and/or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims and/or distributions so received except to pay such funds, payments, claims and/or distributions promptly to Lender, and Guarantor covenants promptly to pay the same to Lender.

(d) Liens Subordinate. Guarantor agrees that any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests,

judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or Lender presently exist or are hereafter created or attach. Without the prior written consent of Lender, until the Loan is repaid in full, Guarantor shall not (i) exercise or enforce any creditor's rights it may have against Borrower, or (ii) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including, without limitation, the commencement of, or the joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interests, collateral rights, judgments or other encumbrances on the assets of Borrower held by Guarantor. The foregoing shall in no manner vitiate or amend, nor be deemed to vitiate or amend, any prohibition in the Loan Documents against Borrower granting liens or security interests in any of its assets to any Person other than Lender.

6. Expenses. In the event that Guarantor should breach or fail to timely perform any provisions of this Guaranty, Guarantor agrees that, promptly after notice or demand, Guarantor will reimburse Lender, to the extent that such reimbursement is not made by Borrower, for all reasonable out-of-pocket expenses incurred by Lender, including, without limitation, reasonable counsel fees and disbursements, incurred by Lender in connection with the collection of the Guaranteed Obligations or any portion thereof.

7. Waivers.

(a) Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of non-payment, non-performance or non-observance, or other proof, or notice or demand with respect to this Guaranty.

(b) Subject to Section 3 above, Guarantor agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired by reason of:

(i) (A) the assertion by Lender of any rights or remedies which it may have under or with respect to any of the Note, the Loan Agreement, the Pledge or any other Loan Documents against any Person obligated thereunder; (B) any failure to file or record any of such instruments or to take or perfect any security intended to be provided thereby; (C) the release or exchange of any property or interest covered by the Loan Agreement or the Pledge or any other collateral for the Loan, or the taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations; (D) the failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any collateral, property or security, including Lender's failure to exercise, or delay in exercising, any such right or remedy or any right or remedy which Lender may have hereunder or in respect to this Guaranty; (E) the commencement of a case under the Bankruptcy Code by or against any Person obligated under the Note, the Loan Agreement, the Pledge or any other Loan Document; or (F) any payment made on the Guaranteed Obligations or any other indebtedness arising under the Note, the Loan Agreement, the Pledge or any other Loan Document, whether made by Borrower or Guarantor or any other Person, which is required to be refunded pursuant to any bankruptcy or insolvency law;

it being understood that no payment so refunded shall be considered as a payment of any portion of the Guaranteed Obligations, nor shall it have the effect of reducing the liability of Guarantor hereunder; it being further understood, that if Borrower shall have taken advantage of, or be subject to the protection of, any provision in the Bankruptcy Code, the effect of which is to prevent or delay Lender from taking any remedial action against Borrower, including the exercise of any option Lender has to declare the Guaranteed Obligations due and payable on the happening of any Default or Event of Default under the terms of the Note, the Loan Agreement, the Pledge or any other Loan Document, then the Guaranteed Obligations shall become due and payable and Lender may, as against Guarantor, declare the Guaranteed Obligations to be due and payable and enforce any or all of its rights and remedies against Guarantor provided for herein; or

(ii) (A) the Guaranteed Obligations or any part thereof exceeding the amount permitted by law, (B) the act of creating the Guaranteed Obligations or any part thereof being *ultra vires*, (C) the officers or representatives executing the Note, the Pledge, the Loan Agreement or the other Loan Documents or otherwise creating the Guaranteed Obligations acting in excess of their authority, (D) the Guaranteed Obligations violating applicable usury laws, (E) Borrower having valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially uncollectible from Borrower (other than the defense of payment or that the obligations are not as claimed), (F) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection with the Guaranteed Obligations or given to secure the repayment of the Guaranteed Obligations) being illegal, uncollectible or unenforceable, or (G) the Note, the Pledge, the Loan Agreement or any of the other Loan Documents having been forged or otherwise being irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person is found not liable on the Guaranteed Obligations or any part thereof for any reason (other than the defense of payment or that the obligations are not as claimed); or

(iii) any full or partial release of the liability of Borrower for the Guaranteed Obligations or any part thereof, or of any co-guarantors, or of any other Person now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support from any other Person, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other Persons (including Borrower) will be liable to pay or perform the Guaranteed Obligations or that Lender will look to other Persons (including Borrower) to pay or perform the Guaranteed Obligations; or

(iv) the reorganization, merger or consolidation of Borrower or Guarantor into or with any other Person; or

(v) any other action taken or omitted to be taken with respect to the Loan Documents, the Guaranteed Obligations or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will

be required to pay the Guaranteed Obligations pursuant to the terms hereof, it being the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether contemplated or uncontemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations.

(c) This Guaranty shall remain and continue in full force and effect as to any modification, extension or renewal of the Note, the Loan Agreement, the Pledge or any other Loan Document except as may be expressly set forth in the Loan Documents. Lender shall not be under a duty to protect, secure or insure any security or lien provided by the Loan Agreement or the Pledge or any other collateral, and Guarantor acknowledges that other indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done or suffered without notice to, or further consent of, Guarantor.

(d) Guarantor hereby waives the pleading of any statute of limitations as a defense to the obligation hereunder.

8. Representations and Warranties.

(a) Benefit. Guarantor is an Affiliate of Borrower, is the owner of a direct or indirect interest in Borrower and has received, or will receive, direct or indirect benefit from the making of this Guaranty with respect to the Guaranteed Obligations.

(b) Familiarity and Reliance. Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment of the Note or Guaranteed Obligations; however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty.

(c) No Representation By Lender. Neither Lender nor any other party has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty.

(d) Guarantor's Financial Condition. As of the date hereof, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor (i) is and will be solvent, (ii) has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and (iii) has and will have property and assets sufficient to satisfy and repay its obligations and liabilities, including the Guaranteed Obligations.

(e) Legality. The execution, delivery and performance by Guarantor of this Guaranty and the consummation of the transactions contemplated hereunder do not and will not contravene or conflict with any law, statute or regulation whatsoever to which Guarantor is subject, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the breach of, any indenture, mortgage, charge, lien, contract, agreement or other instrument to which Guarantor is a party or which may be applicable to Guarantor. This Guaranty is a legal and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

(f) Survival. All representations and warranties made by Guarantor herein shall survive the execution hereof.

9. Financial Covenants; Transfers.

(a) Financial and Transfer Covenants. Guarantor hereby covenants and agrees that:

(i) for any period of time during which the Guarantor Net Worth Requirements are imposed upon Guarantor pursuant to Sections 8.1 through 8.7, inclusive, of the Loan Agreement (such sections, the "Indebtedness and Transfer Provisions"), Guarantor shall maintain a Net Worth of not less than the Minimum Net Worth, and promptly upon the Guarantor Net Worth Requirements being so imposed, Guarantor shall confirm in writing to Lender that Guarantor's obligations under this clause (i) have been triggered and are in full force and effect as ongoing covenants of Guarantor for so long as the Guarantor Net Worth Requirements are so imposed on Guarantor;

(ii) unless and until the Guarantor Net Worth Requirements are imposed upon Guarantor or the Qualifying Replacement Guarantor, as applicable, pursuant to Section 8.5 of the Loan Agreement, it shall not cause, suffer or permit any distribution or transfer of any of its assets to any Person, including its direct or indirect parent entities or their Affiliates unless as of the date of such distribution the Master Lease Guarantor Total Leverage Ratio is less than 3.50:1.00 (as certified by an Officer's Certificate and certificate of Guarantor provided to Lender, together with the related background financial statements and calculations in reasonable detail, delivered to Lender within five Business Days after such distribution or transfer); provided, however, that the foregoing restrictions shall not apply to the following distributions and transfers, which shall be expressly permitted pursuant to this Section 9(a)(ii):

(1) following a Qualifying IPO of an Upper Tier Entity (other than Guarantor), distributions of assets to such Upper Tier Entity for payment by such Upper Tier Entity of reasonable out-of-pocket costs and expenses incurred by such Upper Tier Entity in connection with consummating such Qualifying IPO and ongoing compliance by such Upper Tier Entity with federal and state securities laws and regulations, SEC rules and regulations and the Sarbanes–Oxley Act of 2002 (as amended from time to time and any successor statute thereto);

(2) distributions of assets to Holdings for payment by Holdings of its franchise taxes and for payment by Holdings of Income Taxes that are attributable to the income of Holdings to the extent such income is attributable to the operations of Holdings, Guarantor and/or its direct or indirect Subsidiaries (but not any Subsidiary of Holdings that is not also a Subsidiary of Guarantor);

(3) distributions of assets to a direct or indirect parent of Guarantor for payment of the operating expenses (including administrative, legal, accounting and similar expenses provided by third parties) incurred by such parent in the ordinary course of business to the extent such operating expenses are directly related to the ownership of the direct or indirect Equity Interests in Guarantor and/or to the operations of Guarantor and/or its direct or indirect Subsidiaries;

(4) transfers of assets to Guarantor's direct or indirect Subsidiaries; and

(5) distribution of the proceeds of the Guarantor Subsequent Intercompany Loans to its parent entity.

(iii) Guarantor shall continue to own, directly or indirectly, 100% of the Equity Interests in Master Lease Guarantor, unless such covenant is expressly terminated pursuant to the Indebtedness and Transfer Provisions as a result of the imposition of the Guarantor Net Worth Requirements;

(iv) Guarantor shall not incur any Debt other than the Permitted Debt applicable to Guarantor; and

(v) Guarantor shall otherwise comply with the Indebtedness and Transfer Provisions applicable to Guarantor.

(b) Financial Statements. Guarantor shall deliver to Lender:

(i) within 120 days after the end of each fiscal year of Guarantor, a complete copy of Guarantor's audited annual financial statements certified by an Independent Accountant, prepared in accordance with GAAP and the requirements of Regulation AB, including statements of income and expense and cash flow and a balance sheet for Guarantor, together with a certificate of the chief financial officer of Guarantor (A) during any period for which the Guarantor Net Worth Requirements are applicable to Guarantor, setting forth in reasonable detail Guarantor's Net Worth as of the end of such prior calendar year and based on such annual financial statements, and (B) certifying to the best of such chief financial officer's knowledge, that such annual financial statements fairly present the financial condition and results of the operations of Guarantor;

(ii) within 60 days after the end of each fiscal quarter of Guarantor other than the last quarter of each fiscal year, financial statements (including a balance sheet as of the end of such fiscal quarter and a statement of income and expense for such fiscal quarter) certified by the chief financial officer of Guarantor and in form, content, level of detail and scope reasonably satisfactory to Lender, together with a certificate of the chief financial officer of Guarantor (A) during any period for which the Guarantor Net Worth Requirements are applicable to Guarantor, setting forth in reasonable detail Guarantor's Net Worth as of the end of such prior calendar quarter and based on the foregoing quarterly financial statements, and (B) certifying to the best of such chief financial officer's knowledge, that such quarterly financial statements fairly present the financial condition and results of the operations of Guarantor in a manner consistent with GAAP and the requirements of Regulation AB; and

(iii) promptly after written request by Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to Guarantor.

10. Miscellaneous.

(a) MARSHALLING. GUARANTOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALLING OF BORROWER'S ASSETS OR TO CAUSE LENDER TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS GUARANTY AGAINST BORROWER OR TO PROCEED AGAINST GUARANTOR IN ANY PARTICULAR ORDER. GUARANTOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE FIFTEEN (15) DAYS AFTER WRITTEN DEMAND. EXCEPT AS PERMITTED PURSUANT TO SECTION 5 HEREOF, GUARANTOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO GUARANTOR.

(b) Joint and Several Obligation. If Guarantor consists of more than one person or entity, each shall be jointly and severally liable to perform the obligations of Guarantor hereunder. Any one of Borrower or one or more parties constituting Guarantor or any other party liable upon or in respect of this Guaranty or the Loan may be released without affecting the liability of any party not so released.

(c) Further Assurances. Guarantor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Guaranty, to protect and further the validity and enforceability of this Guaranty or otherwise carry out the purposes of this Guaranty.

(d) Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 10(d)):

If to Lender:	Bank of America, N.A. Real Estate Structured Finance - Servicing 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Facsimile No.: (704) 317-4501 Confirmation No: (866) 531-0957
and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
With a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles Schrank, Esq. Telecopy No.: (312) 853-7036 Confirmation No.: (312) 853-7000
If to Guarantor:	OSI Holdco I, Inc. 2202 North WestShore Blvd., Suite 470C Tampa, Florida 33607 Attention: Chief Financial Officer and Vice President Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Mr. Dave Humphrey Telecopy No.: (617) 516-2124 Confirmation No.: (617) 516-2125
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199 Attention: Richard Gordet, Esq. Telecopy No.: 617-235-0480 or 617-951-7050 Confirmation No.: 617-951-7491

With a copy to: Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

All notices, elections, requests and demands under this Guaranty shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(e) Entire Agreement. This Guaranty constitutes the entire and final agreement between Guarantor and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Guarantor and Lender.

(f) No Waiver. No waiver of any term or condition of this Guaranty, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No delay on Lender's part in exercising any right, power or privilege under this Guaranty or any other Loan Document shall operate as a waiver of any privilege, power or right hereunder.

(g) Successors and Assigns. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Lender and its successors and permitted assigns. No Guarantor shall have the right to assign or transfer its rights or obligations under this Guaranty without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

(h) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Guaranty.

(i) Counterparts. This Guaranty may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Guaranty.

(j) Severability. The provisions of this Guaranty are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Guaranty.

(k) GOVERNING LAW; JURISDICTION; SERVICE OF PROCESS. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK. EACH OF THE LENDER AND GUARANTOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS GUARANTY MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON GUARANTOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS GUARANTY. EACH OF LENDER AND GUARANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(l) JURY TRIAL WAIVER. EACH OF LENDER AND GUARANTOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF GUARANTOR OR LENDER WITH RESPECT TO THIS GUARANTY (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH OF LENDER AND GUARANTOR HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. EACH OF LENDER AND GUARANTOR ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(m) Counterclaims and Other Actions. Guarantor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender in connection with this Guaranty, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Guaranty and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

(n) Cooperation. Guarantor acknowledges that Lender and its successors and assigns may (i) sell this Guaranty, the Note and the other Loan Documents to one or more investors as a whole loan, (ii) participate the Loan secured by this Guaranty to one or more investors, or (iii) otherwise sell the Loan or one or more interests therein to investors (the

transactions referred to in clauses (i) through (iii) are hereinafter each referred to as " Secondary Market Transaction"). Subject to the terms, conditions and limitations set forth in the Loan Agreement, Guarantor shall cooperate with Lender in effecting any such Secondary Market Transaction.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty of Recourse Obligations as of the date first set forth above.

OSI HOLDCO I, INC.,
a Delaware corporation

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.25

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(New Private Restaurant Properties, LLC)

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**"), is executed as of March 27, 2012, to be effective as of March 27, 2012 by and between BANK OF AMERICA, N.A., a national banking association, having a principal place of business at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255, and GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having a principal place of business at 60 Wall Street, 10th Floor, New York, New York 10005 (hereinafter referred to together, collectively with their respective successors and assigns, as "**Lender**"), PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company, having a principal place of business and chief executive office at 2202 North Westshore Boulevard, Suite 500, Tampa, FL 33607 (hereinafter referred to as " **Master Lessee**"), and NEW PRIVATE RESTAURANT PROPERTIES, LLC, a Delaware limited liability company having a principal place of business and chief executive office at 2202 North Westshore Boulevard, Suite 470C, Tampa, FL 33607 (hereinafter referred to as "**Master Lessor**"), with the acknowledgment, consent and limited agreement of OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("**Guarantor**").

RECITALS:

WHEREAS, by that certain Amended and Restated Master Lease Agreement (as the same may be further amended or modified from time to time in accordance with the terms thereof, the "**Lease**"), of even date herewith, between Master Lessor, as master lessor, and Master Lessee, as master lessee, Master Lessor has agreed to lease to Master Lessee the parcels of land listed and generally described on Schedule 2 as attached hereto (Schedule 1 being intentionally omitted) and more particularly described in Exhibit A attached hereto (each of said Schedule 2 and said Exhibit A being hereby made a part hereof, *provided that* a counterpart original of this instrument may be recorded in the official records of any or all of the counties, parishes, or independent cities in which said parcels of land are located with incomplete versions of Exhibit A pursuant to Paragraph 30 hereof), in each case with all improvements located thereon (each an "**Leased Property**" and, collectively, the "**Leased Properties**");

WHEREAS, simultaneously with the execution and delivery hereof, Lender and Master Lessor are entering into that certain Loan and Security Agreement, of even date herewith (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the " **Loan Agreement**"), pursuant to which Lender is making a loan to Master Lessor (the " **Loan**"), which Loan will be secured by, among other things, one or more instruments, each titled either "Mortgage", "Mortgage, Deed to Secure Debt, and/or Deed of Trust with Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Subleases, Rents, and Security Deposits (Multistate Form)" or "Mortgage, Deed to Secure Debt, and/or Deed of Trust with Security Agreement, Financing Statement, Fixture Filing and Assignment of Master Lease, Subleases, Rents, and Security Deposits (Multistate Form)" and each of even date herewith, from Master Lessor to or for the benefit of Lender, collectively encumbering the Leased Properties (such instruments collectively, along with all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and additions thereto, the "**Security Instruments**", each a "**Security Instrument**"); and

WHEREAS, Lender, Master Lessee and Master Lessor desire to confirm their understandings and agreements with respect to the Lease and the Security Instruments, as expressed herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender, Master Lessee and Master Lessor hereby agree and covenant as follows:

1. Defined terms and rules of construction set forth in Paragraph 21 hereof shall apply to the interpretation of this Agreement. Capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

2. The Lease, and all of the terms, covenants, provisions and conditions thereof, along with any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Leased Properties, or any portion thereof, is, shall be, and shall at all times remain and continue to be subject and subordinate in all respects to the liens, terms, covenants, provisions and conditions of the Security Instruments and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Master Lessee shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

3. A. So long as no default by Master Lessee in the payment of rent or other amounts due under the Lease, or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Master Lessee's part to be performed or observed has occurred and has continued to exist for such period of time (after the giving of any notice required to be given under the Lease) as would entitle Master Lessor to terminate the Lease (hereinafter, an "**Event of Default**") and the Lease is in full force and effect: (i) Master Lessee's possession of the Leased Properties and Master Lessee's leasehold interest, rights and privileges under the Lease, including any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished, disturbed or interfered with by Lender, and Master Lessee's occupancy of the Leased Properties shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof; and (ii) the Lease, and Master Lessee's rights thereunder, will remain in full force and effect following (and Master Lessee's use and possession of the Leased Properties will not be disturbed as a result of) foreclosure under any Security Instrument by any non-judicial foreclosure or trustee's sale of the Leased Properties or any portion thereof, and Lender will not join Master Lessee as a party defendant in any action or proceeding to foreclose under any Security Instrument or to enforce any rights or remedies of Lender under any Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Master Lessee's interest and estate under the Lease. Notwithstanding the foregoing provisions of this Subparagraph 3A, if it would be procedurally disadvantageous for Lender not to name or join Master Lessee as a party in a foreclosure proceeding with respect to any Security Instrument, or if required by law, Lender may so name or join Master Lessee without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Master Lessee under this Agreement.

(A) To the fullest extent permitted by applicable law, upon the occurrence of an Event of Default on the part of Master Lessee under the Lease, Lender shall have the absolute and unconditional right to separately or simultaneously exercise either or both of the following options with respect to all or any portion of the Leased Properties in whatever order or combination of such options, lots, or separate parcels as Lender, in its sole discretion, may elect: (i) terminate the Lease, or cause Master Lessor to terminate the Lease at Lender's direction, with respect to all or any portion of the Leased Properties as Lender may specify, by providing written notice thereof to Master Lessee, at which time Master Lessee shall immediately pay directly to Lender all sums payable under the Lease (with respect to the specified portion of the Leased Properties) to and including the Termination Date and immediately vacate the specified portion of the Leased Properties on the Termination Date, and (ii) exercise and enforce or cause Master Lessor to exercise and enforce any rights of Master Lessor under the Lease. As used herein, "**Termination Date**" means the date specified in a written notice from Lender to Master Lessee that Lender has elected to terminate the Lease with respect to all or any portion of the Leased Properties.

4. Master Lessee agrees to make (a) all payments of Base Rent, and (b) all payments of Additional Charges if and to the extent required to be paid by Master Lessee to Master Lessor under the terms of the Master Lease directly to the Holding Account at all times during the term of the Loan.

5. In addition, if Lender (or its nominee or designee) shall succeed to the rights of Master Lessor under the Lease, whether through possession or foreclosure action, delivery of a deed, or otherwise, or if another Person purchases the Leased Properties or any portion thereof upon or following foreclosure under any Security Instrument or in connection with any bankruptcy case commenced by or against Master Lessor (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each hereinafter referred to as a " **Successor Master Lessor**"), then, Master Lessee shall attorn to and recognize such Successor Master Lessor as Master Lessee's master lessor under the Lease. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between such Successor Master Lessor and Master Lessee upon all terms, conditions and covenants as are set forth in the Lease (subject, however, to the provisions of Clauses (i) through (viii) of this Paragraph 5). If the Lease shall have terminated by operation of law or otherwise (whether as a result of or in connection with a bankruptcy case commenced by or against Master Lessor, a judicial or non-judicial foreclosure action or proceeding, delivery of a deed in lieu of foreclosure, or otherwise), then, upon request of such Successor Master Lessor, Master Lessee shall promptly execute and deliver a direct lease with such Successor Master Lessor which direct lease shall be on the same terms and conditions as the Lease (subject, however, to the provisions of Clauses (i) through (viii) of this Paragraph 5) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Master Lessee thereunder, or the execution of a direct lease between a Successor Master Lessor and Master Lessee as aforesaid, no Successor Master Lessor shall:

(i) be liable for any act or omission of the Predecessor Master Lessor under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Master Lessee against the Predecessor Master Lessor;

(iii) be bound by any modification of the Lease or by any previous prepayment of Base Rent or Additional Charges made more than one (1) month prior to the date same was due which Master Lessee might have paid to the Predecessor Master Lessor, unless such modification or prepayment shall have been expressly approved in writing by Lender or expressly required under the Lease, *provided that* this Clause (iii) shall not be construed to affect the rights and obligations of the parties or their successors with respect to any such modification or prepayment approved in writing by Lender;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or said Successor Master Lessor;

(v) be liable or obligated to comply with or fulfill any of the obligations of the Predecessor Master Lessor under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Leased Properties (or any portion thereof), leasehold improvements, Master Lessee work letters and/or similar items (other than pursuant to the casualty/condemnation restoration provisions of the Lease to the extent of casualty proceeds or condemnation awards paid to Lender or said Successor Master Lessor);

(vi) be bound by any obligation to provide or pay for any services, repairs, maintenance or restoration provided for under the Lease arising prior to the date that said Successor Master Lessor becomes the master lessor of Master Lessee (except to the extent of casualty proceeds or condemnation awards paid to Lender or said Successor Master Lessor);

(vii) be bound by any obligation to repair, replace, rebuild, or restore the Leased Properties or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation (other than pursuant to the casualty/condemnation restoration provisions of the Lease to the extent of casualty proceeds or condemnation awards paid to Lender or said Successor Master Lessor); or

(viii) be obligated or liable with respect to any representations or warranties made by the Predecessor Master Lessor in or in relation to the Lease prior to the date that said Successor Master Lessor succeeded to the rights of the Predecessor Master Lessor under the Lease.

For purposes of this Paragraph 5, the term "**Predecessor Master Lessor**" means the Master Lessor under the Lease to whose interest therein a Successor Master Lessor has succeeded.

6. Master Lessee agrees that without the prior written consent of Lender, it shall not (a) terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any Base Rent or Additional Charges more than one (1) month in advance of the due date thereof, or (d) except to the extent required or expressly permitted by the terms of the Lease, subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instruments or allow to exist any lien against the Leased Properties or any portion thereof. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

7. (A) Master Lessee shall promptly notify Lender in writing of (i) any default by Master Lessor under the Lease and (ii) of any act or omission of Master Lessor, which, in either case (i) or (ii), would give Master Lessee the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of (i) any default by Master Lessor under the Lease, (ii) any other breach by Master Lessor of any of its obligations under the Lease (regardless of whether or not said breach constitutes a default under the Lease giving rise to an obligation to give notice under Subparagraph 7(A)), or (iii) any other act or omission of Master Lessor or any other Person, including any act of God, which in each case would give Master Lessee the right to (i) cancel or terminate the Lease (whether immediately or after the lapse of a period of time), (ii) claim a partial or total eviction, (iii) off-set against rent under the Lease, or (iv) any other remedy, Master Lessee agrees not to exercise such right (i) until Master Lessee has given written notice of such default, breach, act or omission to Lender and (ii) unless Lender has failed, within thirty (30) days after Lender receives such notice, to cure or remedy the default, breach, act or omission or, if such default, breach, act or omission shall be one which is not reasonably capable of being remedied by Lender within such thirty (30) day period, until a reasonable period for remedying such default, breach, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instruments to remedy the same (which reasonable period shall in no event be less than the period to which Master Lessor would be entitled, under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Master Lessee written notice of its intention to and shall commence and continue to, remedy such default, breach, act or omission. If Lender cannot reasonably remedy a default, breach, act or omission of Master Lessor until after Lender obtains possession of the Leased Properties, Master Lessee may not (i) cancel or terminate the Lease, (ii) claim a partial or total eviction, (iii) off-set against rent under the Lease, or (iv) exercise any other remedy available to it, whether under the Lease, in law, or in equity, by reason of such default, breach, act or omission until the expiration of a reasonable period necessary for such remedy after Lender secures possession of the Leased Properties.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, breach, act or omission.

Without limiting its rights under the Lease, under applicable law, or in equity, Master Lessee agrees that nothing in this Paragraph 7 shall be construed to grant to Master Lessee any right (including any right to cancel or terminate the Lease, claim a partial or total eviction, off-set against rent under the Lease, or exercise any other remedy).

8. To the extent that the Lease shall entitle Master Lessee to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Master Lessee with respect to the Security Instruments and Lender.

9. Master Lessee hereby acknowledges that, simultaneously with the execution and delivery of this Agreement, all of Master Lessor's rights, title, and interests in, to and under the Lease (including the right to declare a breach, default and/or event of default thereunder) are being assigned to Lender as additional security for the Indebtedness, and Master Lessee hereby expressly consents to such assignment. Master Lessee agrees that if there is a default by Master Lessor in the performance and observance of any of the terms of the Loan Agreement, which default is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Master Lessor under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Master Lessee under the Lease as though Lender were named therein as Master Lessor. Master Lessee expressly acknowledges that Lender may, at its option at any time following such default and failure to cure, demand that all rents and other amounts due to Master Lessor under the Lease be paid by Master Lessee directly to Lender at the address specified below, or as otherwise specified by Lender. Master Lessee agrees that upon Lender's written request for such payment of rent and other amounts due under the Lease directly to Lender, Master Lessee will timely remit any and all payments due under the Lease directly to, and payable solely to the order of, Lender. Master Lessee further acknowledges and agrees that it shall have neither the right nor the obligation to require proofs of default by Master Lessor prior to complying with such a request by Lender, and that such payments to Lender shall constitute performance of Master Lessee's obligation to pay the applicable rents or other amounts due to Master Lessor under the Lease.

10. In addition to the rights of Lender under the immediately preceding Paragraph 9, each of Master Lessee and Master Lessor acknowledge and agree that Lender is a "Superior Party" within the meaning of Section 13.4 of the Lease and shall be entitled to act on behalf of Master Lessor, without the need to exercise any rights of foreclosure or similar rights and without appointing a Successor Master Lessor, in enforcing any right or giving of any notices or directions under Article XIII of the Lease and Section 2.04 of the Guaranty.

11. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor Master Lessor shall acquire title to the Leased Properties or any portion thereof, said Successor Master Lessor shall have no obligation, nor incur any liability, beyond Successor Master Lessor's then interest, if any, in the Leased Properties, and Master Lessee shall look exclusively to such interest, if any, of Successor Master Lessor in the Leased Properties for the payment and discharge of any obligations imposed upon Successor Master Lessor hereunder or under the Lease. Master Lessee agrees that, with respect to any money judgment which may be obtained or secured by Master Lessee against Successor Master Lessor, Master Lessee shall look solely to the estate or interest owned by Successor Master Lessor in the Leased Properties (including, the rents, issues and profits therefrom), and Master Lessee will not collect or attempt to collect any such judgment out of any other assets of Successor Master Lessor.

12. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instruments or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Master Lessee under the Lease or otherwise.

13. B. Master Lessee acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Section 15.1 of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Section and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instruments.

(A) Master Lessee agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Leased Properties, or any portion thereof, provided the material terms of such agreement are substantially the same as this Agreement. Master Lessee does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as any portion of the Indebtedness remains unpaid. Lender agrees not to exercise its rights under the preceding two sentences if Master Lessee promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this Subparagraph 13(B).

14. C. Any notice or other communication required to be given, or expressly provided for and actually given, by Master Lessee to Master Lessor under or in relation to the Lease, and a copy of any list, report, instrument or other document, in each case that is either required to be given, or expressly provided for and actually given, by Master Lessee to Master Lessor under or in relation to the Lease, shall be simultaneously given also to Lender. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Master Lessor, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 7 hereof.

(A) All notices, consents, approvals, requests or other communications required or permitted to be given hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) for notices other than notices of the occurrence of a default only, telecopier (with answer back acknowledged), addressed as follows (or at such other address and person or entity as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Subparagraph 14(B)):

If to Lender:

Bank of America, N.A.
Real Estate Structured Finance – Servicing
900 West Trade Street, Suite 650
Mail Code: NC1-026-06-01
Charlotte, North Carolina 28255
Attention: Servicing Manager
Telecopy No.: (704) 317-4501
Confirmation No: (866) 531-0957

and to:	German American Capital Corporation 60 Wall Street, 10th floor New York, NY 10005 Attention: John Beacham and General Counsel Telecopy No.: (732) 578-4639 Confirmation No.: (212) 250-0164
with a copy to:	Bank of America Legal Department GCIB/CMBS NC1-007-20-01 100 North Tryon Street Charlotte, North Carolina 28255-0001 Attention: Paul Kurzeja, Esq. Facsimile No.: (704) 387-0922
with a copy to:	Servicer, at such notice address as shall be designated by notice delivered in accordance with the Loan Agreement.
and a copy to:	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603 Attention: Charles E. Schrank, Esq. Telecopy No.: (312) 853-4140 Confirmation No.: (312) 853-7036
If to Master Lessee:	Private Restaurant Master Lessee, LLC c/o OSI Restaurant Partners, Inc. 2202 North Westshore Boulevard, Suite 500 Tampa, FL 33607 Attention: Vice President of Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000
If to Master Lessor:	New Private Restaurant Properties, LLC 2202 North Westshore Boulevard, Suite 470C Tampa, FL 33607 Attention: Vice President of Real Estate Telecopy No.: (813) 830-2497 Confirmation No.: (813) 387-8000

and, if to either of Master Lessee or Master Lessor, with copies to each of:

Bain Capital Partners, LLC
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Dave Humphrey
Telecopy No.: (617) 652-3112
Confirmation No.: (617) 516-2112

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004-2498
Attention: Arthur Adler, Esq.
Telecopy No.: (212) 291-9001
Confirmation No.: (212) 558-3960

And

Ropes and Gray, LLP
Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199-3600
Attention: Richard E. Gordet, Esq.
Telecopy No.: (617) 951-7491
Confirmation No.: (617) 235-0480

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the United States mail as required above or (iv) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

15. Master Lessee hereby represents to Lender as follows:

(A) The Lease is in full force and effect and has not been further amended.

(B) There has been no prior assignment of its interest under the Lease, and it is not aware of any contemplated assignment of any such interest.

(C) There are no oral or written agreements or understandings between Master Lessor and Master Lessee relating to the Leased Properties demised under the Lease or the Lease transaction except as set forth in the Lease.

(D) Its execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of its knowledge there exists no default, whether or not beyond any applicable grace or cure period (such determination being made without reference to Section 15.8 of the Lease), or breach which might, with passage of time or otherwise mature into a default, on the part of either Master Lessee or Master Lessor under the Lease.

(E) There has not been filed by or against nor to the best of its knowledge and belief is there threatened, any petition under the bankruptcy laws of the United States naming either Master Lessee or Master Lessor as a debtor.

(F) To the best of its knowledge and other than the collateral assignment of Master Lessor's interest to Lender to be executed and delivered simultaneously with this

Agreement, there has not been any assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Master Lessor (other than assignments that have been terminated prior to or will be terminated simultaneously with the execution and delivery of this Agreement).

16. Whenever, from time to time, reasonably requested by Lender (but not more than twice during any calendar year), Master Lessee shall execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications, in a form reasonably acceptable to Master Lessee, of all of the matters set forth in Paragraph 15 above, and any other information Lender may reasonably require to confirm the current status of the Lease.

17. Without limiting Master Lessee's covenants under Paragraph 6 above or Master Lessor's covenant under the Landlord's Loan Documents (but without limiting Master Lessor's rights and Landlord Lender's duties Section 2.3.6 of the Loan Agreement), Master Lessee agrees that it shall not, and acknowledges that Master Lessor may not (and Master Lessor covenants and agrees with Lender that it shall not), without the prior written consent of Lender (except in connection with a Casualty under Section 10.2 of the Lease or a Condemnation under Section 10.3 of the Lease) (a) renew, extend, effectuate the release of any Leased Property from, agree to the termination of, agree to a reduction of rents or other sums payable under, accept a surrender of, or agree to shorten the term of, the Lease, (b) grant any waiver of any provisions of the Lease, provided that Master Lessee and Master Lessor shall have the right to waive any provisions of the Lease (provided that any such waiver shall be limited to the particular matter under the particular circumstances subject to such waiver and shall not constitute an amendment or modification of the Lease), so long as such waiver would not have the effect of (i) waiving any of the provisions of the Lease identified in clauses (c), (d) or (e) below, or (ii) waiving or reducing the monetary obligations of Master Lessee under the Lease, or (iii) either permitting Master Lessor and/or Master Lessee to take an action that Master Lessor or Master Lessee is prohibited from taking under this Paragraph 17, or preventing Master Lessor and/or Master Lessee from complying with an obligation on the part of Master Lessor or Master Lessee under this Agreement, (c) amend, modify or waive in any respect any provision of the Lease contained in the Statement of Intent, Article I ("Leased Properties; Term"), Article III ("Rent"), Article IV ("Termination; Abatement"), Article V ("Ownership of the Leased Properties"), Section 6.1(a)(ii) (including provisions in respect of permitted uses), Section 6.1(a)(iii) (including provisions in respect of continuous operation), Section 6.1(b) ("Taxes and Other Charges; Contest for Taxes and Other Charges, Legal Requirements and Liens"), Section 6.1(f) ("Cooperate in Legal Proceedings"), Section 6.1(g) ("Insurance Benefits"), Section 6.1(h) ("Financial Reporting and Other Information"), Article VIII ("Alterations; Leasing"), Article X ("Casualty and Condemnation"), Article XI ("Accounts and Reserves"), Article XII ("Events of Default and Remedies"), Section 13.2 ("Transition Services"), Section 13.3 ("Cooperation"), Section 13.4 ("Rights of Superior Parties"), Article XV ("Subordination"), Section 23.1 ("Appraisers"), Article XXIV ("Confidentiality"), Section 26.8 ("Governing Law", including the waivers of right to trial by jury in Section 26.8(c)), Article XXVIII ("True Lease"), any Schedule to the Lease, or any of the definitions in Article II ("Definitions") related to any of the foregoing provisions, Articles or Sections, or to any Schedule, (d) amend, modify or waive any provision of the Lease not listed in clause (c) in a manner adverse to Lender in any material respect (including without limitation any amendment of any provision (i) requiring Landlord's Lender's consent or approval prior to Master Lessee taking any action, or creating, incurring assuming, permitting or suffering to exist a circumstance or condition, or (ii) requiring Master Lessee to

cooperate with Landlord's Lender or reimburse Landlord's Lender for amounts expended by Landlord's Lender) or that would decrease Master Lessee's obligations or increase Master Lessor's obligations thereunder; or (e) amend, modify or waive any provision of the Lease in such a way as to cause its terms to become inconsistent with the material terms of any Affiliated Sublease, Unaffiliated Sublease or Specified Prior Sublease (unless the terms of such Affiliated Sublease, Unaffiliated Sublease or Specified Prior Sublease is similarly modified or waived). In addition, Master Lessor and Master Lessee acknowledge and agree that (x) any approval by Master Lessor of any Alteration requiring Master Lessor's approval under Section 8.1 of the Lease shall require, as a condition thereto, Lender's written approval, and no such approval by the Master Lessor shall be effective absent such written approval by Lender, (y) any approval by Master Lessor of the amount of Eligible Collateral under Section 6.1 of the Lease shall require, as a condition thereto, Lender's written approval, and no such approval by Master Lessor shall be effective absent such written approval by Lender, and (z) any approval by Master Lessor (as Indemnitee) of a compromise or settlement of any claim requiring Master Lessor's approval under Section 15.9(A) of the Lease shall require, as a condition thereto, Lender's written approval, and no such approval by Master Lessor shall be effective absent such written approval by Lender. Neither Master Lessee nor Master Lessor shall permit any amendment, modification or waiver of the Guaranty without the prior written consent of Lender. Master Lessee agrees that any agreement by Master Lessee in the Lease not to take an action, or not to create, permit or suffer to exist a circumstance or condition, without the consent or approval of Landlord's Lender, is hereby deemed a direct agreement by Master Lessee in this Agreement not to create, permit or suffer to exist such circumstance or condition (as applicable) without the prior written consent of Lender (so long as this Agreement remains in effect). Master Lessee and Master Lessor intend and agree that, in the absence of Lender's prior written consent, any purported agreement between them and any action taken by either or both of them which requires Lender consent pursuant to this Paragraph 17, including any amendment of or waiver under the Lease described in this Paragraph 17, shall be void and of no effect. The obligations of Master Lessor and Master Lessee under this Agreement, including, without limitation, this Paragraph 17 are several (and not joint and several) obligations of such parties.

18. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

19. This Agreement shall inure to the benefit of and be binding upon each of Lender, Master Lessee and Master Lessor and their respective heirs, executors, administrators, legal representatives, nominees, successors and assigns.

20. This Agreement supersedes any prior agreement, oral or written, and contains the entire agreement among Lender, Master Lessee and Master Lessor with respect to the subject matter hereof. No subsequent agreement, representation or promise made by any party hereto, or by or to any employee, officer, agent or representative of any such party, shall be of any effect unless it is in writing and executed by the party to be bound thereby. This Agreement shall not create any rights in any third party and may be amended or modified without liability to any third party, but only by an agreement in writing signed by each of Lender, Master Lessee and Master Lessor or their respective successors-in-interest.

21. Wherever they occur in this Agreement: (a) the term "Holding Account" means that certain account, named "New Private Restaurant Properties, LLC Holding Account in favor of Bank of America, N.A. as Agent", established by Master Lessor with the Cash Management Bank (as defined in the Loan Agreement) and in which Master Lessor has granted Lender a security interest pursuant to the Loan Agreement, along with any substitute or successor account thereto; (b) the term "Indebtedness" means, at any given time, the principal amount outstanding under the Loan Agreement, together with all accrued and unpaid interest thereon and all other amounts, obligations and liabilities due or to become due to Lender pursuant to the Loan Agreement or under the promissory note or any other documents executed and delivered by Master Lessor in association therewith, and all other amounts, sums and expenses paid by or payable to lender pursuant to said Loan Agreement, note, or other documents; (c) the term "Lender" means the then holder of the Security Instruments; (d) the term "Master Lessor" means the then holder of the Master Lessor's interest in the Lease; (e) the term "Person" means any individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or entity of any kind whatsoever; (f) the words "hereof", "herein" and "hereunder" and words of similar import shall be held and construed to be references to this Agreement; (g) the words "include" and "including" and words of similar import shall be held and construed to include the words "without limitation" (unless already expressly followed by such words); (h) words of any gender shall be held and construed to include any other gender; and (i) words in the singular shall be held and construed to include the plural, and vice versa.

22. If any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall, to the maximum extent permitted under applicable law, affect only such clause or provision, or part thereof, and not any other clause or provision of this Agreement.

23. EACH OF MASTER LESSEE, MASTER LESSOR AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

24. Unless otherwise indicated, whether expressly or by context, all references herein to Paragraphs, Subparagraphs, Schedules, Exhibits or other parts or portions of a document without indication of the document refer to such parts of this Agreement.

25. Time and each of the terms, covenants, conditions and contingencies of this Agreement are hereby expressly made of the essence.

26. Each of Lender, Master Lessee and Master Lessor acknowledges and agrees that this Agreement has been jointly drafted to fairly represent and neutrally state their agreement and that the conventional presumption against the drafter should have no application in its interpretation.

27. This Agreement may be executed in any number of counterparts, and any one counterpart executed by all of the parties hereto, or any set of counterparts so executed in aggregate, shall constitute a complete original. In proving this Agreement, it shall not be necessary to produce or account for more than one such complete original.

28. THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CHOICE OF LAW RULES) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, *PROVIDED HOWEVER*, THAT PROVISIONS DIRECTLY AFFECTING THE VALIDITY OR PRIORITY, WITH RESPECT TO ANY INDIVIDUAL PARCEL, OF ANY ONE OR MORE OF (A) THE LEASEHOLD INTEREST OF MASTER LESSEE CREATED UNDER THE LEASE, (B) THE ASSIGNMENT OF SUCH LEASEHOLD INTEREST AND RELATED RIGHTS TO LENDER, OR (C) THE LIENS AND SECURITY INTERESTS CREATED UNDER THE SECURITY INSTRUMENTS, SHALL BE GOVERNED BY THE LAW OF THE STATE IN WHICH SAID INDIVIDUAL PARCEL IS LOCATED TO THE EXTENT NECESSARY FOR THE VALIDITY AND ENFORCEMENT, AND FOR DETERMINATION OF THE RELATIVE PRIORITIES OF SAID INTERESTS AND LIENS.

29. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER, MASTER LESSEE OR MASTER LESSOR ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF LENDER, MASTER LESSEE AND MASTER LESSOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF LENDER, MASTER LESSEE AND MASTER LESSOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. EACH OF MASTER LESSEE AND MASTER LESSOR DOES HEREBY DESIGNATE AND APPOINT:

CT CORPORATION SYSTEM
111 8TH AVENUE
NEW YORK, NEW YORK 10011

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO MASTER LESSEE OR MASTER LESSOR AS APPLICABLE IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MASTER LESSEE OR MASTER LESSOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. EACH AND EITHER OF MASTER LESSEE AND MASTER LESSOR (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

30. A counterpart original of this Agreement may be recorded for notice purposes in any jurisdiction in which any Leased Property listed on Schedule 2 is located, under a cover sheet indicating, in a manner consistent with the recording requirements for such jurisdiction that it is to be indexed against any Leased Property located in said jurisdiction. Counterparts so recorded may have different titles or captions, may substitute signature pages and acknowledgments in form required by applicable recording statutes, and may include modified versions of Exhibit A describing only those parcels of Leased Property against which they are to be indexed, and may be otherwise different from this Agreement. Recording of such modified versions of this Agreement, including with abbreviated versions of Exhibit A describing less than all of the Leased Properties, is for notice purposes only, and shall not be construed to suggest severability of either the leasehold interest under the Lease or the subordination hereunder of such interest, which interest Lender, Master Lessee and Master Lessor each acknowledge and agree is intended to and shall remain at all times, including in any bankruptcy or other insolvency proceeding, a unitary encumbrance on all of the Leased Properties. This Paragraph 30 is intended to create the option but not the obligation to cause notice copies of this Agreement to be recorded, and the absence of such a notice copy in the records of any particular jurisdiction or in reference to any parcel shall not affect the enforceability or priority of this Agreement as between the parties hereto, their successors and assigns, or any other Person with actual notice of the existence of this Agreement.

31. By execution of its counterpart signature page to this Agreement, Guarantor (a) acknowledges and consents to this Agreement for the benefit of each party hereto, (b) affirms, for the benefit of both Master Lessor and Lender and recognizing and acknowledging the obligations of Master Lessee hereunder, Guarantor's obligations under that certain Guaranty, of even date herewith, made by Guarantor to and for the benefit of Master Lessor (the " **Guaranty**"), pursuant to which Guarantor unconditionally and irrevocably guarantees to Master Lessor, upon and subject to the terms of the Guaranty, the due, punctual and full payment, performance and observance of all obligations of the Master Lessee as tenant under the Lease, and (c) for the benefit of Lender, expressly joins Master Lessee and Master Lessor in acknowledging and agreeing to Lender's rights as a "Superior Party" within the meaning of Section 13.4 of the Lease pursuant to Paragraph 10 above. Guarantor shall not be bound by any provision of this Agreement except as set forth in this Paragraph 31 nor shall this Paragraph 31 or this Agreement be deemed to modify any term or condition of the Guaranty.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned, by its officer or other authorized signatory duly elected or appointed by such its member in accordance with its organizational documents, and pursuant to proper authority (as evidenced by the annexed Resolution as to real property in LA) has duly executed, acknowledged and delivered this instrument as of the day and year first above written.

NEW PRIVATE RESTAURANT PROPERTIES, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

PRIVATE RESTAURANT MASTER LESSEE, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

IN WITNESS WHEREOF, the undersigned, by its officer or other authorized signatory duly elected or appointed, and pursuant to proper authority, has duly executed, acknowledged and delivered this instrument as of the day and year first above written.

BANK OF AMERICA, N.A.,
a national banking association

By: /s/ David S. Fallick
Name: David S. Fallick
Title: Managing Director

IN WITNESS WHEREOF, the u\ndersigned, by its officer or other authorized signatory duly elected or appointed, and pursuant to proper authority, has duly executed, acknowledged and delivered this instrument as of the day and year first above written.

GERMAN AMERICAN CAPITAL CORPORATION,
a Maryland corporation

By: /s/ J. Robert Brown
Name: J. Robert Brown
Title: Vice President

By: /s/ Mary Brundage
Name: Mary Brundage
Title: Director

SCHEDULE 1

INDIVIDUAL PARCELS — GENERAL DESCRIPTIONS

A. Fee Parcel Description(s)

COUNT	UNIT	STREET ADDRESS	CITY	COUNTY	ST	ZIP
1.	#0311	5605 West Bell Road	Glendale	Maricopa	AZ	85308
2.	#0312	4871 East Grant Road	Tucson	Pima	AZ	85712
3.	#0314	1650 South Clearview	Mesa	Maricopa	AZ	85208
4.	#0316	1080 North 54th Street	Chandler	Maricopa	AZ	85226
5.	#0317	2600 East Lucky Lane	Flagstaff	Coconino	AZ	86004
6.	#0323	14225 West Grand Avenue	Surprise	Maricopa	AZ	85374
7.	#0325	99 South Highway 92	Sierra Vista	Cochise	AZ	85635
8.	#0326	1830 East McKellips	Mesa	Maricopa	AZ	85203
9.	#0453	2310 Sanders Street	Conway	Faulkner	AR	72032
10.	#0455	4509 W. Poplar Street	Rogers	Benton	AR	72758
11.	#0601	7401 West 92nd Avenue	Westminster	Jefferson	CO	80021
12.	#0602	2815 Geyser Drive	Colorado Springs	El Paso	CO	80906
13.	#0605	1212 Oakridge Drive East	Fort Collins	Larimer	CO	80525
14.	#0606	2088 South Abilene Street	Aurora	Arapahoe	CO	80014
15.	#0611	9329 North Sheridan Boulevard	Westminster	Jefferson	CO	80031

16.	#0612	7065 Commerce Center Drive	Colorado Springs	El Paso	CO	80919
17.	#0613	807 East Harmony Road	Fort Collins	Larimer	CO	80525
18.	#0614	15 West Springer Drive	Highlands Ranch (Littleton P.O.)	Douglas	CO	80129
19.	#0615	497 120th Avenue	Thornton	Adams	CO	80233
20.	#0616	988 Dillon Road	Louisville	Boulder	CO	80027
21.	#0617	2825 Geyser Drive	Colorado Springs	El Paso	CO	80906
22.	#0619	2066 South Abilene Street	Aurora	Arapahoe	CO	80014
23.	#0628	1315 Dry Creek Road	Longmont	Boulder	CO	80501
24.	#1001	12990 Cleveland Avenue	Fort Myers	Lee	FL	33907
25.	#1002	4320 North Tamiami Trail	Naples	Collier	FL	34103
26.	#1006	2244 Palm Beach Lakes Boulevard	West Palm Beach	Palm Beach	FL	33409
27.	#1008	2700 SE Federal Highway	Stuart	Martin	FL	34994
28.	#1022	3215 SW College Road	Ocala	Marion	FL	34474
29.	#1023	11308 North 56th Street	Temple Terrace	Hillsborough	FL	33617
30.	#1024	6390 North Lockwood Ridge Road	Sarasota	Sarasota	FL	34243
31.	#1025	170 Cypress Gardens Boulevard	Winter Haven	Polk	FL	33880
32.	#1026	1481 Tamiami Trail	Port Charlotte	Charlotte	FL	33948
33.	#1027	1642 NE Pine Island Road	Cape Coral	Lee	FL	33903

34.	#1028	4902 Commercial Way	Spring Hill	Hernando	FL	34608
35.	#1029	5710 Oakley Boulevard	Wesley Chapel	Pasco	FL	33544
36.	#1030	9773 San Jose Boulevard	Jacksonville	Duval	FL	32257
37.	#1031	3760 South 3rd Street	Jacksonville Beach	Duval	FL	32250
38.	#1033	1775 Wells Road	Orange Park	Clay	FL	32073
39.	#1034	245 State Road 312	Saint Augustine	St. Johns	FL	32086
40.	#1035	1820 Raymond Diehl Road	Tallahassee	Duval	FL	32309
41.	#1036	861 W. 23rd Street	Panama City	Bay	FL	32405
42.	#1060	4845 South Kirkman Road	Orlando	Orange	FL	32811
43.	#1061	180 Hickman Drive	Sanford	Seminole	FL	32771
44.	#1063	9600 U.S. Highway 441	Leesburg	Lake	FL	34788
45.	#1101	3913 River Place Drive	Macon	Bibb	GA	31210
46.	#1102	1160 Ernest Barrett Parkway	Kennesaw	Cobb	GA	30144
47.	#1108	1887 Mt. Zion Road	Morrow	Clayton	GA	30260
48.	#1116	3585 Atlanta Highway	Athens	Clarke	GA	30606
49.	#1119	810 Ernest Barrett Parkway	Kennesaw	Cobb	GA	30144
50.	#1120	6331 Douglas Boulevard	Douglasville	Douglas	GA	30135
51.	#1121	1188 Dogwood Drive	Conyers	Rockdale	GA	30012
52.	#1122	145 Gwinco Boulevard	Suwanee	Gwinnett	GA	30024

53.	#1123	655 Douglasville Highway	Gainesville	Hall	GA	30501
54.	#1124	995 N. Peachtree Parkway	Peachtree City	Fayette	GA	30269
55.	#1125	3 Reinhardt College Parkway	Canton	Cherokee	GA	30114
56.	#1133	11196 Abercorn Expressway	Savannah	Chatham	GA	31419
57.	#1134	823 North Westover Boulevard	Albany	Dougherty	GA	31707
58.	#1135	1824 Club House Drive	Valdosta	Lowndes	GA	31601
59.	#1137	3088 Watson Boulevard	Warner Robins	Houston	GA	31093
60.	#1201	18375 Bluemound Road	Brookfield	Waukesha	WI	53045
61.	#1264	2925 Ross Clark Circle	Dothan	Houston	AL	36301
62.	#1410	2005 River Oaks Drive	Calumet City	Cook	IL	60409
63.	#1411	720 West Lake Cook Road	Buffalo Grove	Cook	IL	60089
64.	#1412	216 East Golf Road	Schaumburg	Cook	IL	60173
65.	#1414	2855 West Ogden Avenue	Naperville	Dupage	IL	60540
66.	#1416	15608 S. Harlem Avenue	Orland Park	Cook	IL	60462
67.	#1418	6007 E. State Street	Rockford	Winnebago	IL	61108
68.	#1419	5652 Northridge Drive	Gurnee	Lake	IL	60031
69.	#1424	3241 Chicagoland Circle	Joliet	Will	IL	60431
70.	#1450	4390 Illinois Street	Swansea	St. Claire	IL	62221
71.	#1452	2402 N. Prospect Avenue	Champaign	Champaign	IL	61822

72.	#1453	3201 Horizon Drive	Springfield	Sangamon	IL	62703
73.	#1516	3201 West 3rd Street	Bloomington	Monroe	IN	47404
74.	#1518	3660 State Road 26	Lafayette	Tippecanoe	IN	47905
75.	#1519	7201 E Indiana Street	Evansville	Vanderburgh	IN	47715
76.	#1520	2315 Post Road	Indianapolis	Marion	IN	46219
77.	#1521	3730 S. Reed Rd.	Kokomo	Howard	IN	46902
78.	#1522	3401 N. Granville Ave.	Muncie	Delaware	IN	47303
79.	#1550	8110 Georgia Street	Merrillville	Lake	IN	46410
80.	#1611	3939 1st Avenue SE	Cedar Rapids	Linn	IA	52402
81.	#1614	4500 Southern Hills Drive	Sioux City	Woodbury	IA	51106
82.	#1715	233 S. Ridge Road	Wichita	Sedgwick	KS	67212
83.	#1716	15430 South Rogers Road	Olathe	Johnson	KS	66062
84.	#1813	6520 Signature Drive	Louisville	Jefferson	KY	40213
85.	#1851	3260 Scottsville Rd.	Bowling Green	Warren	KY	42104
86.	#1901	2415 S. Acadian Thruway	Baton Rouge	East Baton Rouge Parish	LA	70808
87.	#1912	830 East I-10 Service Road	Slidell	St. Tammany Parish	LA	70461
88.	#1914	60 Park Place Drive	Covington	St. Tammany Parish	LA	70433
89.	#1921	1600 W. Pinhook Drive	Lafayette	Lafayette Parish	LA	70508
90.	#1941	2616 Derek Drive	Lake Charles	Calcasieu Parish	LA	70607
91.	#1951	305 West Constitution	West Monroe	Ouachita Parish	LA	71292

92.	#1961	2715 Village Lane	Bossier City	Bossier Parish	LA	71112
93.	#1971	3217 South MacArthur Drive	Alexandria	Rapsides Parish	LA	71301
94.	#2001	4322 West Boy Scout Boulevard	Tampa	Hillsborough	FL	33607
95.	#2014	1203 Townsgate Court	Plant City	Hillsborough	FL	33563
96.	#2017	11950 Sheldon Road	Tampa	Hillsborough	FL	33626
97.	#2134	3020 Crain Highway	Waldorf	Charles	MD	20601
98.	#2139	4420 Long Gate Parkway	Ellicott City	Howard	MD	21043
99.	#2315	3650 28th Street SE	Kentwood	Kent	MI	49512
100.	#2319	2468 Tittabawassee Road	Saginaw	Saginaw	MI	48604
101.	#2320	1515 W. 14 Mile Road	Madison Heights	Oakland	MI	48071
102.	#2321	1501 Boardman Road	Jackson	Jackson	MI	49202
103.	#2325	6435 Dixie Highway	Clarkston	Oakland	MI	48346
104.	#2326	7873 Conference Center Drive	Brighton	Livingston	MI	48114
105.	#2411	8880 Springbrook Dr. NW	Coon Rapids	Anoka	MN	55433
106.	#2415	5723 Bishop Avenue	Inver Grove Heights	Dakota	MN	55076
107.	#2420	4255 Haines Road	Hermantown	St. Louis	MN	55811
108.	#2619	3110 East 36th Street	Joplin	Newton	MO	64804
109.	#3002	4342 West Boy Scout Boulevard	Tampa	Hillsborough	FL	33607
110.	#3101	4650 Route 42	Turnersville	Gloucester	NJ	08012

111.	#3102	500 Route 38	Maple Shade	Burlington	NJ	08052
112.	#3110	230 Lake Drive East	Cherry Hill	Camden	NJ	08002
113.	#3114	1397 US Route 9 North	Old Bridge	Middlesex	NJ	08857
114.	#3116	4600 Route 42	Turnersville	Gloucester	NJ	08012
115.	#3117	98 US Route 22 West	Green Brook	Somerset	NJ	08812
116.	#3120	Klockner Road @ Route 130	Hamilton	Mercer	NJ	08619
117.	#3122	901 Route 73	Evesham Township	Burlington	NJ	08053
118.	#3211	4141 South Pecos Road	Las Vegas	Clark	NV	89121
119.	#3212	1950 North Rainbow Boulevard	Las Vegas	Clark	NV	89108
120.	#3213	4423 East Sunset Road	Henderson	Clark	NV	89014
121.	#3214	8671 West Sahara Avenue	Las Vegas	Clark	NV	89117
122.	#3215	3645 S. Virginia Street	Reno	Washoe	NV	89502
123.	#3217	2625 West Craig Road	North Las Vegas	Clark	NV	89032
124.	#3220	7380 South Las Vegas Boulevard	Las Vegas	Clark	NV	89123
125.	#3357	3112 Erie Boulevard	Dewitt	Onondaga	NY	13214
126.	#3402	10400 E. Independence Boulevard	Matthews	Mecklenburg	NC	28105
127.	#3403	16408 Northcross Drive	Huntersville	Mecklenburg	NC	28078
128.	#3420	4821 Capital Boulevard	Raleigh	Wake	NC	27616
129.	#3444	302 S. College Road	Wilmington	New Hanover	NC	28403

130.	#3446	3550 Mount Moriah Road	Durham	Durham	NC	27707
131.	#3447	505 Highland Oaks Dr	Winston-Salem	Forsyth	NC	27103
132.	#3448	501 North New Hope Road	Gastonia	Gaston	NC	28054
133.	#3450	606 SW Greenville Boulevard	Greenville	Pitt	NC	27834
134.	#3451	256 East Parris Avenue	High Point	Guilford	NC	27262
135.	#3452	100 Southern Road	Southern Pines	Moore	NC	28387
136.	#3453	210 Gateway Boulevard	Rocky Mount	Nash	NC	27804
137.	#3454	16400 Northcross Drive	Huntersville	Mecklenburg	NC	28078
138.	#3455	1235 Longpine Road	Burlington	Alamance	NC	27215
139.	#3458	8280 Valley Boulevard	Blowing Rock	Watauga	NC	28605
140.	#3460	250 Mitchelle Drive	Hendersonville	Henderson	NC	28792
141.	#3461	1020 E. Innes Street	Salisbury	Rowan	NC	28144
142.	#3462	111 Howell Road	New Bern	Craven	NC	28562
143.	#3463	8338 Pineville-Matthews Road	Pineville	Mecklenburg	NC	28226
144.	#3464	223 Wintergreen Dr	Lumberton	Robeson	NC	28358
145.	#3621	401 West Dussel Road	Maumee	Lucas	OH	43537
146.	#3633	6950 Ridge Road	Parma	Cuyahoga	OH	44060
147.	#3635	24900 Sperry Drive	Westlake	Cuyahoga	OH	44145
148.	#3636	820 North Lexington Springmill Road	Ontario	Richland	OH	44906

149.	#3640	8595 Market Street	Mentor	Lake	OH	44060
150.	#3658	6800 Miller Lane	Butler Township	Montgomery	OH	45414
151.	#3662	930 Interstate Drive	Findlay	Hancock	OH	45840
152.	#3663	2512 Kings Center Court	Mason	Warren	OH	45040
153.	#3713	3600 South Broadway	Edmond	Oklahoma	OK	73013
154.	#3715	860 N. Interstate Drive	Norman	Cleveland	OK	73013
155.	#3716	7206 Cache Road	Lawton	Comanche	OK	73505
156.	#3915	3527 N. Union Deposit Road	Harrisburg	Dauphin	PA	17109
157.	#3917	100 North Pointe Boulevard	Lancaster	Lancaster	PA	17601
158.	#3951	9395 McKnight Road	Pittsburgh	Allegheny	PA	15237
159.	#3952	100 Sheraton Drive	Altoona	Blair	PA	16601
160.	#4117	110 Interstate Boulevard	Anderson	Anderson	SC	29621
161.	#4118	7611 Two Notch Road	Columbia	Richland	SC	29223
162.	#4119	110 Dunbarton Drive	Florence	Florence	SC	29501
163.	#4120	1319 River Point Road	Rock Hill	York	SC	29730
164.	#4121	20 Hatton Place	Hilton Head	Beaufort	SC	29926
165.	#4122	454 Bypass 72 NW	Greenwood	Greenwood	SC	29649
166.	#4123	1721 U.S. Highway 17 North	North Myrtle Beach	Horry	SC	29582
167.	#4124	2480 Broad Street	Sumter	Sumter	SC	29150

168.	#4127	945 Factory Shops Boulevard	Gaffney	Cherokee	SC	29341
169.	#4210	2411 S. Carolyn Avenue	Sioux Falls	Minnehaha	SD	57106
170.	#4314	330 N. Peters Road	Knoxville	Knox	TN	37922
171.	#4318	1390 Interstate Drive	Cookeville	Putnam	TN	38501
172.	#4319	2790 Wilma Rudolph Blvd.	Clarksville	Montgomery	TN	37040
173.	#4320	1968 Old Fort Parkway	Murfreesboro	Rutherford	TN	37129
174.	#4324	1125 Franklin Road	Lebanon	Wilson	TN	37087
175.	#4350	536 Paul Huff Parkway	Cleveland	Bradley	TN	37312
176.	#4401	11339 Katy Freeway	Houston	Harris	TX	77079
177.	#4403	11590 Research Boulevard	Austin	Travis	TX	78759
178.	#4404	2335 Highway 6	Sugar Land	Fort Bend	TX	77478
179.	#4405	12507 West IH-10	San Antonio	Bexar	TX	78230
180.	#4406	25665 Interstate 45 North	The Woodlands	Montgomery	TX	77380
181.	#4407	502 West Bay Area Boulevard	Webster	Harris	TX	77598
182.	#4416	20455 Katy Freeway	Katy	Harris	TX	77450
183.	#4417	16080 San Pedro Avenue	San Antonio	Bexar	TX	78230
184.	#4418	2102 S. Texas Avenue	College Station	Brazos	TX	77840
185.	#4422	11600 Research Boulevard	Austin	Travis	TX	78759
186.	#4423	12511 West IH-10	San Antonio	Bexar	TX	78230

187.	#4424	2060 I-10 South	Beaumont	Jefferson	TX	77707
188.	#4426	5555 NW Loop 410	San Antonio	Bexar	TX	78238
189.	#4429	4205 South IH-35	San Marcos	Hays	TX	78666
190.	#4454	3904 Towne Crossing Boulevard	Mesquite	Dallas	TX	75150
191.	#4455	1031 SH 114 West	Grapevine	Tarrant	TX	76051
192.	#4456	9049 Vantage Point Drive	Dallas	Dallas	TX	75243
193.	#4457	1509 North Central Expressway	Plano	Collin	TX	42075
194.	#4458	15180 Addison Road	Addison	Dallas	TX	75001
195.	#4459	1151 West IH-20	Arlington	Tarrant	TX	76017
196.	#4461	2211 South Stemmons Freeway	Lewisville	Denton	TX	75067
197.	#4462	2314 West Loop 250 North	Midland	Midland	TX	79705
198.	#4463	7101 West Interstate Highway 40	Amarillo	Potter	TX	79106
199.	#4464	4015 South Loop 289	Lubbock	Lubbock	TX	79423
200.	#4466	300 South I-35 East	Denton	Denton	TX	76201
201.	#4467	501 East Loop 281	Longview	Gregg	TX	75605
202.	#4468	4500 Franklin Avenue	Waco	McLennan	TX	76710
203.	#4469	2701 East Central Texas Expressway	Killeen	Bell	TX	76543
204.	#4470	11875 Gateway West	El Paso	El Paso	TX	79936
205.	#4473	4505 Sherwood Way	San Angelo	Tom Green	TX	76901

206.	#4474	4142 Ridgemont Drive	Abilene	Taylor	TX	79606
207.	#4475	1101 North Beckley Avenue	DeSoto	Dallas	TX	75115
208.	#4476	4902 President George Bush Turnpike	Garland	Dallas	TX	75040
209.	#4478	13265 South Freeway	Fort Worth	Tarrant	TX	76028
210.	#4510	7770 South 1300 East	Sandy	Salt Lake	UT	84094
211.	#4511	1664 North Heritage Park Boulevard	Layton	Davis	UT	84041
212.	#4716	7917 West Broad Street	Richmond	Henrico	VA	23294
213.	#4724	261 University Boulevard	Harrisonburg	Rockingham	VA	22801
214.	#4728	6821 Chital Drive	Midlothian	Chesterfield	VA	23112
215.	#4756	3026 Richmond Road	Williamsburg	City of Williamsburg	VA	23185
216.	#4758	295 Peppers Ferry Road	Christiansburg	Montgomery	VA	24073
217.	#4762	3121 Albert Lankford Drive	Lynchburg	City of Lynchburg	VA	24501
218.	#4801	40 Geoffrey Drive	Newark	New Castle	DE	19713
219.	#4810	279 Junction Road	Madison	Dane	WI	53717
220.	#4813	311 Hampton Court	Onalaska	LaCrosse	WI	54650
221.	#4910	790 Foxcroft Avenue	Martinsburg	Berkeley	WV	25401
222.	#4961	111 Hylton Lane	Beckley	Raleigh	WV	25801
223.	#5010	229 Miracle Road	Evansville	Natrona	WY	82636
224.	#5113	2574 Camino Entrata	Santa Fe	Santa Fe	NM	87507

225.	#5301	1740 S. Clearview	Mesa	Maricopa	AZ	85208
226.	#5302	5646 West Bell Road	Glendale	Maricopa	AZ	85308
227.	#5303	1060 North 54th Street	Chandler	Maricopa	AZ	85226
228.	#5501	4670 Southport Crossing Drive	Indianapolis	Marion	IN	43237
229.	#5502	9770 Crosspoint Boulevard	Fisher	Hamilton	IN	46256
230.	#5505	3830 S US Highway 41	Indianapolis	Vigo	IN	47802
231.	#5506	8301 Eagle Lake Drive	Evansville	Vanderburgh	IN	47715
232.	#6006	2501 University Drive	Coral Springs	Broward	FL	33065
233.	#6007	60 Palmetto Avenue	Merritt Island	Brevard	FL	32953
234.	#6013	4829 South Florida Avenue	Lakeland	Polk	FL	33813
235.	#6015	801 Providence Road	Brandon	Hillsborough	FL	33511
236.	#6020	3530 Tyrone Boulevard	Saint Petersburg	Pinellas	FL	33710
237.	#6021	2752 Capital Circle NE	Tallahassee	Leon	FL	32405
238.	#6029	1285 US Highway 1	Vero Beach	Indian River	FL	32960
239.	#6035	270 Citi Center	Winter Haven	Polk	FL	33880
240.	#6048	11950 Sheldon Road	Tampa	Hillsborough	FL	33626
241.	#6052	1203 Townsgate Court	Plant City	Hillsborough	FL	33563
242.	#6116	2700 Chapel Hill Road	Douglasville	Douglas	GA	30135
243.	#6302	13905 Lakeside Circle	Sterling Heights	Macomb	MI	48313

244.	#6402	2840 Dallas Parkway	Plano	Collin	TX	42093
245.	#6502	4690 Southport Crossing	Indianapolis	Marion	IN	43237
246.	#6903	2010 Kaliste Saloom Road	Lafayette	Lafayette Parish	LA	70508
247.	#7101	4430 Long Gate Parkway	Ellicott City	Howard	MD	21043
248.	#8001	4302 West Boy Scout Boulevard	Tampa	Hillsborough	FL	33607
249.	#8002	17508 Dona Michelle Drive	Tampa	Hillsborough	FL	33647
250.	#8109	901 Route 73	Evesham Township	Burlington	NJ	08053
251.	#8302	13905 Lakeside Circle	Sterling Heights	Macomb	MI	48313
252.	#8609	1320 Boardman Polland Road	Boardman Township	Mahoning	OH	44514
253.	#8705	1101 Seminole Trail	Charlottesville	City of Charlottesville	VA	22901
254.	#8908	100 North Pointe Boulevard	Lancaster	Lancaster	PA	17601
255.	#9301	324 N. Peter's Road	Knoxville	Knox	TN	37922
256.	#9407	190 Partner Circle	Southern Pines	Moore	NC	28387
257.	#9410	1550 I-10 South	Beaumont	Jefferson	TX	77707
258.	#9414	3400 North Central Expressway	Plano	Collin	TX	75074
259.	#9704	5805 Trinity Parkway	Centreville	Fairfax	VA	20120
260.	#9802	18375 Bluemound Road	Brookfield	Waukesha	WI	53045

B. Condominium Parcel Description(s):

OS Unit of the OS Inverness Land Condominium

COUNT	UNIT	STREET ADDRESS	CITY	COUNTY	ST	ZIP
1.	#2015	2225 Highway 44 West	Inverness	Citrus	FL	34453

Property List
Subordination Agreement

EXHIBIT A

INDIVIDUAL PARCELS – LEGAL DESCRIPTIONS

1. FEE PARCEL DESCRIPTION: UNIT 0311

Parcel No. 1:

Lot 4, Talavi Towne Centre II, according to Book 448 of Maps, page 36, records of Maricopa County, Arizona.

Parcel No. 2:

An easement for ingress and egress, parking and utilities as created in Declaration of Reciprocal Easements and Declaration of Covenants, Conditions and Restrictions recorded November 16, 1993, in Recording No. 93-0789859 and Declaration of Amendment recorded in Recording No. 95-0447535.

2. FEE PARCEL DESCRIPTION: UNIT 0312

Parcel No. 1:

The East 101.08 feet of the South 118.00 feet of Lot 8, THE CROSSROADS FESTIVAL, as recorded in Book 41 of Maps, Page 77, records of Pima County, Arizona.

Parcel No. 2:

A perpetual non-exclusive easement on, over and across the following described property of Grantor and adjacent to Parcel No. 1, above, for the installation and maintenance of a loading dock and of a dumpster or trash receptacle adjacent to Parcel No. 1, above:

The East 101.08 feet of the North 62 feet of the South 180.00 feet of Lot 8, THE CROSSROADS FESTIVAL, as recorded in Book 41 of Maps, Page 77, records of Pima County, Arizona.

3. FEE PARCEL DESCRIPTION: UNIT 0314

Lot 2, HARKINS SUPERSTITION SPRINGS, according to Book 424 of Maps, Page 26, records of Maricopa County, Arizona.

4. FEE PARCEL DESCRIPTION: UNIT 0316

Lot 2, CHANDLER GATEWAY WEST, according to Book 474 of Maps, Page 2, records of Maricopa County, Arizona.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitation of the following: All matters contained in Declaration of Covenants, Conditions, Restrictions and Easements recorded in Instrument No. 98-0622586A and Property Owner's Agreement recorded in Instrument No, 00-0096265

5. FEE PARCEL DESCRIPTION: UNIT 0317

Lot 1, PINE CREEK VILLAGE UNIT ONE, according to Case 7, Map 75, records of Coconino County, Arizona.

6. FEE PARCEL DESCRIPTION: UNIT 0323

PARCEL I:

Lot 3, Replat of Lot 3, Grand Village Center South, according to Book 712 of Maps, page 15, records of Maricopa County, Arizona.

Being the same property as that described as that portion of Lot 3 Grand Village Center South, according to Book 565 of Maps, page 21, record of Maricopa County, Arizona, located in a portion of the Northwest quarter of Section 33, Township 4 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and being more particularly described as follows:

BEGINNING at the most easterly corner of said Lot 3;

Thence South 43° 45’ 50” West, along the southeasterly line of said Lot 3, a distance of 250.22

Thence North 46° 14’ 10” West, parallel with the northeasterly line of said Lot 3, a distance of 203.18 feet;

Thence North 43° 45’ 50” East, parallel with said southeasterly line of Lot 3, a distance of 250.22 feet to a point on said northeasterly line of said Lot 3;

Thence South 46° 14’ 10” East along said northeasterly line, a distance of 203.18 feet to the POINT OF BEGINNING;

PARCEL II:

Easement rights as set forth in instrument recorded April 1, 1999, in Instrument No, 99-0311415.

7. FEE PARCEL DESCRIPTION: UNIT 0325

Parcel I:

Lot 14, INDIAN HILLS PLAZA, according to Book 11 of Maps, page 53, records of Cochise County, Arizona;

EXCEPT all gas, oil, minerals and other hydrocarbon substances lying 500 feet below the surface of the land but without the right to use the surface of the land to remove, drill or prospect for same as granted in Deed recorded in Docket 1400, page 107.

Parcel II:

Easements as granted by that certain "Declaration of Establishment of Protective Covenants, Conditions and Restrictions and Grants of Easements recorded in Docket 1554, page 212, records of Cochise County, Arizona.

8. FEE PARCEL DESCRIPTION: UNIT 0326

That portion of the Southwest quarter of the Southeast quarter of the Southeast quarter of Section 1, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows;

COMMENCING at the Southeast corner of said Section 1;

THENCE South 88 degrees 33 minutes 10 seconds West along the South line of the Southeast quarter of said Section 1, a distance of 657.72 feet to the Southeast corner of said Southwest quarter;

THENCE North 00 degrees 05 minutes 29 seconds East along the East line of said Southwest quarter, a distance of 65.02 feet to a point on the North line of the South 65 feet of said Southeast quarter, said point being the TRUE POINT OF BEGINNING;

THENCE South 88 degrees 33 minutes 10 seconds West along said North line, a distance of 244.03 feet;

THENCE North 01 degrees 26 minutes 50 seconds West, perpendicular to said North line, a distance of 257.98 feet;

THENCE North 88 degrees 33 minutes 10 seconds East, 250.96 feet to a point on the East line of said Southwest quarter;

THENCE South 00 degrees 05 minutes 29 seconds West along said East line, a distance of 258.07 feet to the TRUE POINT OF BEGINNING;

EXCEPT that portion described as follows:

COMMENCING at the Southeast corner of said Section 1;

THENCE South 88 degrees 33 minutes 10 seconds West along the South line of the Southeast quarter of Section 1, a distance of 667.00 feet;

THENCE North 00 degrees 33 minutes 11 seconds West, a distance of 108.15 feet to the TRUE POINT OF BEGINNING;

THENCE North, a distance of 3.00 feet;

THENCE North 21 degrees 30 minutes 09 seconds East, a distance of 3.24 feet;

THENCE North, a distance of 3.00 feet;

THENCE West, a distance of 3.03 feet;

THENCE North 00 degrees 01 minutes 14 seconds East, a distance of 26.94 feet;

THENCE North 89 degrees 32 minutes 12 seconds West, a distance of 25.25 feet;

THENCE South 00 degrees 51 minutes 26 seconds West, a distance of 21.87 feet;

THENCE West, a distance of 3.08 feet;

THENCE South, a distance of 3.00 feet;

THENCE East, a distance of 3.03 feet;

THENCE South 00 degrees 51 minutes 26 seconds West, a distance of 5.23 feet;

THENCE South 89 degrees 45 minutes 03 seconds East, a distance of 24.53 feet;

THENCE South, a distance of 5.98 feet;

THENCE East, a distance of 3.00 feet to the TRUE POINT OF BEGINNING.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitation of the following: All matters contained in Non-Exclusive Access and Parking Easement Agreement recorded in Instrument No. 2003-0491948 and re-recorded in Instrument No. 2003-0543283. (EASEMENT BEING SEARCHED)

9. FEE PARCEL DESCRIPTION: UNIT 0453

The land referred to herein below is situated in the county of Faulkner, State of Arkansas, and is described as follows:

Lot 5, Meadows Commercial Subdivision to the City of Conway, Arkansas, as shown on plat of record in Plat Book J, page 276, records of Faulkner County, Arkansas.

Also, an access and utility easement described as the Southern 45 feet of Lot 4, Meadows Commercial Subdivision to the City of Conway, Arkansas, as filed in instrument No 2001-14013 on August 3, 2001, and shown on plat of record in Plat Book J, page 276, records of Faulkner County, Arkansas.

10. FEE PARCEL DESCRIPTION: UNIT 0455

The land referred to herein below is situated in the county of Benton, State of Arkansas, and is described as follows:

All that tract or parcel of land lying and being in Benton County, Arkansas, and begin more particularly described as follows: A part of the NE 1/4 of the SW 1/4 of Section 9, Township 19 North, Range 30 West, City of Rogers, Benton County, Arkansas, shown as Tract 1 of Plat Book 2004, page 690, and being more particularly described as follows:

Commencing at the SE corner of the SE 1/4 of the SW 1/4 of said Section 9; thence along the East line of said SW 1/4 North 02º29'06" East 1979.02 feet; Thence leaving said East line North 86º47'47" West 857.89 feet to the Point of Beginning; Thence South 03º12'36" West 349.67 feet to the North right of way line of Poplar Street; Thence along said right of way the following courses, North 86º46'50" West 18.86 feet; Thence along a curve to the right, said curve having a radius of 25.31 feet, a central angle of 47º32'22", and an arc length of 21.00 feet; Thence along a curve to the left, said curve having a radius of 50.00 feet, a central angle of 71º17'58", and an arc length of 62.22 feet; Thence North 86º47'47" West 200.62 feet to the Easterly right of way line of Interstate Highway No. 540, thence along said easterly right of way line to the following courses, North 33º07'17" East 64.14 feet; Thence North 33º13'15" East 65.63 feet; Thence North 22º13'58" East 228.67 feet to a found rebar, thence leaving said easterly right of way line South 86º47'47" East 155.80 feet to the Point of Beginning, containing 72,014.4 sq. ft. or 1.6532 acres more or less, and subject to all rights of way easements and restrictive covenants of record or fact.

Together with those easements shown in Declaration of Protective Covenants for certain lands in Benton County, Arkansas known as the Five Forty Property, recorded August 24, 2004 in Benton County, Arkansas, Deed Book 2004 at Page 39090.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitation of the following:

Beneficial Easements arising from the Declaration of Protective Covenants dated August 24, 2004 recorded August 24, 2004 in Book 2004 page 39090 of the aforesaid records.

11. FEE PARCEL DESCRIPTION: UNIT 0601

Parcel A:
Lot 3,
MEADOW POINTE COMMERCIAL SUBDIVISION, CITY OF WESTMINSTER,
County of Jefferson, State of Colorado.

Parcel B:

Non-exclusive easements for ingress and egress by vehicular and pedestrian traffic as described in Declaration of Covenants, Conditions and Restrictions for Meadow

12. FEE PARCEL DESCRIPTION: UNIT 0602

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF EL PASO, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS: CHEYENNE MOUNTAIN CENTER SUBDIVISION, FILING NO. 4, according to the plat recorded December 26, 1995 at Reception No. 95138535, County of El Paso, State of Colorado.

Being the same property described as follows:

A parcel of land located in the NE1/4 of Section 32, Township 14 South, Range 66 West of the 6th Principal Meridian, County of El Paso and State of Colorado, described as follows:

Commencing at the E1/4 corner of said Section 32, from which the NE corner of said Section 32 bears N00° 18’ 24” W a distance of 1773.48 feet to a point on the Westerly right of way line of Interstate Highway No. 25;

Thence along said right of way for the following five courses:

1. Thence S24° 01’ 28” E a distance of 37.93 feet;

2. Thence S23° 01’ 57” E a distance of 116.48 feet;

3. Thence S33° 19’ 03” E a distance of 210.61 feet to the point of beginning;

4. Thence continuing S33° 19’ 03” E a distance of 87.95 feet to a point of curve to the right, whose radius is 55,880.00 feet and central angle is 00° 20’ 17”;

5. Thence along the arc of said curve a distance of 329.57 feet;

Thence S60° 49’ 07” W a distance of 322.50 feet;

Thence S47° 23’ 00” W a distance of 106.20 feet to a point on the Easterly right of way of proposed Geyser Drive;

Thence N19° 56’ 13” W along said right of way a distance of 419.55 feet to a point of curve to the left, whose radius is 331.00 feet and central angle is 02° 59’ 42”;

Thence along the arc of said curve a distance of 17.30 feet;

Thence departing from said curve radially N67° 04’ 05” E a distance of 84.99 feet;

Thence N56° 40’ 57” E a distance of 275.19 feet to the point of beginning.

13. FEE PARCEL DESCRIPTION: UNIT 0605

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LARIMER, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

Parcel A:

Lot 2, Oakridge Block One P.U.D., Third Filing, according to the plat recorded March 10, 1995 at Reception No. 95013926, County of Larimer, State of Colorado.

Parcel B:

Together With access and parking easements as set forth in Declaration of Easements recorded June 30, 1995 at Reception No. 95038279 and in First Amendment to Declaration of Easements recorded June 6, 1995 at Reception No. 96040349, County of Larimer, State of Colorado.

14. FEE PARCEL DESCRIPTION: UNIT 0606

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ARAPAHOE, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

Parcel I:
Lot 1,
Block 1,
SOUTHEAST COMMONS SUBDIVISION FILING NO. 5,
County of Arapahoe, State of Colorado.

Parcel II:
Tract A and Tract B,
Southeast Commons Subdivision Filing No. 1,
County of Arapahoe,
State of Colorado.

Except those portions of the above tracts conveyed by Warranty Deed recorded November 14, 1995 at Reception No. A5120678 and Warranty Deed recorded June 21, 1996 at Reception No. A6078907, County of Arapahoe, State of Colorado.

15. FEE PARCEL DESCRIPTION: UNIT 0611

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF JEFFERSON, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

Parcel A:
Lot 6,
WESTFIELD SUBDIVISION FILING NO. 1, County of Jefferson, State of Colorado.

Parcel B:

Together With those benefits of a nonexclusive easement for roadways, walkways, ingress and egress as described in Easements with Covenants and Restrictions affecting Land ("E.C.R.") recorded September 16, 1993 at Reception No. 93144727, First Amendment recorded February 3, 1994 at Reception No. 94024287, Second Amendment recorded March 24, 1994 at Reception No. 94055605, Third Amendment recorded April 15, 1994 at Reception No. 94069655 and Fourth Amendment recorded June 24, 1994 at Reception No. 94110765., County of Jefferson, State of Colorado.

16. FEE PARCEL DESCRIPTION: UNIT 0612

Parcel A:
Lot 2,

MONUMENT CREEK COMMERCE CENTER FILING NO. 5, according to the plat recorded September 16, 1994 in plat Book G5 at Page 18, County of El Paso, State of Colorado.

Parcel B:

Non-exclusive access easement as described in Easement Agreement recorded October 31, 1985 in Book 5082 at Page 1213, County of El Paso, State of Colorado.

Parcel C:

Together with the benefits and burdens contained in that certain declaration recorded April 28, 1994 in Book 6434 at Page 1198, County of El Paso, State of Colorado

17. FEE PARCEL DESCRIPTION: UNIT 0613

Parcel A:
Lot 1,
OUTBACK STEAKHOUSE AT HARMONY MARKET 8TH FILING, County of Larimer, State of Colorado.

Parcel B:

Non-exclusive easements for access and storm drainage as described in the Amended and Restated Declaration recorded December 7, 1992 at Reception No. 92078372 and Amendment recorded March 1, 1994 at Reception No. 94018270, County of Larimer, State of Colorado.

18. FEE PARCEL DESCRIPTION: UNIT 0614

Lot 1A,

HIGHLANDS RANCH—FILING NO. 57-A—5TH. AMENDMENT, and Resolution No. R-995-020 recorded February 8, 1995 at Reception No. 9506529, County of Douglas, State of Colorado.

Easement Parcel:

Together with that certain access easement as contained in The Planned Community District Development Guide for the new Town of Highlands Ranch, as adopted by the Board of County Commissioners of Douglas County, Colorado, on September 17, 1979, recorded October, 25 1979, in Book 373 at Page 187

19. FEE PARCEL DESCRIPTION: UNIT 0615

Block 1,

WASHINGTON SQUARE SUBDIVISION FILING NO. 6, according to the Plat filed in Plat File 17 at Map 362, County of Adams, State of Colorado.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitations as contained in that certain Declaration of Restrictions and Grant of Easements recorded April 26, 1995 in Book 4502 at Page 556.

20. FEE PARCEL DESCRIPTION: UNIT 0616

Parcel A:
Lot 6A,
CENTENNIAL VALLEY, PARCEL H, SECOND FILING, County of Boulder, State of Colorado.

Parcel B:

Together With those rights of a non-exclusive easement for ingress, egress and passage of vehicles and persons as described in Declaration of Covenants, Restrictions and Easements recorded September 25, 1995 at Reception No. 01549767, County of Boulder, State of Colorado.

Parcel C:

Non-exclusive easement and other rights as more particularly described in that certain Declaration of Easements, Covenants, Conditions and Restrictions recorded September 22, 1995 at Reception No. 01549444, County of Boulder, State of Colorado.

21. FEE PARCEL DESCRIPTION: UNIT 0617

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF EL PASO, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS: CHEYENNE MOUNTAIN CENTER SUBDIVISION, FILING NO. 4, according to the plat recorded December 26, 1995 at Reception No. 95138535, County of El Paso, State of Colorado.

Being the same property described as follows:

A parcel of land located in the NE1/4 of Section 32, Township 14 South, Range 66 West of the 6th Principal Meridian, County of El Paso and State of Colorado, described as follows:

Commencing at the E1/4 corner of said Section 32, from which the NE corner of said Section 32 bears N00° 18’ 24” W a distance of 1773.48 feet to a point on the Westerly right of way line of Interstate Highway No. 25;

Thence along said right of way for the following five courses:

1. Thence S24° 01’ 28” E a distance of 37.93 feet;

2. Thence S23° 01’ 57” E a distance of 116.48 feet;

3. Thence S33° 19’ 03” E a distance of 210.61 feet to the point of beginning;

4. Thence continuing S33° 19’ 03” E a distance of 87.95 feet to a point of curve to the right, whose radius is 55,880.00 feet and central angle is 00° 20’ 17”;

5. Thence along the arc of said curve a distance of 329.57 feet;

Thence S60° 49’ 07” W a distance of 322.50 feet;

Thence S47° 23’ 00” W a distance of 106.20 feet to a point on the Easterly right of way of proposed Geyser Drive;

Thence N19° 56’ 13” W along said right of way a distance of 419.55 feet to a point of curve to the left, whose radius is 331.00 feet and central angle is 02° 59’ 42”;

Thence along the arc of said curve a distance of 17.30 feet;

Thence departing from said curve radially N67° 04’ 05” E a distance of 84.99 feet;

Thence N56° 40’ 57” E a distance of 275.19 feet to the point of beginning.

22. FEE PARCEL DESCRIPTION: UNIT 0619

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ARAPAHOE, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

Parcel I:
Lot 1,
Block 1,
SOUTHEAST COMMONS SUBDIVISION FILING NO. 5,
County of Arapahoe, State of Colorado.

Parcel II:
Tract A and Tract B,
Southeast Commons Subdivision Filing No. 1,
County of Arapahoe,
State of Colorado.

Except those portions of the above tracts conveyed by Warranty Deed recorded November 14, 1995 at Reception No. A5120678 and Warranty Deed recorded June 21, 1996 at Reception No. A6078907, County of Arapahoe, State of Colorado.

23. FEE PARCEL DESCRIPTION: UNIT 0628

Parcel One:

Lot 12A, Longmont Business Center Replat F, as per the plat thereof recorded December 12, 2006 at Reception No. 2823527, County of Boulder, State of Colorado.

Parcel Two:

Non-exclusive rights as more particularly described in that certain Declaration of Access Easement recorded April 28, 2003 at Reception No. 2432533, County of Boulder, State of Colorado.

Parcel Three:

Non-exclusive easements for vehicular and pedestrian access over Outlot 1 as shown on the plat for Longmont Business Center Replat F recorded December 12, 2006 at Reception No. 2823527, County of Boulder, State of Colorado.

24. FEE PARCEL DESCRIPTION: UNIT 1001

A parcel of land in Section 23, Township 45 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 23, Township 45 South, Range 24 East; thence South 89 ° 11’ 50” West along the North line of said section 23 for 132.18 feet to an intersection with the Westerly right of way line of State Road 45 (Tamiami Trail); thence South 01 ° 16’ 00” East along said Westerly right of way line for 210.00 feet to the Point of Beginning of the herein described parcel of land; thence continue South 01° 16’ 00” East along said Westerly right of way line for 175.95 feet; thence South 89 ° 08’20” West for 324.11 feet to an intersection with the Easterly line of that certain parcel of land as described in O.R. Book 1388 at Page 822, of the Public Records of Lee County, Florida; thence North 01 ° 16’ 00” West along said Easterly line for 108.40 feet to the Northeast corner of said parcel; thence South 88 ° 44’ 00” West along the Northerly line of said parcel for 3.00 feet; thence North 01° 16’ 00” West for 67.58 feet; thence North 89° 08’ 20” East for 329.11 feet to the Point of Beginning. Said parcel of land situate, lying and being in Lee County, Florida.

TOGETHER WITH a nonexclusive easement for drainage purposes over the following described parcel:

A parcel of land in Section 23, Township 45 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 23, Township 45 South, Range 24 East; thence South 89° 11’ 50” West along the North line of said Section 23 for 132.18 feet to an intersection with the Westerly right of way line of State Road 45 (Tamiami Trail); thence South 01° 16’ 00” East along said Westerly

right of way line for 385.95 feet; thence South 89° 08’ 20” West for 292.11 feet; thence North 01° 16’ 00” West for 133.91 feet; thence South 88° 44’ 00” West for 37.00 feet to the Point of Beginning of the herein described parcel of land; thence continue South 88° 44’ 00” West for 25.00 feet; thence North 01° 16’ 00” West for 10.00 feet; thence North 88° 44’ 00” East for 25.00 feet; thence South 01° 16’ 00” East for 10.00 feet to the Point of Beginning. Said parcel of land situate, lying and being in Lee County, Florida.

Together with rights of ingress and egress over and across the following described parcels by virtue of easements reserved in Warranty Deeds recorded in O.R. Book 1600, Page 1465, O.R. Book 1621, Page 173, and in O.R. Book 1651, Page 671, of the Public Records of Lee County, Florida.

Parcel I:

A parcel of land in Section 23, Township 45 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 23, Township 45 South, Range 24 East; thence South 89° 11’ 50” West along the North line of said Section 23 for 132.10 feet to an intersection with the Westerly right of way line of S.R. 45 (Tamiami Trail); thence continue South 89° 11’ 50” West for 20.00 feet to the Point of Beginning of the herein described parcel of land; thence South 01° 16’ 00” East for 411.11 feet to the point of curvature of circular curve concave to the Northwest; thence Southwesterly along the arc of said curve, having for its elements a radius of 103.16 feet and a central angle of 45° 00’ 00” for 81.02 feet to the point of tangency; thence South 43° 44’ 00” West for 6.80 feet to the point of curvature of a circular curve concave to the Southeast; thence southwesterly along the arc of said curve having for its elements a radius of 102.34 feet and a central angle of 44° 35’ 40” for 79.65 feet to the point of tangency and an intersection with the Northerly line of a roadway easement 64.00 feet wide as described in O.R. Book 654, Page 747 and 748 of the Public Records of Lee County, Florida; thence South 89° 00’ 20” West along said Northerly line for 20.00 feet to the point of curvature of a circular curve concave to the Southeast; thence Northerly and northeasterly along the arc of said curve having for its elements a radius of 122.34 feet and a central angle of 44° 35’ 40” for 95.22 feet to the point of tangency; thence North 43° 44’ 00” East for 6.00 feet to the point of curvature of a circular curve concave to the Northwest; thence Northeasterly along the arc of said curve having for its elements a radius of 83.16 feet and a central angle of 45° 00’ 00” for 65.32 feet to the point of tangency; thence North 01° 16’ 00” West for 411.27 feet to an intersection with the North line of the aforementioned Section 23; thence North 89° 11’ 60” East along said North line for 20.00 feet to the Point of Beginning.

Parcel II:

A parcel of land in Section 23, Township 45 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 23, Township 45 South, Range 24 East; thence South 89° 11’ 50” West along the North line of said Section 23 for 132.10 feet to an intersection with the Westerly right of way line of S.R. 45 (Tamiami Trail); thence South 01° 16’ 00” East for 210.00 feet; thence South 89° 08’ 20” West for 5.00 feet to the Point of Beginning of the herein described parcel of land; thence continue South 89° 08’ 20” West for 40.00 feet; thence South 01° 16’ 00” East for 175.95 feet; thence North 89° 08’ 20” East for 40.00 feet; thence North 01° 16’ 00” West for 175.95 feet to the Point of Beginning.

Parcel III:

A parcel of land in Section 23, Township 45 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 23, Township 45 South, Range 24 East; thence South 89° 11’ 50” West along the North line of said Section 23 for 132.10 feet to an intersection with the Westerly right of way line of S.R. 45 (Tamiami Trail); thence South 01° 16’ 00” East along said westerly right of way line for 305.95 feet; thence South 89° 08’ 20” West for 10.00 feet to the Point of Beginning of the herein described parcel of land; thence continue South 89° 08’ 20” West for 40.00 feet; thence South 01° 16’ 00” East for 25.35 feet to the point of curvature of a circular curve concave to the Northwest; thence Southwesterly along the arc of said curve having for its elements a radius of 73.16 feet and a central angle of 45° 00’ 00” for 57.46 feet to the point of tangency; thence South 43° 44’ 00” West for 6.80 feet to the point of curvature of a circular curve concave to the northeast; thence southwesterly along the arc of said curve having for its elements a radius of 132.34 feet and a central angle of 37° 39’ 54” for 117.00 feet; thence South 44° 08’ 20” West for 22.58 feet to an intersection with the northerly line of a roadway easement 64.00 feet wide as described in O.R. Book 654, Page 747 and 748 of the Public Records of Lee County, Florida; thence North 89° 08’ 20” East along said northerly line for 75.00 feet ; thence North 45° 51’ 40” West for 25.72 feet to an intersection with the arc of a circular curve concave to the southeast, said Point bearing North 79° 29’ 59” West from the radius point of said curve; thence northeasterly along the arc of said curve having for its elements a radius of 92.34 feet and a central angle of 33° 13’ 59” for 53.56 feet to the point of tangency; thence North 43° 44’ 00” East for 6.00 feet to the point of curvature of a circular curve concave to the northwest; thence Northeasterly along the arc of said curve having for its elements a radius of 113.16 feet and a central angle of 45° 00’ 00” for 88.88 feet to the point of tangency; thence North 01° 16’ 00” West for 25.07 feet to the point of beginning.

Together with a non-exclusive easement for ingress and egress over and across that parcel of land in Lee County, Florida, commonly known as Seven Lakes Blvd., and more particularly described as follows:

A parcel of land in Section 23, Township 45 South, Range 24 East, Lee County, Florida, more particularly described as follows:

From the Northeast corner of said Section 23, run S 89° 11’ 50” W for 132.18 feet to the West right of way line of State Road 45 (Tamiami Trail); thence run S 01° 16’ 00” E along said right of way for 592.95 feet to the Point of Beginning of the herein described centerline. From said point of beginning run S 89° 08’ 20” W along the centerline of a roadway easement 64 feet in width for 175.00 feet to a point of curvature; thence run southwesterly along the arc of a curve to the left of radius 278.68 feet along the centerline of a roadway easement 64 feet in width (chord bearing S 64° 38’ 20” W, chord distance 231.13 feet) for 238.33 feet to a point of reverse curvature; thence run southwesterly along the arc of a curve to the right of radius 244.67 feet along the centerline of a roadway easement 64 feet in width (chord bearing S 64° 38’ 20” W, chord distance 202.93 feet) for 209.24 feet to a point of tangency; thence run S 89° 08’ 20” W along the centerline of a roadway easement 64 feet in width for 148.50 to a point of curvature; thence run northwesterly along the arc of a curve to the right of radius 653.42 feet along the centerline of a roadway easement 64 feet in width (chord bearing N 86° 29’ 10” W, chord distance 99.71 feet) for 99.80 feet to the point of tangency, thence run N 82° 06’ 34” W along the centerline of a roadway easement 64 feet in width for 100.43 feet to a point; thence run N 82° 06’ 34” W along the centerline of a roadway easement 30 feet in width for 33.60 feet; thence run N 01° 16’ 00” W along the centerline of a roadway easement 30 feet in width for 696.97 feet; thence run S 88° 52’

20” W along the centerline of a roadway easement 30 feet in width for 183.81 feet; thence run S 89° 11’ 50” W along the centerline of a roadway easement 30 feet in width for 569.84 feet to the westerly terminus and the end of the herein above right of way easement.

25. FEE PARCEL DESCRIPTION: UNIT 1002

The North 200 feet of the West 330 feet of Lot 63, Naples Improvement Company’s Little Farms, according to the Plat thereof which plat is recorded in Plat Book 2, at Page 2, of the Public Records of Collier County, Florida.

26. FEE PARCEL DESCRIPTION: UNIT 1006

Lots 4 and 5, Block 38-A, of Replat of Block 38 & Block 39, Plat No. 3, PALM BEACH LAKES SOUTH, according to the Plat thereof, as recorded in Plat Book 28, Page 180, of the Public Records of Palm Beach County, Florida.

27. FEE PARCEL DESCRIPTION: UNIT 1008

All Lot 1 and a Portion of Lot 2 according to the Plat of MARTIN SQUARE CORPORATE PARK, as recorded in Plat Book 13, Page 55, of the Public Records of Martin County, Florida, and being more particularly described as follows:

Begin at the Northeast Corner of said Lot 2; thence South 66°30’56” West along the North line of said Lot 2, a distance of 86.34 feet; thence South 23°29’04” East, parallel with and 86.34 feet Westerly of, as measured at right angles, with the East line of said Lot 2, a distance of 223.74 feet to a point in a non-tangent curve concave to the Southeast having a radius of 150.00 feet, the chord of which bears North 57°53’41” East and being the Northerly right-of-way line of Martin Square Corporate Parkway, thence Northeasterly along the arc of said curve, and said Northerly right-of-way line, a distance of 45.14 feet through a central angle of 17°14’29”; thence North 66°30’56” East, a distance of 41.88 feet to the East line of said Lot 2; thence North 23°29’04” West along the said East line a distance of 217.00 feet to the POINT OF BEGINNING.

28. FEE PARCEL DESCRIPTION: UNIT 1022

PARCEL I:

Commencing at the most Southerly corner of Lot 2, Block N, College Park Second Addition, according to plat thereof as recorded in Plat Book H, pages 36 and 36A, Public Records of Marion County, Florida, said point being on the Northwesterly right of way line of S.R. 200 (100 feet wide); thence North 41° 07’ 55” East along said right of way line 30.00 feet to the point of beginning; thence departing from said right of way line North 48° 52’ 05” West parallel to the Southwesterly boundary of said Lot, 400.28 feet to an intersection with the Northwesterly boundary of said lot; thence North 41° 02’ 21” East along said Northwesterly boundary 100.00 feet; thence departing from said Northwesterly boundary South 48° 52’ 05” East, 400.4 feet to an intersection with aforesaid right of way line; thence South 41° 07’ 55” West along said right of way line 100.00 feet to the point of beginning.

PARCEL II:

Beginning at the most Southerly corner of Lot 2, Block N, College Park Second Addition, according to the plat thereof as recorded in Plat Book H, pages 36 and 36A, Public Records of Marion County, Florida, said point being on the Northwesterly right of way line of S.R. 200 (100 feet wide); thence North 48° 52' 05" West along the Southwesterly boundary of said Lot, 400.23 feet to the most Westerly corner of said Lot; thence North 41° 02' 21" East along the Northwesterly boundary of said Lot, 30.00 feet; thence departing from said Northwesterly boundary South 48° 52' 05" East, 400.28 feet to an intersection with aforesaid right of way line; thence South 41° 07' 55" West along said right of way line 30.00 feet to the point of beginning.

29. FEE PARCEL DESCRIPTION: UNIT 1023

Lots H and J of Block 9 of TEMPLE TERRACES, according to the plat thereof, as recorded in Plat Book 25, Page 62, of the Public Records of Hillsborough County, Florida. LESS that part of said lots deeded to the State of Florida as recorded in Official Records Book 824, Page 663 and also LESS that part of Lot J, Block 9 of TEMPLE TERRACES as recorded in Plat Book 25, Page 62 of the Public Records of Hillsborough County, Florida deeded to the State of Florida in Official Records Book 824, Page 681 of the aforementioned public records.

30. FEE PARCEL DESCRIPTION: UNIT 1024

PARCEL 1:

A parcel of land lying in the Northwest 1/4 of the Northeast 1/4 of Section 4, Township 36 South, Range 18 East, Sarasota County, Florida and being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Northeast 1/4 of said Section 4; thence along the West line of said Northwest 1/4 of the Northeast l/4, being the centerline of Lockwood Ridge Road, South 00°21'41" West (measured), South 00°21'52" West (Department of Transportation), 37.94 feet; thence South 89°38'19" East, 45.00 feet to the East right-of-way line of Lockwood Ridge Road, according to Road Plat Book 3, Page 16D, of the Public Records of Sarasota County, Florida and the Southwesterly right-of-way line of State Road No. 610, now known as University Parkway, according to the Florida Department of Transportation right-of-way map, as recorded in Road Plat Book 2, Page 40-E, of the aforementioned public records and to the intersection with a curve to the right, whose center bears, South 03°04'20" West; thence along the Southwesterly right-of-way of said State Road No. 610, now known as University Parkway and the arc of said curve, having a radius of 5626.58 feet, a central angle of 04°49'28", for an arc distance of 473.78 feet to the Point of Tangency; thence continue along said right-of-way line, South 82°06'12" East, 524.21 feet for a Point of Beginning; thence continue along said right-of-way line, South 82°06'12" East, 42.19 feet to the Point of Curvature of a curve to the left; thence continue along said right-of-way line and the arc of said curve, having a radius of 5832.58 feet, a central angle of 02°35'30", for an arc distance of 263.82 feet to the East line of the Northwest 1/4 of the Northeast 1/4 of said Section 4; thence leaving said right-of-way line and along said East line, South 00°15'18" West, 219.67 feet; thence North 89°44'42" West, 304.00 feet; thence North 00°15'18" East 254.44 feet to the Point of Beginning.

PARCEL 2:

Together with the non-exclusive easements as defined in the Declaration of Easements, Restrictions and Reservations recorded in Official Records Book 2170, Page 1540, Public Records of Sarasota County, Florida, over the following property:

Outparcel A:

A parcel of land lying in the Northwest 1/4 of the Northeast 1/4 of Section 4, Township 36 South, Range 18 East, Sarasota County, Florida and being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Northeast 1/4 of said Section 4; thence along the West line of said Northwest 1/4 of the Northeast 1/4, being the centerline of Lockwood Ridge Road, South 00°21'41" West, 37.94 feet; thence South 89°38'19" East, 45.00 feet to the East aright-of-way line of Lockwood Ridge Road and the Southwesterly right-of-way line of State Road No. 610 (University Parkway), according to the Florida Department of Transportation right-of-way map as recorded in Road Plat Book 2, Page 40-E, of the public records of Sarasota County, Florida and to the intersection with a curve to the right, whose center bears, South 03°04'20" West, and for a Point of Beginning; thence along the Southwesterly right-of-way line of said State Road No. 610 (University Parkway) and the arc of said curve having a radius of 5626.58 feet; a central angle of 02°26'04", for an arc distance of 239.08 feet; thence leaving said right-of-way line, South 00°21'41" West, 211.69 feet; thence North 89°38'19" West, 238.50 feet to the East right-of-way line of said Lockwood Ridge Road; thence along said right-of-way, North 00°21'41" East (measured), North 00°21'52" East (Department of Transportation), 228.07 feet to the Point of Beginning.

Outparcel B:

A parcel of land lying in the Northwest 1/4 of the Northeast 1/4 of Section 4, Township 36, South, Range 18 East, Sarasota County, Florida and being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Northeast 1/4 of said Section 4; thence along the West line of said Northwest 1/4 of the Northeast l/4, being the centerline of Lockwood Ridge Road, South 00°21'41" West, 296.01 feet; thence South 89°88'l9" East, 45.00 feet to the East right-of-way line of Lockwood Ridge Road for a Point of Beginning; thence South 89°38'19" East, 238.50 feet; thence South 00°21'41" West, 203.00 feet; thence North 89°38'19" West, 238.50 feet to the East right-or-way line of said Lockwood Ridge Road; thence along said right-of-way line, North 00°2l'4l" East, 203.00 feet to the Point of Beginning.

PARCEL 3:

Together with the non-exclusive easements as defined in the Declaration of Easements, Restrictions and Reservations for Outparcel C recorded November 5, 1990 in Official Records Book 2253, Page 1360, as amended by First Amendment to Declaration of Easements, Restrictions And Reservations For Outparcel C recorded in Official Records Instrument No. 2007133947, and Consents thereto recorded in Official Records Instrument Nos. 2007133948, 2007133949 and 2007133950, all of the Public Records of Sarasota Cover the following property:

A parcel of land lying in the Northwest 1/4 of the Northeast 1/4 of Section 4, Township 36 South, Range 18 East, Sarasota County, Florida and being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Northeast 1/4 of said Section 4; thence along the West line of said Northwest 1/4 of the Northeast 1/4, being the centerline of Lockwood Ridge Road, South 00°21'41" West, 37.94 feet; thence South 89°38'19" East, 45.00 feet to the East right-of-way line of Lockwood Ridge Road and the Southwesterly right-of-way line of State Road No. 610 (University Parkway), according to the Florida Department of Transportation right-of-way map as recorded in Road Plat Book 2, Page 40-E, of the public records of Sarasota County, Florida and to the intersection with a curve to the right, whose center bears, South 03°04'20" West; thence along the Southwesterly right-of-way line of said State Road No. 610 (University Parkway) and the arc of said curve having a radius of 5626.58 feet; a central angle of 04°49'28", for an arc distance of 473.78 feet to the Point of Tangency; thence continue along said right-of-way line, South 82°06'12" East, 224.04 feet for a Point of Beginning; thence continue along said right-of-way line, South 82°06'12" East 209.36 feet; thence leaving said right-of-way line, South 00°l5'18" West, 157.80 feet; thence North 89°44'42" West, 207.50 feet; thence North 00°15'18" East, 185.64 feet to the Point of Beginning.

PARCEL 4:

Together with the non-exclusive easements as defined in the Declaration of Easements, Restrictions and Reservations for Outparcel D by Lancaster Partners VII, Ltd., a Florida limited partnership, recorded May 31, 1994 in Official Records Book 2636, Page 2019, as amended by Amendment thereto recorded in Official Records Instrument No. 200848635, of the Public Records Sarasota County, Florida.

31. FEE PARCEL DESCRIPTION: UNIT 1025

PARCEL A:

Lot 1, TAMPOSI WILLIAMS COMPANY SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 102, Page 23, of the Public Records of Polk County, Florida; also being described as:

Starting at the Northwest corner of the Southwest 1/4 of Section 33, Township 28 South, Range 26 East, Polk County, Florida, also being the Northwest corner of U.S. Government Lot 4; thence Southerly along the West boundary of said Southwest 1/4, a distance of 40 feet to the South right-of-way line of State Road 540, also known as Cypress Gardens Boulevard; thence South 90°00'00" East along said South right-of-way line, 223.21 feet to the POINT OF BEGINNING; thence continue South 90°00'00" East along said South right-of-way line, 140.00 feet; thence South 00°01'00" West, 25.00 feet; thence South 90°00'00" East, 10.00 feet; thence North 00°01'00" East, 20.00 feet; thence South 90°00'00" East, 40.00 feet; thence South 00°01'00" West, 193.50 feet; thence North 90°00'00" West, 60.04 feet; thence South 00°01'00" West, 19.58 feet; thence North 90°00'00" West, 99.97 feet; thence South 00°01'00" West 360.78 feet; thence South 90°00'00" East, 48.00 feet; thence North 00°01'00" East, 11.06 feet; thence South 90°00'00" East, 40.67 feet; thence South 00°01'00" West, 19.39 feet; thence South 90°00'00" East, 12.86 feet; thence North 00°01'00" East, 19.36 feet; thence South 90°00'00" East, 69.78 feet; thence South 00°01'00" West, 16.96 feet; thence South 90°00'00" East, 33.60 feet; thence South 00°01'00" West, 89.07 feet; thence North 90°00'00" West, 234.90 feet; thence North 00°01'00" East, 673.86 feet to the Point of Beginning;

LESS AND EXCEPT that part of Lot 1, TAMPOSI WILLIAMS COMPANY SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 102, Page 23, of the Public Records of Polk County, Florida; more particularly described as follows:

Begin at the Southwest corner of said Lot 1; thence North 00°01'00" East, along the West boundary thereof a distance of 356.78 feet; thence South 90°00'00" East, 20.00 feet; thence South 00°01'00" West, 18.00 feet; thence South 90°00'00" East, 9.99 feet to a point on the common boundary between Lots 1 and 2 of said Tamposi Williams Subdivision; thence along said common boundary the following 12 courses: 1) South 00°01'00" West, 243.78 feet; thence 2) South 90°00'00" East, 48.00 feet; thence 3) North 00°01'00" East, 11.06 feet; thence 4) South 90°00'00" East, 40.67 feet; thence 5) South 00°01'00" West, 19.39 feet; thence 6) South 90°00'00" East, 12.86 feet; thence 7) North 00°01'00" East, 19.36 feet; thence 8) South 90°00'00" East, 69.78 feet; thence 9) South 00°01'00" West, 16.96 feet; thence 10) South 90°00'00" East, 33.60 feet; thence 11) South 00°01'00" West, 89.07 feet; thence 12) North 90°00'00" West, 234.90 feet to the Point of Beginning.

PARCEL B:

That part of Lot 2, TAMPOSI WILLIAMS COMPANY SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 102, Page 23, of the Public Records of Polk County, Florida; more particularly described as follows:

Commence at the Southeast corner of said Lot 2; thence North 00°01'00" East, along the East boundary thereof a distance of 130.00 feet; thence North 90°00'00" West, 45.00 feet; thence South 00°01'00" West, 50.00 feet; thence North 90°00'00" West, 85.00 feet; thence North 00°01'00" East, 50.00 feet; thence North 90°00'00" West, 103.70 feet; thence North 45°00'00" West, 58.45 feet; thence North 00°01'00" East, 172.45 feet to the POINT OF BEGINNING; thence North 90°00'00" West, 129.97 feet to a point on the common boundary between Lots 1 and 2 of said TAMPOSI WILLIAMS COMPANY SUBDIVISION; thence along said common boundary the following 4 courses: 1) North 00°01'00" East, 117.00 feet; thence 2) South 90°00'00" East, 99.97 feet; thence 3) North 00°01'00" East, 19.58 feet; thence 4) South 90°00'00" East, 30.00 feet; thence departing said common boundary, South 00°01'00" West, 136.58 feet to the Point of Beginning.

PARCEL C:

That part of Lot 2, TAMPOSI WILLIAMS COMPANY SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 102, Page 23, of the Public Records of Polk County, Florida; more particularly described as follows:

Commence at the Southeast corner of said Lot 2; thence North 00°01'00" East, along the East boundary thereof a distance of 130.00 feet; thence North 90°00'00" West, 45.00 feet; thence South 00°01'00" West, 50.00 feet; thence North 90°00'00" West, 85.00 feet; thence North 00°01'00" East, 50.00 feet; thence North 90°00'00" West, 103.70 feet; thence North 45°00'00" West, 58.45 feet; thence North 00°01'00" East, 172.45 feet to the POINT OF BEGINNING; thence continue North 00°01'00" East, 136.58 feet to a point on the common boundary between Lots 1 and 2 of said TAMPOSI WILLIAMS COMPANY SUBDIVISION; thence South 90°00'00" East along said common boundary a distance of 30.04 feet; thence departing said common boundary, South 00°01'00" West, 45.00 feet; thence North 90°00'00" West, 20.04 feet; thence South 00°01'00" West, 91.58 feet; thence North 90°00'00" West, 10.00 feet to the Point of Beginning.

PARCEL D: (Easement)

Together with a 24 foot easement and right-of-way which benefits the insured property as created by and set forth in Easement recorded in Official Records Book 3534, Page 1716, located within the following area:

The South 65 feet of the following described property:

Commence at the Northwest corner of Government Lot 4 in Section 33, Township 28 South, Range 26 East, Polk County, Florida, and run South 00°09'16" East, 40 feet; thence North 89°58'11" East, 50 feet; thence South 00°09'16" East, 200 feet to the POINT OF BEGINNING; thence North 89°58'11" East, 172.64 feet; thence South 00°00'31" West, 124 feet; thence North 89°59'29" West, 27.50 feet; thence North 82°04'17" West, 156.34 feet; thence South 89°50'44" West, 29.84 feet; thence North 11°53'37" East, 104.66 feet; thence North 89°58'11" East, 18 feet to the Point of Beginning.

PARCEL E: (Easement)

Together with those easements which benefit the insured property as created by and set forth in Reciprocal Easement Agreement recorded in Official Records Book 3628, Page 1608, Public Records of Polk County, Florida.

PARCEL F: (ACCESS AND UTILITY EASEMENT)

Together with Non-exclusive easements as created by and set forth in Access and Utility Easement recorded in Official Records Book 6795, Page 1892, Public Records of Polk County, Florida.

32. FEE PARCEL DESCRIPTION: UNIT 1026

Parcel 1:

A parcel of land lying in Section 7, Township 40 South, Range 22 East, Charlotte County, Florida, described as follows:

Commencing at the Southwest corner of said Section 7, run North 00°05'44" East, along the West line of said Section 7, a distance of 40.00 feet to a point on the Northerly right-of-way line of Toledo Blade Boulevard, the same as shown and described in Official Records Book 251, Pages 106 thru 109 and on the Plat of "Port Charlotte Subdivision, Section Ninety", recorded in Plat Book 7, Pages 59-A thru 59-B of the Public Records of Charlotte County, Florida; thence South 89°58'20" East, along the right-of-way line, a distance of 1,559.93 feet to the Point of Curvature of a circular curve, concave Northerly, having a radius of 1,602.15 feet and a central angle of 13°44'34"; thence Easterly along the arc of said curve, a distance of 384.29 feet to the Point of Reverse Curvature of a circular curve, concave Southerly, having a radius of 1,681.38 feet and a central angle of 13°44'34", thence Easterly along the arc of said curve, a distance of 403.29 feet to the Point of Tangency of said curve; thence South 89°58'20" East, along said Northerly right-of-way line, a distance of 49.73 feet to a point lying on the Northerly extension of the centerline of Courtland Waterway, as shown on said Plat of "Port Charlotte Subdivision, Section Ninety"; thence North 00°09'16" West, along the centerline of said Courtland Waterway extended Northerly, a distance of 1,120.00 feet to a point on the Northerly right-of-way of Murdock Circle (150

feet wide); thence along said Northerly line, North 89°50’44” East, a distance of 179.06 feet to a point; thence along said Northerly right-of-way line, a distance of 1,601.78 feet along an arc to the left, having a radius of 2,200.00 feet and a central angle of 41°42’58” to a point; thence continuing along said Northern line, North 48°07’46” East, a distance of 679.46 feet to the Point of Curvature of a circular curve concave to the left, having as elements a central angle of 21°00’00”, a radius of 900.00 feet, and a chord bearing of North 37°37’46” East; thence Northeasterly along the arc of said curve, a distance of 329.87 feet to a point of compound curvature of a circular curve concave to the left, having as elements a central angle of 90°00’00”, a radius of 25.00 feet, and a chord bearing of North 17°52’14” West; thence Northwesterly along said right-of-way line and the arc of said curve, a distance of 39.27 feet to the Southerly right-of-way line of U.S. 41 (S.R. 45; 200 feet wide); thence North 62°52’14” West, along said right-of-way line, a distance of 333.82 feet to the POINT OF BEGINNING;

Thence from said POINT OF BEGINNING continue North 62°52’14” West, along said right-of-way line, a distance of 200.78 feet; thence South 27°07’46” West, a distance of 186.88 feet; thence South 62°52’14” East, a distance of 186.75 feet; thence North 27°07’46” East, a distance of 69.89 feet; thence South 62°52’14” East, a distance of 33.00 feet; thence North 27°07’46” East, a distance of 73.00 feet; thence North 51°39’20” West, a distance of 19.34 feet; thence North 27°07’46” East, a distance of 40.23 feet to the POINT OF BEGINNING.

Parcel 2:

TOGETHER with Easements for the benefit of the above described parcel as set forth in Easement Agreement dated May 29, 1996 and recorded in Official Records Book 1467, Page 1236, of the Public Records of Charlotte County, Florida.

Parcel 3:

TOGETHER with Easements for the benefit of the above described parcel as set forth in Easement Agreement and Declaration of Restrictions dated May 24, 1996 and recorded in Official Records Book 1467, Page 1246, of the Public Records of Charlotte County, Florida.

Parcel 4:

TOGETHER with Easements for the benefit of the above described parcel as set forth in Access Easement dated May 30, 1996 and recorded in Official Records Book 1467, Page 1271, of the Public Records of Charlotte County, Florida.

33. FEE PARCEL DESCRIPTION: UNIT 1027

Tract “B”, EAGLE SUBDIVISION I, according to the plat thereof, as recorded in Plat Book 66, Page 16 and 17, of the Public Records of Lee County, Florida.

TOGETHER WITH

A non-exclusive easement for ingress and egress over Tract A and Tract C of Eagle Subdivision I, according to the plat thereof, recorded in Plat Book 66, Page 16 and 17, of the Public Records of Lee County, Florida.

TOGETHER WITH

Perpetual non-exclusive easements for roadways, walkways, ingress and egress, and the use of facilities for the benefit of the above described parcel as created by and set forth in that certain Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 3243, Page 0144 and as amended in Official Records Instrument No. 2009000158329, of the Public Records of Lee County, Florida.

34. FEE PARCEL DESCRIPTION: UNIT 1028

Lots 4 and 5, Hernando Square Plaza North—Phase 2, according to the map or plat thereof, as recorded in Plat Book 32, Pages 10 and 11, inclusive, of the Public Records of Hernando County, Florida.

TOGETHER WITH all easements appurtenant thereto as described and created in that certain Declaration of Covenants, Conditions and Restrictions recorded in the Official Records of Hernando County, Florida, recorded in Official Records Book 1087, Page 570 and as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for Hernando Square, recorded in Official Records Book 1110, Page 545, and as further amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for Hernando Square Annexing Property recorded in Official Records Book 1359, Page 1950, all of the Public Records of Hernando County, Florida.

35. FEE PARCEL DESCRIPTION: UNIT 1029

PARCEL 1:

A parcel of land lying in part in the NE 1/4 of Section 12, Township 26 South, Range 19 East and lying in part in the NW 1/4 of Section 7, Township 26 South, Range 20 East, Pasco County, Florida, and being more particularly described as follows:

Commence at the Southeast corner of the NE 1/4 of the SE 1/4 of Section 12, Township 26 South, Range 19 East, Pasco County, Florida, thence run N00°17’43”E, 1336.37’ on the East boundary of said Section 12 to the point of intersection with the Northerly right-of-way line of State Road 54 West; thence run N77°28’17”W, 1325.17’ along said R/W line to the Point of Intersection with the Easterly R/W line of Oakley Boulevard, said Point being the P.C. of a curve to the right, said curve having a radius of 25.00’, chord of 35.36’, chord bearing of N32°28’17”W; thence run along said curve and Easterly R/W line an arc distance of 39.27’ to the P.T. of said curve; thence run N12°31°43”E, along said R/W line, 655.00’ thence run S77°28’17”E, 15.00’, thence run N12°31’43”E, 254.01’; thence leaving said Easterly R/W line run S80°18’30”E, 615.00’; thence run N09°41’30”E, 165.02’ for a POINT OF BEGINNING; thence continue N09°41’30”E, 119.14’; thence run S87°28’33”E, 747.36’ to a point on the Westerly R/W line of Interstate 75; thence run S33°54’42”W, along said R/W line, 267.65’; thence leaving said R/W line, run N77°26’08”W, 632.51 feet to the POINT OF BEGINNING.

LESS AND EXCEPT

Those lands described and set forth in Special Warranty Deed, from Private Restaurant Properties, LLC to Kazwell Realty Partners, LLC, dated July 31, 2008 and recorded August 1, 2008 in Official Records Book 7896, Page 1553, of the public records of Pasco County, Florida.

PARCEL 2:

Non-Exclusive EASEMENT FOR INGRESS AND EGRESS over and across the following described parcel:

Commence at the Southeast corner of the NE 1/4 of the SE 1/4 of Section 12, Township 26 South, Range 19 East, Pasco County, Florida, thence run N00°17'43"E, 1336.37' on the East boundary of said Section 12 to the point of intersection with the Northerly right-of-way line of State Road 54 West; thence run N77°28'17"W, 1325.17' along said R/W line to the Point of Intersection with the Easterly R/W line of Oakley Boulevard, said Point being the P.C. of a curve to the right, said curve having a radius of 25.00', chord of 35.36', chord bearing of N32°28'17"W; thence run along said curve and Easterly R/W line an arc distance of 39.27' to the P.T. of said curve; thence run N12°31°43"E, along said R/W line 542.36' for a POINT OF BEGINNING; thence continue N12°31'43"E, along said R/W line 60.00'; thence run S77°28'17"E, 230.35'; thence S77°26'08"E, 305.02' to the P.C. of a curve to the left, said curve having a radius of 220.00', Delta of 90°, chord of 311.13'; thence run along said curve an arc distance of 345.58' to the P.T. of said curve; thence run N12°33'52"E, 60.91'; thence run N12°23'47"E, 369.48'; thence run S87°28'33"E, 60.90'; thence S12°23'47"W, 380.01'; thence run S12°33'52"W, 61.00' to the P.C. of a curve to the right, said curve having a radius of 280.00', delta of 90°, chord of 395.98'; thence run along said curve an arc distance of 439.82' to the P.T. of said curve; thence run N77°26'08"W, 305.00'; thence run N77°28'17"W, 230.33' to the POINT OF BEGINNING, as created and described in EXHIBIT "A" attached to that certain Warranty Deed recorded in Official Records Book 3289, Page 646, as re-recorded in Official Records Book 3304, Page 462, and as contained in subsequent deeds in the chain of title recorded in Official Records Book 4057, Page 73, Official Records Book 4463, Page 1418, Official Records Book 7556, Page 1393 and Official Records Book 7896, Page 1553, of the public records of Pasco County, Florida.

PARCEL 3:

Easements benefiting the above described land described and set forth in Access, Utility and Drainage Easement Agreement, by and among Kazwell Realty Partners, LLC, Oakley Grove Development LLC and Private Restaurant Properties, LLC, dated July 31, 2008 and recorded August 1, 2008 in Official Records Book 7896, Page 1578, of the public records of Pasco County, Florida.

36. FEE PARCEL DESCRIPTION: UNIT 1030

PARCEL I:

A part of the Southeast 1/4 of the Northwest 1/4 of Section 32, Township 3 South, Range 27 East, Duval County, Florida, being more particularly described as follows:

Commence at the intersection of the South line of the Southeast 1/4 of the Northwest 1/4 of Section 32, with the Easterly right of way line of State Road No. 13 (a 174.00 foot right of way as now established); thence North 34°08'50" East along said Easterly right of way line of said State Road No. 13, a distance of 424.02 feet to a point of change in width of said right of way line; thence South 55°51'10" East, a distance of 10.00 feet; thence continue North 34°08'50" East along the Easterly right of way of said State Road No. 13, a distance of 154.00 feet to the Point of Beginning for this description.

From the Point of Beginning thus described, continue North 34°08’50” East along said Easterly right of way line of State Road No. 13, a distance of 138.00 feet; thence South 55°30’25” East departing from said right of way line a distance of 210.00 feet; thence South 34°08’50” West, a distance of 138.00 feet; thence North 55°30’25” West, a distance of 210.00 feet to the Point of Beginning.

PARCEL II:

Together with a Non Exclusive Easement for access, ingress, egress and parking, as disclosed in Warranty Deed dated 10/16/84, recorded 10/31/84, in Official Records Book 5871, page 1362, Public Records of Duval County, Florida.

PARCEL III:

Together with a Non Exclusive Easement for utilities as set forth in and granted by Warranty Deed dated 10/16/84, recorded 10/31/84, in Official Records Book 5871, page 1362, Public Records of Duval County, Florida.

37. FEE PARCEL DESCRIPTION: UNIT 1031

PARCEL I:

Lot 3 (Out Parcel), SOUTH BEACH REGIONAL SHOPPING CENTER, according to plat thereof recorded in Plat Book 46, Pages 88, 88A and 88B, Public Records of Duval County, Florida.

PARCEL II:

A Non-Exclusive Easement and other rights of the insured as disclosed by Reciprocal Easement Agreement between South Beach Regional Associates, a Florida joint venture composed of (i) Gerald M. Smalley (a.k.a. Jerry M. Smalley), an individual, and (ii) Jacksonville Beach Southern Properties, a Delaware general partnership, which is composed of Norpet (Swain) Inc., a Delaware corporation, Lynro Florida, Inc., a Delaware corporation, and Robert Rouleau, an individual, Sand Castle Associates, a Florida joint venture composed of (i) Gerald M. Smalley (a.k.a Jerry M. Smalley), an individual, and (ii) Jacksonville Beach Southern Properties, a Delaware general partnership, which is composed of Norpet (Swain) Inc., a Delaware corporation, Lynro Florida, Inc., a Delaware corporation, and Robert Rouleau, an individual and South Beach Office Tower Partnership, a Florida general partnership, dated as of August 2, 1989, recorded August 3, 1989 in Official Records Book 6743, Page 851; as affected by First Amendment, dated as of December 28, 1989, recorded July 13, 1990 in Official Records Book 6931, Page 595; Second Amendment, dated as of July 20, 1990, recorded August 1, 1990 in Official Records Book 6940, Page 1199; Third Amendment, dated as of November 13, 1990, recorded November 14, 1990 in Official Records Book 6997, Page 1795; Fourth Amendment, dated as of January 6, 1992, recorded January 23, 1992 in Official Records Book 7255, Page 1757; and Fifth Amendment, dated as of November 30, 1992, recorded December 3, 1992 in Official Records Book 7468, Page 1246, of the Public Records of Duval County, Florida.

38. FEE PARCEL DESCRIPTION: UNIT 1033

ALL THOSE CERTAIN PIECES, PARCELS OR TRACTS OF LAND SITUATE, LYING AND BEING IN THE COUNTY OF CLAY AND STATE OF FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A:

a parcel of land situated in Section 5, Township 4 South, Range 26 East, Clay County, Florida; said parcel being more particularly described as follows: Commence at the intersection of the former Easterly line of Blanding Boulevard (State Road No. 21 as formerly established as a 100 foot right of way) with the centerline of Wells Road (a 100 foot wide County Road according to Official Records Book 157, pages 539-544 of the Public Records of said County); thence on said centerline run South 88° 36’ 30” East, 2329.90 feet; thence North 01° 23’ 30” East, 50.00 feet to the North line of said Wells Road; thence on last said line run the following five courses: (1) on the arc of a curve concave Southwesterly and having a radius of 4347.18 feet, a chord distance of 327.95 feet, the bearing of said chord being South 86° 26’ 48” East; (2) continue on last said arc, a chord distance of 200.98 feet, the bearing of said chord being South 82° 57’ 37” East; (3) continue on last said arc, a chord distance of 158.04 feet to the point of beginning. The bearing of said chord being South 80° 35’ 38” East; (4) continue on last said arc, a chord distance of 71.62 feet, the bearing of last chord being South 79° 04’ 49” East to the point of tangency of said curve; (5) thence continue along said North right of way line, South 78° 36’ 30” East, 170.25 feet; thence North 01° 23’ 30” East, 304.63 feet; thence North 78° 36’ 30” West, 117.35 feet to the point of curvature of a curve concave Southwesterly and having a radius of 4647.18 feet; thence Westerly around and along the arc of said curve, an arc distance of 111.93 feet, said arc having a chord bearing and distance of North 79° 17’ 54” West, 111.92 feet; thence South 10° 00’ 42” West, 48.96 feet; thence North 80° 00’ 00” West, 5.00 feet; thence South 01° 23’ 30” West, 254.03 feet to the point of beginning.

and

PARCEL B:

A parcel of land situated in Section 5, Township 4 South, Range 26 East, Clay County, Florida; said parcel being more particularly described as follows: Commence at the intersection of the former Easterly line of Blanding Boulevard (State Road No. 21 as formerly established as a 100 foot right of way) with the centerline of Wells Road (a 100 foot wide County Road according to Official Records Book 157, pages 539-544 of the Public Records of said County); thence on said centerline run South 88° 36’ 30” East, 2329.90 feet; thence North 01° 23’ 30” East, 50.00 feet to the North line of said Wells Road; thence on last said line run the following three courses; (1) on the arc of a curve concave Southwesterly and having a radius of 4347.18 feet, a chord distance of 327.95 feet, the bearing of said chord being South 86° 26’ 48” East; (2) continue on last said arc, a chord distance of 200.98 feet to the point of beginning, the bearing of last said chord being South 82° 57’ 37” East; (3) continue on last said arc, a distance of 158.05 feet, said arc having a chord distance of 158.04 feet, the bearing of last said chord being South 80° 35’ 38” East; thence North 01° 23’ 30” East, 254.03 feet; thence South 80° 00’ 00” East 5.00 feet; thence North 10° 00’ 42” East, 48.96 feet to a point situate in a curve concave Southwesterly and having a radius of 4647.18 feet; thence Westerly around and along the arc of said curve, 170.28 feet; said arc being subtended by a chord bearing and distance of North 81° 02’ 17” West, 170.27 feet; thence South 01° 23’ 30” West, 302.09 feet to the point of beginning.

LESS AND EXCEPT that portion conveyed by Warranty Deed to JP Car Wash Investments, LLC, a Florida limited liability company recorded in Official Records Book 2712, page 350, of the Public Records of Clay County, Florida.

and

PARCEL C:

Together with easement in Official Records Book 1337, page 345 of the Public Records of Clay County, Florida.

and

PARCEL D:

Together with a perpetual non-exclusive Easement for the benefit of Parcel A and B as created by Declaration of Covenants, Conditions, Restrictions and Easements recorded in Official Records Book 2712, page 330, for the purpose described therein over, under and across the lands described therein.

39. FEE PARCEL DESCRIPTION: UNIT 1034

PARCEL I

A part of the G.W. Perpall Grant, Section 41, Township 7 South, Range 30 East, St. Johns County, Florida, and being more particularly described as follows:

For a Point of Reference, commence at a Florida, D.O.T. nail and washer at the intersection of the centerline of the Southbound lane, U.S. Highway No. 1, and the centerline of State Road No. 312, as shown on Florida D.O.T. Right-of-way Map, Section No. 78002-2502, Sheet 3 of 13 (Said Point of Intersection lying 98.0 feet East of the Westerly Right-of-Way line of said U.S. Highway No. 1); thence South 89°54'15" East, along said centerline of State Road No. 312, a distance of 123.98 feet; thence at right angles to said centerline, South 00°05'45" West, a distance of 100.00 feet to the Southerly line of said State Road No. 312; thence along the Southerly Right-of-Way line of said State Road No. 312 as shown on said D.O.T. Right-of-Way Map and as recorded O.R. Volume 234, Page 623, of the Public Records of said County, South 89°54'15" East, a distance of 704.00 feet to the Point of Beginning; thence continue South 89°54'15" East, along said Right-of-Way line, a distance of 225.24 feet; thence South 00°08'00" West, a distance of 333.28 feet; thence North 89°52'00" West, a distance of 225.24 feet; thence a North 00°08'00" East, a distance of 333.13 feet to the Point of Beginning.

PARCEL II

A Non-Exclusive Easement for passage and use for the purpose of walking upon and driving vehicles upon, over and across all those sidewalks, entrances and drives on the driveway area as disclosed in Cross Easement Agreement between Scotty's, Inc., a Florida corporation, New America Properties, Inc., a Delaware corporation, and Wal-Mart Properties, Inc., a Delaware corporation, dated as of March 22, 1983, recorded March 24, 1983 in O.R. Book 577, Pages 96 through 124; as affected by Supplement to Cross Easement Agreement, dated as of March 23, 1993, recorded March 26, 1993 in O.R. Book 984, Pages 1169 through 1183, St. Johns County Records.

PARCEL III

A Non-Exclusive Easement for pedestrian and vehicular ingress and egress over and across all those sidewalks, driveways passageways as may exist from time to time on that certain real property described in Easement for Ingress and Egress granted to Southern Centers Associates, a Florida general partnership, from Apple South, Inc., a Georgia corporation, dated March 23, 1993, recorded March 26, 1993 in O.R. Book 984, Pages 1193 through 1196, St. Johns County Records.

PARCEL IV

A Non-Exclusive Easement for pedestrian and vehicular ingress and egress over and across the service road, as disclosed in Easement Agreement between Southern Center Associates, a Florida general partnership, and Connerty, Inc., a Florida corporation, dated November 30, 1993, recorded December 6, 1993 in O.R. Book 1024, Pages 1549 through 1562, St. Johns County Records.

PARCEL V

A Non-Exclusive Easement for the purpose of using a surface and storm water retention pond system as disclosed in Easement Agreement between Southern Center Associates, a Florida general partnership, and Connerty, Inc., a Florida corporation, dated November 30, 1993, recorded December 6, 1993 in O.R. Book 1024, Pages 1549 through 1562, St. Johns County Records.

PARCEL VI

A Non-Exclusive Easement for drainage of surface waters, storm water and for the construction, installation, operations and maintenance of drainage improvements and structures over, under and across that certain property described in Easement Agreement dated November 30, 1993, recorded December 6, 1993 in O.R. Book 1024, Pages 1549 through 1562, St. Johns County Records.

PARCEL VII

A Non-Exclusive Easement for pedestrian or vehicular, or both, ingress, egress and regress, as set forth in that certain Agreement by and between Staug Properties, Inc., a Florida corporation and Scotty's, Inc., a Florida corporation recorded in Official Records Book 398, Page 164, and as affected by Amendment to Easement recorded in Official Records Book 481, Page 288, St. Johns County Records.

40. FEE PARCEL DESCRIPTION: UNIT 1035

Commence at the Department of Transportation from Pin on the Southerly Right-of-Way boundary of State Road No. 8 (Interstate 10), set iron pipe being North 89 degrees 23 minutes 03 seconds West 604.28 feet from the Easterly boundary of Section 8, Township 1 North, Range 1 East, Leon County, Florida, and run thence South 86 degrees 07 minutes 58 seconds West 135.97 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING leaving said Southerly Right-of-Way run South 00 degrees 58 minutes 58 seconds West 378.71 feet to a point on the Northerly Right-of-Way of Raymond Diehl Road, thence run North 83 degrees 44 minutes 30 seconds West along said Northerly Right-of-Way 157.71 feet, thence North 04 degrees 18 minutes 58 seconds East 15.06 feet, thence North 82 degrees 57 minutes 27 seconds West along said Northerly Right-of-Way 128.81 feet, thence leaving said Northerly Right-of-Way run North 07 degrees 02 minutes 33 seconds East 114.14 feet, thence North 15

degrees 23 minutes 55 seconds West 131.30 feet, thence North 60 degrees 53 minutes 19 seconds West 14.63 feet, thence North 15 degrees 31 minutes 47 seconds West 78.80 feet to a point on the Southerly Right-of-Way of said State Road No. 8, thence run South 88 degrees 53 minutes 50 seconds East along said Southerly Right-of-Way 179.19 feet, thence North 86 degrees 07 minutes 58 seconds East 165.95 feet to the POINT OF BEGINNING.

Together with Grant of Access and Parking Easements from McKibbon Hotel Group of Tallahassee Florida, L.P., a Georgia limited partnership to Outback Steakhouse of Florida, Inc., a Florida corporation as set forth in that certain Agreement Imposing Restrictive Covenants, Granting Easements, and Creating Parking, Signage and Maintenance Obligations by and between McKibbon Hotel Group of Tallahassee Florida, L.P., a Georgia limited partnership and Outback Steakhouse of Florida, Inc., a Florida corporation recorded in Official Records Book 1803, Page 1510.

41. FEE PARCEL DESCRIPTION: UNIT 1036

COMMENCE AT THE NORTHWEST CORNER OF SECTION 32, TOWNSHIP 03 SOUTH, RANGE 14 WEST, BAY COUNTY, FLORIDA, THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 32 FOR 50.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF 23RD STREET; THENCE SOUTH 89°19’39” EAST ALONG SAID SOUTH RIGHT OF WAY LINE FOR 254.92 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°19’39” EAST ALONG SAID SOUTH RIGHT OF WAY LINE FOR 200.00 FEET; THENCE SOUTH 01°05’48” WEST FOR 464.34 FEET TO THE NORTHERLY LINE OF LOT 5, EDGEWOOD, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 8, PAGE 68A, IN THE PUBLIC RECORDS OF BAY COUNTY, FLORIDA; THENCE NORTH 62°08’12” WEST ALONG SAID NORTHERLY LINE OF LOT 5, FOR 0.76 FEET; THENCE NORTH 62°17’23” WEST ALONG THE NORTHERLY LINE OF LOT 3, EDGEWOOD, ACCORDING TO SAID PLAT, FOR 171.96 FEET; THENCE NORTH 62°27’44” WEST ALONG THE NORTHERLY LINE OF LOT 3, EDGEWOOD, ACCORDING TO SAID PLAT, FOR 50.91 FEET; THENCE NORTH 01°05’48” EAST FOR 362.82 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A NON-EXCLUSIVE DRAINAGE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN THAT CERTAIN DECLARATION OF STORM DRAINAGE EASEMENT BY BARKLEY DEVELOPMENT COMPANY RECORDED SEPTEMBER 5, 1991 IN OFFICIAL RECORDS BOOK 1334, PAGE 1482 OF THE PUBLIC RECORDS OF BAY COUNTY, FLORIDA.

42. FEE PARCEL DESCRIPTION: UNIT 1060

Parcel 1

Lot 1, Florida Center Turnpike—Cypress Creek Golf Course Residential & Commercial Area Plat No. 8, according to the plat thereof as recorded in Plat Book 34, Page 58, Public Records of Orange County, Florida.

Parcel 2

Together with those certain Non-Exclusive Easements for the benefit of Parcel 1 created by Non-Exclusive Reciprocal Easement Agreement recorded in Official Records Book 4875, Page 3323, Public Records of Orange County, Florida.

Parcel 3

Together with Easements for the benefit of Parcel 1 created by Lawing Lane Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 3870, page 2729, Public Records of Orange County, Florida.

43. FEE PARCEL DESCRIPTION: UNIT 1061

Parcel A:

A parcel of land lying in Section 29, Township 19 South, Range 30 East, being more particularly described as follows:

Beginning at the Northwest corner of the Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 29; run North 89°38’09” East along the North line of the Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 29 for a distance of 242.76 feet to the Westerly right of way line of Hickman Drive as shown on the plat of I-4 Industrial Park as filed in Plat Book 16 at Page 59 of the Public Records of Seminole County, Florida; thence run South 00°16’14” East along said last mentioned Westerly line for a distance of 289.81 feet; thence run South 89°55’33” West for a distance of 242.76 feet to the West line of the Northeast 1/4 of the Northeast 1/4 of said Section 29, thence run North 00°16’14” West along said last mentioned West line for a distance of 288.58 feet to the point of beginning, Less the West 10 feet thereof, all in the Public Records of Seminole County, Florida.

Parcel B:

Commencing at the Northeast corner of the Northeast 1/4 of Section 29, Township 19 South, Range 30 East, Seminole County, Florida, run South 00°18’16” East along the East line of said Northeast 1/4, 660.44 feet; thence South 89°38’03” West, 1298.40 feet for a point of beginning; thence run North 00°16’14” West, 49.77 feet; thence South 89°38’03” West, 345.92 feet to the Easterly right of way of State Road 400 (I-4); thence South 23°52’49” West along said right of way, 54.58 feet; thence North 89°38’03” East, 40.00 feet; thence North 00°16’14” West, 25.00 feet; thence North 89°41’12” East, 70.00 feet; thence South 00°16’14” East, 15.00 feet; thence North 89°38’03” East, 248.24 feet; thence South 00°16’14” East, 10.00 feet; thence North 89°38’03” East, 10 feet to the point of beginning and also being described as follows:

Commencing at the Northwest corner of the Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section 29, Township 19 South, Range 30 East, according to the Plat of I-4 Industrial Park, as recorded in Plat Book 16, Pages 59 and 60, of the Public Records of Seminole County, Florida, run thence North 89°38’03” East more or less, 10.00 feet for a point of beginning; thence continue North 89°38’03” East, 10.00 feet; thence North 00°16’14” West, 49.77 feet; thence South 89°38’03” West, 345.92 feet to the Easterly right of way of State Road 400 (I-4); thence South 23°52’49” West along said right of way, 54.50 feet; thence North 89°38’03” East, 40.00 feet; thence North 00°16’14” West, 25.00 feet; thence

North 89°41’12” East, 70.00 feet; thence South 00°16’14” East, 15.00 feet; thence North 89°38’03” East, 248.22 feet; thence South 00°16’14” East, 10.00 feet to the point of beginning.

Parcel C:

Together with Non-Exclusive Easement for the benefit of Parcel B as created in Easement Agreement recorded in Official Records Book 3020, Page 452, for the purpose described therein over, under and across lands described therein.

44. FEE PARCEL DESCRIPTION: UNIT 1063

That portion of Lot 2, Block 46 of the revised and corrected plat of Re-Subdivision of Subdivision of Silver Lakes Estates, according to the plat thereof as recorded in Plat Book 10, Pages 66 through 69, Public Records of Lake County, Florida, described as follows:

Commence at the Northwest corner of Lot 1, Block 46, of the above said revised and corrected plat of Re-Subdivision of Subdivision of Silver Lake Estates, (said point of commencement being a 6” x 6” concrete monument); thence run North 00°44’58’ East along the West line of Lot 4, of Block 45 of said subdivision a distance of 146.50 feet to the Southwesterly right of way line of State Road 500, U.S. Highway 441; thence run South 71°26’06” East along said right of way line a distance of 476.58 feet to the point of beginning; thence continue South 71°26’06” East along said right of way line a distance of 207.00 feet to the intersection with the East line of Lot 2, Block 46; thence departing said right of way line run South 00°19’45” East along said East line a distance of 302.23 feet; thence departing the East line of Lot 2, run North 89°37’35” West, a distance of 175.08 feet to the point of curvature of a curve concave Northeasterly and having a radius of 33.00 feet; thence run Northwesterly along the arc of said curve through a central angle of 90°00’00” a distance of 51.84 feet to the point of tangency thereof; thence run North 00°22’25” East, a distance of 307.72 feet to the point of curvature of a curve concave Southeasterly and having a radius of 48.00 feet; thence run Northeasterly along the arc of said curve through a central angle of 32°56’36” a distance of 27.60 feet to the abovementioned Southwesterly right of way line of State Road 500, U.S. Highway 441 and the point of beginning.

Together with:

Non-exclusive and perpetual Easements as reserved in Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 1660, Page 1002; as re-recorded in Official Records Book 1662, Page 2431, as amended by First Amendment to Declaration recorded in Official Records Book 1827, Page 276, Public Records of Lake County, Florida.

45. FEE PARCEL DESCRIPTION: UNIT 1101

All that tract or parcel of land lying and being in Land Lot 345 of the 13th Land District of Bibb County, Georgia, being more particularly described as follows: BEGINNING AT A POINT where the North margin of the right-of-way of Riverplace Drive (variable right-of-way) intersects with the East margin of the right-of-way of Arkwright Road (variable right-of-way) and from said POINT run north 81 degrees 30 minutes 21 seconds east along the North margin of the right-of-way of Riverplace Drive a distance of 67.74 feet to a point; thence run in a Northeasterly direction along the North margin of the right-of-way of Riverplace Drive an arc distance of 82.73 feet (which arc has a radius of 359.92 feet, a delta angle of 13 degrees 10 minutes 11 seconds, a chord course of north 88 degrees 05 minutes 15

seconds east and a chord distance of 82.55) feet to a point marked by a Nail set in asphalt which is the TRUE POINT OF BEGINNING; thence leaving the North margin of the right-of-way of Riverplace Drive and from said TRUE POINT OF BEGINNING run north 21 degrees 34 minutes 15 seconds east a distance of 170.27 feet to a point marked by an iron pin; thence run north 03 degrees 24 minutes 58 seconds east a distance of 110.0 feet to a point marked by a one-half inch Rebar; thence run north 03 degrees 24 minutes 58 seconds east a distance of 7.60 feet to a point marked by an iron pin; thence run north 64 degrees 45 minutes 28 seconds east a distance of 137.66 feet to a point marked by an iron pin; thence run south 68 degrees 25 minutes 45 seconds east a distance of 154.96 feet to a point marked by an iron pin; thence run south 24 degrees 19 minutes 06 seconds west a distance of 115.47 feet to a point marked by an iron pin; thence run south 24 degrees 19 minutes 06 seconds west a distance of 24.73 feet to a point marked by an iron pin; thence run south 08 degrees 28 minutes 32 seconds east a distance of 91.56 feet to a point marked by an iron pin; thence run south 06 degrees 39 minutes 55 seconds west a distance of 56.87 feet to a point marked by an iron pin; thence run south 29 degrees 22 minutes 26 seconds west a distance of 123.93 feet to a point on the North margin of the right-of-way of River Place Drive marked by an iron pin; thence run north 46 degrees 50 minutes 25 seconds west along the North margin of the right-of-way of Riverplace Drive 13.36 feet to a point marked by an iron pin; thence run in a Northwesterly direction along the North margin of the right-of-way of Riverplace Drive an arc distance of 241.75 feet (which arc has a radius of 359.92 feet, a delta angle of 38 degrees 29 minutes 06 seconds, a chord course of north 66 degrees 04 minutes 38 seconds west and a chord distance of 237.23 feet) to a point marked by a Nail set in asphalt and the TRUE POINT OF BEGINNING. Said property is shown as TRACT “A”, containing 2.0377 acres, on a certain map or plat of survey entitled “Boundary Survey for Carrabba’s Restaurant”, prepared by Donaldson, Garrett & Associates, Inc. (James P. Garrett, Georgia Registered Surveyor No. 2466), dated October 22, 1994, revised November 22, 1994, and recorded in Plat Book 87, Pages 992 and 993, Bibb County, Georgia Records, to which map or plat of survey and the record thereof reference is hereby made for all purposes in aid of the description of said property.

TOGETHER WITH, as appurtenance, all those real property rights which benefit the property as contained in the Easement from Southeast Timberlands, Inc. to J. Gordon Bennett, III, filed May 2, 1991 at Deed Book 1987, Page 270, aforesaid records.

46. FEE PARCEL DESCRIPTION: UNIT 1102

ALL THAT TRACT or parcel of land lying and being in Land Lot 208 of the 20th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin set (1/2-inch rebar) at the intersection of the northwest right-of-way of Ernest Barrett Parkway (right-of-way varies) with the northeast right-of-way of Cobb Place Drive (right-of-way varies); thence along the northeast right-of-way of Cobb Place Drive South 73 degrees 40 minutes 36 seconds West 45.78 feet to an iron pin set; thence North 75 degrees 30 minutes 22 seconds West 33.92 feet to an iron pin set; thence North 35 degrees 33 minutes 35 seconds West 277.43 feet to an iron pin set (1/2-inch rebar); thence leaving said right-of-way North 54 degrees 26 minutes 25 seconds East 207.70 feet to an iron pin set; thence along an arc 29.02 feet subtended by a chord bearing North 56 degrees 13 minutes 43 seconds East and a chord distance of 29.01 feet with a radius of 465.04 feet to an iron pin set; thence South 35 degrees 33 minutes 35 seconds East 309.11 feet to an iron pin set on the northwest right-of-way of Earnest Barrett Parkway; thence along said right-of-way South 54 degrees 26 minutes 25 seconds West 55.61 feet to an iron pin set; thence South 35 degrees 33 minutes 35 seconds East 8.50 feet to an iron pin set; thence South 54 degrees 26 minutes 25 seconds West 116.09 feet to the POINT OF BEGINNING. Said tract being 1.687 acres (73,973.06 square feet) more or less.

47. FEE PARCEL DESCRIPTION: UNIT 1108

ALL THAT TRACT or parcel of land lying and being in Land Lot 110 of the 12th District of Clayton County, Georgia, being more particularly described as follows:

Commence at a point at the intersection of the southwesterly right-of-way line of Mt. Zion Road (variable right-of-way) with the northwesterly right-of-way line of Mt. Zion Circle (50-foot right-of-way); proceed thence northwesterly along the right-of-way of Mt. Zion Road a distance of 1504.23 feet to a point, said point being the TRUE POINT OF BEGINNING; proceed thence South 43 degrees 14 minutes 51 seconds West a distance of 261.11 feet to a point; proceed thence North 46 degrees 45 minutes 09 seconds West a distance of 193.00 feet to point; proceed thence North 43 degrees 14 minutes 51 seconds East a distance of 260.90 feet to point; proceed thence South 46 degrees 48 minutes 52 seconds East a distance of 193.00 feet to a point, said point being the TRUE POINT OF BEGINNING; containing 1.16 acres more or less and being shown on ALTA/ACSM Survey for: Fourth Quarter Properties XI, LLC, SouthTrust Bank of Georgia, N.A., Carrabba's Italian Grill, Inc., Baker & Hostetler, L.P. and First American Title Insurance Company, made by Travis Pruitt & Associates, P.C., bearing the seal of Travis N. Puritt, Sr., GA R.L.S. No. 1729, dated April 19, 1997, last revised April 29, 1997, which survey is incorporated herein by this reference and made a part hereof.

TOGETHER WITH the rights, privileges, easements and burdens granted under that certain Declaration of Operations, Easements, Covenants and Restrictions by Fourth Quarter Properties XI, LLC, a Georgia limited liability company dated April 29, 1997, recorded in Deed Book 3033, Page 4, Clayton County, Georgia records.

48. FEE PARCEL DESCRIPTION: UNIT 1116

ALL THAT TRACT OR PARCEL OF LAND lying and being in the 241st District, G.M., Clarke County, Georgia, and being more particularly described as follows:

To find the TRUE POINT OF BEGINNING, commence at a point located at the Southwest corner of the intersection of the Southwesterly right-of-way line of Timothy Road (which right-of-way is 100 feet) and the Southerly right-of-way line of Athens-Atlanta Highway (U.S. 78, a 200 foot right-of-way); running thence Southwesterly along the Southerly line of the right-of-way of said Athens-Atlanta Highway and along the arc of a curve (which arc has a radius of 2,944.79 feet and a chord distance of 53.85 feet on a bearing of South 81 degrees 03 minutes 35 seconds West), a distance of 53.85 feet to a point, which point is the TRUE POINT OF BEGINNING; from said TRUE POINT OF BEGINNING and leaving the southerly right-of-way line of said Athens-Atlanta Highway, running thence South 01 degrees 02 minutes 30 seconds East a distance of 285.07 feet to a point; running thence South 89 degrees 50 minutes 10 seconds West a distance of 180.00 feet to a point; running thence North 01 degrees 02 minutes 31 seconds West a distance of 264.63 feet to a point located on the southerly right-of-way line of said Athens-Atlanta Highway; running thence Northeasterly along the Southerly right-of-way line of said Athens-Atlanta Highway and along the arc of the curve to the left (which arc has a radius of 2,944.79 feet and a chord distance of 180.5 feet on a bearing of North 83 degrees 20 minutes 56 seconds East) a distance of 180.87 feet to a point; which point is the TRUE POINT OF BEGINNING, according to a plat of survey for ShowBiz Pizza Place, Inc., dated September 15, 1982, by Ben McLeroy, Georgia Registered Land Surveyor #1184.

Tax Map Reference Number 074C A056D

49. FEE PARCEL DESCRIPTION: UNIT 1119

ALL THAT TRACT or parcel of land lying and being in Land Lot 649 of the 16th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at a point located on the eastern side of the land lot line being common to Land Lots 719 and 720 of the aforesaid district, section and county and the northwestern right-of-way line of Barrett Parkway (formerly known as New Roberts Road and having a 120-foot right-of-way width); thence leaving the eastern side of the land lot line being common to Land Lots 719 and 720, run in a southwesterly direction along the northwestern right-of-way line of Barrett Parkway South 54 degrees 26 minutes 25 seconds West a distance of 674.89 feet to a point located on the southwestern right-of-way line of a private road known as Cobb Place Parkway (formerly known as New Street B) and having a variable right-of-way width); thence leaving the northwestern right-of-way line of Barrett Parkway, run along the southwestern, northwestern and western right-of-way lines of Cobb Place Parkway the following four (4) courses and distances and following the curvature thereof: (1) along the arc of a 72.444-foot radius curve to the left having an arc distance of 113.80 feet to a point (said arc being subtended by a chord lying to the west thereof bearing North 09 degrees 26 minutes 44 seconds East and being 102.45 feet in length); (2) along the arc of a 177.405-foot radius curve to the right having an arc distance of 239.38 feet to a point (said arc being subtended by a chord lying to the east thereof bearing North 03 degrees 05 minutes 43 seconds East and being 221.62 feet in length); (3) North 41 degrees 45 minutes 00 seconds East a distance of 213.30 feet to a point; and (4) along the arc of a curve of a 139.60-foot radius curve to the left having an arc distance of 99.29 feet to a point (said arc being subtended by a chord lying to the west thereof bearing North 21 degrees 22 minutes 30 seconds East and being 97.21 feet in length); thence leaving the western right-of-way line of Cobb Place Parkway, run South 89 degrees 00 minutes 00 seconds East, a distance of 25.00 feet to a point; said point being the centerline of Cobb Place Parkway and the eastern boundary line of Grantor's property; thence along the centerline of Cobb Place Parkway and the eastern boundary line of Grantor's property, run North 01 degree 00 minutes 00 seconds East, a distance of 486.58 feet to a point; thence leaving the centerline of Cobb Place Parkway and the eastern boundary line of Grantor's property, run the following two (2) courses and distances: (1) North 89 degrees 00 minutes 00 seconds West a distance of 279.00 feet to a point; and (2) South 01 degree 00 minutes 00 seconds West, a distance of 197.69 feet to an iron pin placed, said iron pin placed being the TRUE POINT OF BEGINNING; from the TRUE POINT OF BEGINNING, as thus established, run the following four (4) courses and distances: (1) South 89 degrees 00 minutes 00 seconds East a distance of 244.00 feet to an iron pin placed; (2) South 01 degree 00 minutes 00 seconds West a distance of 151.05 feet to an iron pin placed; (3) North 89 degrees 00 minutes 00 seconds West a distance of 244.00 feet to a nail in cap placed; and (4) North 01 degree 00 minutes 00 seconds East a distance of 151.05 feet to an iron pin placed, said iron pin placed being the TRUE POINT OF BEGINNING.

The above described property contains 0.846 acres more or less, and is shown on and described according to that certain survey prepared for Outback Steakhouse of Florida, Inc., Andrew Weiss, P.C. and Chicago Title Insurance Company by Watts & Browning Engineers, Inc., (G.M. Gillespie, Georgia Registered Land Surveyor No. 2121), dated May 23, 1994, last revised July 7, 1994, which survey is incorporated herein by this reference and made a part of this description.

TOGETHER WITH the rights, privileges and easements granted under that certain Limited Warranty Deed recorded in Deed Book 3548, Page 367, Cobb County, Georgia records.

TOGETHER WITH the rights, privileges and easements granted under that certain Cobb Place Reciprocal Easement Agreement dated August 14, 1985, recorded in Deed Book 3607, Page 23, Cobb County, Georgia records; as assigned by that certain Assignment and Assumption Agreement from CA Cobb Retail Investors, Ltd. to Cobb Retail Associates, a Georgia general partnership, dated February 11, 1986, filed for record March 10, 1986, recorded in Deed Book 3851, Page 171, aforesaid county records; as amended by that certain Amendment to Cobb Place Reciprocal Easement Agreement dated November 28, 1990, filed for record December 7, 1990, recorded in Deed Book 5949, Page 516, aforesaid county records; as affected by that certain Easement and Indemnity Agreement dated August 8, 1991, filed of record August 9, 1991, recorded in Deed Book 6223, Page 433, aforesaid county records; as further amended in deed Book 8494, Page 552, aforesaid county records.

TOGETHER WITH the rights arising from that certain Easement and Indemnity Agreement dated August 8, 1991, filed of record August 9, 1991, recorded in Deed Book 6223, Page 433, aforesaid county records.

TOGETHER WITH the rights, privileges and easements granted under that certain Amendment and Restatement of Easement Agreement by and between Senior Corp. and Cobb Retail Associates, et al., dated August 20, 1986, filed for record November 6, 1986, recorded in Deed Book 4195, Page 316, Cobb County, Georgia records and in Deed Book 4195, Page 376, aforesaid county records.

TOGETHER WITH the rights, privileges and easements granted under that certain Easement Agreement by and between Jose Manuel Lomelin, et al., and Cobb Retail Associates, et al., dated August 22, 1986, filed for record November 6, 1986, recorded in Deed Book 4195, Page 435, Cobb County, Georgia records and in Deed Book 4195, Page 458, aforesaid county records.

50. FEE PARCEL DESCRIPTION: UNIT 1120

ALL THAT TRACT or parcel of land lying and being in Land Lot 23 of the 1st District, 5th Section, City of Douglasville, Douglas County, Georgia, said tract or parcel further described as follows:

To find the Point of Beginning commence at a concrete right-of-way monument found at the intersection of the westerly right-of-way line of Chapel Hill Road (r/w varies) and the northerly right-of-way line of Douglas Boulevard (100 ft r/w); thence the following courses and distances along the northerly right-of-way line of Douglas Boulevard to the Point of Beginning: North 87 degrees 28 minutes 24 seconds West for a distance of 56.11 feet to a point; thence along a curve to the right having a radius of 522.96 feet and an arc length of 126.25 feet, being subtended by a chord of North 80 degrees 47 minutes 54 seconds West for a distance of 125.94 feet to an iron pin found on the northerly right-of-way line of Douglas Boulevard said iron pin found being the Point of Beginning; thence the following courses and distances along the northerly right-of-way line of Douglas Boulevard along the arc of a curve to the right having a radius of 522.96 feet and an arc length of 75.56 feet, being subtended by a chord of North 69 degrees 44 minutes 36 seconds West for a distance of 75.49 feet to a point; thence North 65 degrees 36 minutes 15 seconds West for a distance of 166.95 feet to a point; thence along a curve to the left having

a radius of 622.96 feet and an arc length of 67.35 feet, being subtended by a chord of North 68 degrees 42 minutes 05 seconds West for a distance of 67.32 feet to an iron pin found; thence North 18 degrees 12 minutes 05 seconds East for a distance of 186.89 feet leaving the northerly right-of-way line of Douglas Boulevard to an iron pin found; thence North 77 degrees 01 minute 09 seconds East for a distance of 167.34 feet to an iron pin found; thence South 27 degrees 21 minutes 53 seconds East for a distance of 134.90 feet to an iron pin found; thence South 00 degrees 34 minutes 12 seconds East for a distance of 214.88 feet to an iron pin found on the northerly right-of-way line of Douglas Boulevard said iron pin found being the Point of Beginning. Together with and subject to covenants, easements and restrictions of record. Said parcel contains 1.471 acres, more or less.

TOGETHER WITH A 50 FOOT ACCESS EASEMENT being more particularly described as ALL THAT TRACT or parcel of land lying and being in Land Lot 23 of the 1st District, 5th Section, City of Douglasville, Douglas County, Georgia, said tract or parcel further described as follows:

To find the Point of Beginning commence at a concrete right-of-way monument found at the intersection of the westerly right-of-way lien of Chapel Hill Road (r/w varies) and the northerly right-of-way line of Douglas Boulevard (100 ft r/w); thence the following courses and distances along the northerly right-of-way line of Douglas Boulevard: North 87 degrees 28 minutes 24 seconds West for a distance of 56.11 feet to a point; thence along a curve to the right having a radius of 522.96 feet and an arc length of 126.25 feet, being subtended by a chord of North 80 degrees 47 minutes 54 seconds for a distance of 125.94 feet to an iron pin found; thence North 00 degrees 34 minutes 12 seconds West for a distance of 214.88 feet leaving the northerly right-of-way line of Douglas Boulevard to an iron pin found; thence North 27 degrees 21 minutes 53 seconds West for a distance of 134.90 feet to an iron pin found at the Point of Beginning; thence South 77 degrees 01 minute 09 seconds West for a distance of 167.34 feet to an iron pin found; thence North 18 degrees 12 minutes 05 seconds East for a distance of 58.73 feet to an iron pin set on the southerly right-of-way line of Interstate I-20; thence North 77 degrees 00 minutes 22 seconds East for a distance of 168.68 feet along the southerly right-of-way line of Interstate I-20 to an iron pin set; thence South 12 degrees 59 minutes 38 seconds East for a distance of 50.28 feet leaving the southerly right-of-way line of Interstate I-20 to an iron pin set; thence South 77 degrees 01 minute 09 seconds West for a distance of 31.75 feet to an iron pin found and the Point of Beginning.

TOGETHER WITH the rights, privileges, easements and burdens contained in that certain Perpetual Easement as contained in that certain General Warranty Deed from Benchmark United, Inc. to J.R. Morgan Oil Company, Inc., dated September 8, 1993, filed of record September 13, 1993, recorded in Deed Book 833, Page 527, aforesaid county records.

TOGETHER WITH the rights, privileges, easements and burdens contained in that certain Mutual Access, Non-Exclusive Parking and Sewer and Utility Easement Agreement by and between Benchmark United, Inc. and Outback Steakhouse of Florida, Inc., dated Nov. 2, 1995, filed of record Nov. 11, 1995, as recorded in Deed Book 971, page 489, aforesaid county records. Easement Agreement and Amendment to Mutual Access, Non-Exclusive Parking and Sewer and Utility Easement Agreement by and between Benchmark United, Inc. and Outback Steakhouse of Florida, Inc., dated Sept. 13, 1999, filed of record Sept. 15, 1999, as recorded in Deed Book 1281, page 467, aforesaid county records.

51. FEE PARCEL DESCRIPTION: UNIT 1121

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 229 of the 16th District of Rockdale County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at a concrete monument found at the intersection of the southern right of way line of Old Covington Highway (Old S.R. 12) (50 foot right of way) and the western right of way line of Old Covington Access Road; run thence South 18 degrees 23 minutes 22 seconds West for a distance of 101.18 feet to an iron pin found; thence South 44 degrees 25 minutes 23 seconds West for a distance of 81.50 feet, to a point; thence along a curve to the left having a radius of 192.00 feet for an arc length of 100.57 feet , being subtended by a chord of South 58 degrees 00 minutes 57 seconds West having a chord distance of 99.43 feet; thence along a curve to the left having a radius of 193.00 feet and an arc length of 13.36 feet, being subtended by a chord of South 46 degrees 22 minutes 32 seconds West having a chord distance of 13.35 feet to a concrete monument found and the TRUE POINT OF BEGINNING; from the true point of beginning thus established, run thence South 43 degrees 54 minutes 54 seconds West for a distance of 343.52 feet to a concrete monument found; thence South 64 degrees 07 minutes 57 seconds West for a distance of 53.00 feet to a point; thence North 11 degrees 58 minutes 22 seconds West for a distance of 309.56 feet to a point; thence North 38 degrees 11 minutes 13 seconds East for a distance of 61.40 feet to a point; thence South 89 degrees 20 minutes 21 seconds East for a distance of 231.39 feet to a point; thence South 46 degrees 05 minutes 06 seconds East for a distance of 112.22 feet to a concrete monument found and the TRUE POINT OF BEGINNING, containing 1.68 acres and shown on that certain site Exhibit for Hugh W. Cheek prepared by Patrick & Associates, Inc., dated June 19, 1995, last revised November 7, 1995.

Tax Map Reference Number 072-0-01-014B

TOGETHER WITH the rights, privileges, easements and burdens granted under that certain Easement Agreement by and among Hugh W. Cheek, The Estate of Georgie D. Cheek, and Chatto Fields, II Limited Partnership, and Cracker Barrel Old Country Store, Inc., dated November 15, 1995, filed for record November 15, 1995, recorded in Deed Book 1174, Page 108, aforesaid Records, as amended by Amended Easement Agreement by and among Chatto Fields II, Limited Partnership, Hugh W. Cheek, individually and Hugh W. Cheek, as Executor under the Last Will and Testament of Georgie E. Cheek, a/k/a Mrs. Omar R. Cheek, and Cracker Barrel, dated December 4, 1995, filed for record December 21, 1995 at 3:29 p.m., recorded in Deed Book 1187, Page 1, aforesaid records, as supplemented by Supplement to Easement Agreement by and amount Hugh W. Cheek, The Estate of Georgie D. Cheek, and Chatto Fields II Limited Partnership, a Georgia limited partnership, dated October 21, 1996, filed for records October 23, 1996 at 4:58 p.m., recorded in Deed Book 1290, Page 192, aforesaid records.

52. FEE PARCEL DESCRIPTION: UNIT 1122

AS TO THE 2.268 ACRES:

TRACT 1

ALL THAT TRACT or parcel of land lying and being in Land Lot 152 of the 7th Land District of Gwinnett County, Georgia and being more particularly described as follows:

BEGINNING at a point formed by the intersection of the northwest 90 foot right-of-way of Old Peachtree Road and the southwest 80 foot right-of-way of Gwinco Boulevard if extended; thence in a northerly direction along the 80 foot right-of-way of Gwinco Boulevard for a distance of 1197.01 feet to a 1/2” rebar set, said point being the TRUE POINT OF BEGINNING; thence leaving said right-of-way North 40 degrees 14 minutes 20 seconds West for a distance of 240.00 feet to a 1/2” rebar set; thence North 51 degrees 26 minutes 50 seconds East for a distance of 280.00 feet to a 1/2” rebar set; thence

South 40 degrees 14 minutes 20 seconds East for a distance of 240.00 feet to a 1/2” rebar set on the northwest right-of-way of Gwinco Boulevard; thence along said right-of-way South 51 degrees 26 minutes 50 seconds West for a distance of 251.25 feet to a point; thence leaving said right-of-way North 35 degrees 11 minutes 32 seconds West for a distance of 115.48 feet to a point; thence South 00 degrees 14 minutes 34 seconds for a distance of 19.69 feet to a point; thence South 51 degrees 26 minutes 50 seconds West for a distance of 17.45 feet to a point; said point being the POINT OF BEGINNING; sold property contains 1.540 acres more or less.

TRACT 2

ALL THAT TRACT or parcel of land lying and being in Land Lot 152 of the 7th Land District of Gwinnett County, Georgia and being more particularly described as follows:

BEGINNING at a point formed by the intersection of the northwest 90 foot right-of-way of Old Peachtree Road and the southwest 80 foot right-of-way of Gwinco Boulevard if extended; thence in a northerly direction along the 80 foot right-of-way of Gwinco Boulevard for a distance of 1197.01 feet to a 1/2” rebar set; thence leaving said right-of-way North 40 degrees 14 minutes 20 seconds West for a distance of 240.00 feet to a 1/2” rebar set; thence North 51 degrees 26 minutes 50 seconds East for a distance of 53.14 feet to a 1/2” rebar set, said point being the TRUE POINT OF BEGINNING; thence North 35 degrees 00 minutes 55 seconds West for a distance of 100.60 feet to a 1/2” rebar set; thence South 54 degrees 59 minutes 05 seconds West for a distance of 50.00 feet to a 1/2” rebar set; thence North 35 degrees 00 minutes 55 seconds West for a distance of 55.09 feet to a 1/2” rebar set on the southeast right-of-way of Interstate 85; thence along said right-of-way North 45 degrees 17 minutes 55 seconds East for a distance of 215.97 feet to a 1/2” rebar set; thence leaving said right-of-way South 36 degrees 53 minutes 10 seconds East for a distance of 181.69 feet to a 1/2” rebar set; thence South 51 degrees 26 minutes 50 seconds West for a distance of 169.14 feet to a 1/2” rebar set, said point being the POINT OF BEGINNING; said property contains 0.728 acres more or less.

AS TO THE 0.028 ACRES:

TRACT 3

ALL THAT TRACT or parcel of land lying and being in Land Lot 152 of the 7th Land District, Gwinnett County, Georgia and being more particularly described as follows:

To find the point of beginning, commence at the intersection of the centerline of Old Peachtree Road and the centerline of Lawrenceville-Suwanee Road; thence leaving said point and traveling in a northwesterly direction along said centerline of Lawrenceville-Suwanee Road 775.27 feet to a point on said centerline; thence leaving said centerline and traveling South 49 degrees 24 minutes 58 seconds West for a distance of 50.40 feet to a point at the intersection of the southwesterly right-of-way of Lawrenceville-Suwanee Road (right-of-way varies) and the northwesterly right-of-way of Gwinco Boulevard (80-foot right-of-way), said point being the TRUE POINT OF BEGINNING; thence from said point as thus established, continuing along said right-of-way of Gwinco Boulevard, South 49 degrees 24 minutes 58 seconds West for a distance of 45.00 feet to a point; thence leaving said right-of-way, North 40 degrees 35 minutes 02 seconds West for a distance of 26.71 feet to a point; thence North 49 degrees 24 minutes 59 seconds East for a distance of 45.44 feet to a point on the aforesaid southwesterly right-of-way of Lawrenceville-Suwanee Road; thence continuing along said right-of-way, South 39 degrees 38 minutes 33 seconds East for a distance of 26.71 feet to a point, said point being the TRUE POINT OF BEGINNING.

Said property contains 0.028 acres, as disclosed on that ALTA/ACSM Land Title Survey for Outback Steakhouse of Florida, Inc., prepared by Precision Planning, Inc., dated December 10, 2003, bearing the stamp and seal of Lee Jay Johnson, Georgia Registered Land Surveyor No. 2845, said survey being incorporated herein by reference.

53. FEE PARCEL DESCRIPTION: UNIT 1123

ALL THAT TRACT or parcel of land lying and being in Land Lot 171 of the 9th Land District, City of Gainesville, Hall County, Georgia said tract or parcel being more particularly described as follows:

To find the Point of Beginning commence at the intersection of the southerly right-of-way line of Georgia State Route 53 (r/w varies) and the easterly right-of-way line of relocated Green Hill Circle (r/w varies) if said right-of-way lines were extended to form an intersection instead of a miter. Thence South 48 degrees 54 minutes 00 seconds East for a distance of 23.86 feet along the extension of the right-of-way line of Georgia State Route 53 to an iron pin set at the intersection of the southerly right-of-way line of Georgia State Route 53 and the easterly right-of-way line of relocated Green Hill Circle; thence the following courses and distances along the southerly right-of-way line of Georgia State Route 53 to the Point of Beginning; thence South 48 degrees 54 minutes 00 seconds East for a distance of 223.00 feet to an iron pin set; thence South 48 degrees 54 minutes 00 seconds East for a distance of 53.22 feet to an iron pin set; thence along a curve to the left having a radius of 1513.34 feet and an arc length of 103.87 feet, being subtended by a chord of South 50 degrees 51 minutes 58 seconds East for a distance of 103.85 feet to an iron pin set, said iron pin set being the Point of Beginning; thence along a curve to the left having a radius of 1513.34 feet and an arc length of 150.48 feet, being subtended by a chord of South 55 degrees 40 minutes 52 seconds East for a distance of 150.42 feet continuing along the southerly right-of-way line of Georgia State Route53 to an iron pin set; thence South 41 degrees 06 minutes 00 seconds West for a distance of 76.02 feet leaving said southerly right-of-way line of Georgia State Route 53 to an iron pin set; thence South 48 degrees 54 minutes 00 seconds East for a distance of 37.63 feet to an iron pin set; thence South 41 degrees 06 minutes 00 seconds West for a distance of 299.78 feet to an iron pin set on the northerly right-of-way line of relocated Green Hill Circle; thence the following courses and distance along the northerly right-of-way line of relocated Green Hill Circle: North 04 degrees 18 minutes 40 seconds East for a distance of 40.42 feet to a hub and tac found; thence South 86 degrees 47 minutes 24 seconds West for a distance of 57.33 feet to a hub and tac found; thence North 48 degrees 52 minutes 22 seconds West for a distance of 121.77 feet to an iron pin set; thence North 41 degrees 06 minutes 00 seconds East for a distance of 365.66 feet leaving said northerly right-of-way line of relocated Green Hill Circle to an iron pin set on the southerly right-of-way line of Georgia State Route 53, said iron pin set being the Point of Beginning. Said tract or parcel containing 1.514 acres more or less or 65,932 square feet more or less as per plat of survey for Outback Steakhouse of Florida, Inc. and First American Title Insurance Company dated January 8, 1997, revised January 16, 1997 and January 22, 1997, by Glenn A. Valentino, Georgia Registered Land Surveyor No. 2528 of Valentino & Associates, Inc. which plat of survey is by this reference incorporated herein. Said property being 1.514 acres (65,932 square feet) more or less.

TOGETHER WITH the rights, privileges, easements and burdens contained in that certain Declaration of Restrictive Covenants and Grant of Easements by Stafford Properties, Inc., dated February 14, 1997, filed of record February 18, 1997, recorded in Deed Book 2806, Page 218, Hall County, Georgia

records; as amended by that certain Amended Declaration of Restrictive Covenants and Grant of Easements by Stafford Properties, Inc., Party City of America, Inc., AEI Net Lease Income & Growth Fund XIX, Brinker Georgia, Inc., Outback Steakhouse of Florida, Inc., BV Rentals of Georgia, L.L.C., AmSouth Bank of Alabama, B&W Restaurants, LLC, Lancy W. Gotfredson, and Community Bank & Trust, dated September 4, 1997, filed of record September 5, 1997, recorded in Deed Book 2962, Page 237, aforesaid county records.

54. FEE PARCEL DESCRIPTION: UNIT 1124

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 135 of the 7th Land District, Fayette County, Georgia, and being more particularly describes as follows:

BEGIN at an iron pin found on the southerly right of way line of Peachtree Parkway (130 foot right of way), which point lies South 84 degrees 8 minutes 43 seconds East a distance of 315.27 feet from the intersection of said right of way line of Peachtree Parkway with the southeasterly right of way line of Georgia State Route No. 74 (right of way varies), and run thence along said right of way line of Peachtree Parkway South 84 degrees 8 minutes 43 seconds East a distance of 347.80 feet to an iron pin found; run thence South 39 degrees 8 minutes 43 seconds East a distance of 70.71 feet to an iron pin found; run thence South 5 degrees 51 minutes 17 seconds West a distance of 180 feet to an iron pin found; run thence North 84 degrees 8 minutes 43 seconds West a distance of 397.80 feet to an iron pin found; run thence North 5 degrees 51 minutes 17 seconds East a distance of 230 feet to an iron pin found at the POINT OF BEGINNING as established above; being shown and described as Outlot #4 and Outlot #5, a total of 2.072 acres, containing 90, 244 square feet, on that certain boundary and topographic survey prepared for Outback Steakhouse of Florida, Inc., and First American Title Insurance Company, by Armstrong Land Surveying, Inc., Robert T. Armstrong, Georgia Registered Land Surveyor #1901, dated October 31, 1996, last revised January 6, 1997.

TOGETHER WITH the easement rights applicable to said property and SUBJECT TO those matters contained in that certain Restriction, Operating and Easement Agreement by and between Sofran Peachtree City, L.L.C., and Peachtree City Holdings, L.L.C., dated December 1, 1995, recorded in Deed Book 1028, Page 145, Fayette County, Georgia Records; as amended by that certain First Amendment to Restriction, Operating and Easement Agreement, dated March 14, 1996, recorded in Deed Book 1052, Page 491, aforesaid records; as further amended by that certain Second Amendment to Restriction, Operating and easement Agreement, dated September 4, 1996, recorded in Deed Book 1106, Page 378, aforesaid records; as further amended by that certain Third Amendment to Restriction, Operating and Easement Agreement, dated January 22, 1997, recorded in Deed Book 1122, Page 399, aforesaid records; as further amended by that certain Fourth Amendment to Restriction, Operating and Easement Agreement, dated January 24, 1997, recorded in Deed Book 1122, Page 403, aforesaid records; as further amended by that certain Fifth Amendment to Restriction, Operating and Easement Agreement, dated December 30, 1999, and recorded December 30, 1999, at Deed Book 1461, Page 399, aforesaid records; and as further amended by Sixth Amendment to Restriction, Operating and Easement Agreement, dated January 20, 2005, and recorded January 21, 2005, in Deed Book 2693, Page 1, aforesaid records; and as further amended by Seventh Amendment to Restriction, Operating and Easement Agreement, dated March 15, 2006, and recorded March 15, 2006, in Deed Book 2974, Page 469, aforesaid records.

Tax Map Reference Number 0736 078

55. FEE PARCEL DESCRIPTION: UNIT 1125

ALL THAT TRACT or parcel of land lying and being in Land Lots 193 and 204 of the 14th District, 2nd Section, Cherokee County, Georgia and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at the intersection of Land Lots 192, 193, 204 and 205; thence travel along the land lot line common to Land Lots 193 and 204, South 01 degree 29 minutes 17 seconds West for a distance of 130.00 feet to a point, said point being the intersection of said land lot line and the westerly right-of-way of State Route 140; thence leaving said land lot line and traveling along said right-of-way along a curve to the left having a radius of 800.00 feet and an arc length of 30.94 feet, being subtended by a chord of South 34 degrees 14 minute 53 seconds East for a distance or 30.94 feet to a point, said point marked by a 1/2 inch rebar pin set, said point being the TRUE POINT OF BEGINNING. Thence along a curve to the left having a radius of 800.00 feet and an arc length of 19.30 feet, being subtended by a chord of South 36 degrees 02 minutes 50 seconds East for a distance of 19.30 feet to a 1/2 inch rebar set; thence South 36 degrees 10 minutes 36 seconds East for a distance of 197.53 feet to a 1/2 inch rebar set; thence South 17 degrees 26 minutes 20 seconds West for a distance of 47.20 feet to a 1/2 inch rebar set; thence South 36 degrees 10 minutes 35 seconds East for a distance of 29.79 feet to a 1/2 inch rebar set; thence leaving said right-of-way South 54 degrees 05 minutes 45 seconds West for a distance of 222.32 feet to a 1/2 inch rebar set; thence North 35 degrees 53 minutes 15 seconds West for a distance of 273.49 feet to a 1/2 inch rebar set; thence North 53 degrees 49 minutes 24 seconds East for a distance of 258.98 feet to a 1/2 inch rebar set; said point being the TRUE POINT OF BEGINNING. Said property contains 1.596 acres, more or less.

TOGETHER WITH the rights, privileges, easements and burdens granted under that certain Declaration of Restrictions, Covenants and Conditions and Grant of Easements by Bright-Sasser Canton, L.L.C, a Georgia limited liability company dated December 19, 1997, filed for record December 31, 1997, recorded in Deed Book 2939, Page 168, Cherokee County, Georgia records; as amended by that certain First Amendment to Declaration of Restrictions, Covenants and Grant of Easement dated July XX, 1998, filed for record August 14, 1998, recorded in Deed Book 3242, Page 255, aforesaid county records.

56. FEE PARCEL DESCRIPTION: UNIT 1133

Parcel 1 according to the plat of subdivision for Home Depot U.S.A., Inc., being the eastern one-half of Lot 4 of the Estate of Dorothy Salfner, 6 th G.M. District, Savannah, Chatham County, Georgia, certified by William H. Saussy, Jr., GA. Reg. L.S. No 1216, dated November 23, 1993, and recorded in Subdivision Map Book 13-S, Folio 98, Chatham County, Georgia records.

TOGETHER WITH the perpetual easements granted under that certain Declaration of Joint Reciprocal Easement dated July 2, 1993 at Record Book 160-W, Folio 495, Chatham County, Georgia Records.

TOGETHER WITH the perpetual easements granted under that certain Reciprocal Easement and Operation Agreement, dated April 15, 1994 at Record Book 166-S, Folio 256, Chatham County, Georgia Records.

TOGETHER WITH and subject to (1) Easements with Covenants and Restrictions affecting Land, by and between SS Partnership and Lowe's Home Centers, Inc., dated April 3, 1992, and recorded April 8, 1992, in Deed Book 153-P, page 448, Chatham County, Georgia Records; and (2) Declaration of

Covenants, Conditions and Restrictions for Southcase Shopping Center, by SS Partnership (and affirmed by Gladys B. Boykin and Paula B. Dewitt, Trustee under the Will of Paul R. Boykin, as Lessors), dated April 3, 1992, and recorded in Deed Book 153-P, page 483, Chatham County, Georgia Records.

Tax Map Reference Number 2-0695-01-021

LESS AND EXCEPT the property conveyed to the Georgia Department of Transportation by Quit Claim Deed at Deed Book 339-B, Page 324, and by Right of Way Deed from Private Restaurants Properties, LLC to the Department of Transportation, dated March 7, 2008, and recorded March 27, 2008, in Deed Book 339-B, Page 319, aforesaid records.

57. FEE PARCEL DESCRIPTION: UNIT 1134

All that tract or parcel of land lying and being in Land Lot 2 of the Second Land District in the City of Albany, Dougherty County, Georgia, and being Lot 4-A, Albany Square Subdivision and being a re-combination of Lot 4 and Lot 5, Albany Square Subdivision, as more fully shown on plant of survey of the property of Owen Aronov, Jake Aronov, Frank M. Johnston, Rand Warren Aronov, Jane Aronov Nafel, Freddi Lynn Aronov, and the Thelma A. Mendel Lifetime Trust, dated August 8, 1995 by Ritchey Marbury, III, Registered Land Surveyor No. 1495, and a copy of which is recorded in Plat Cabinet No. 1, Slide No. C-20, in the Office of the Clerk of the Superior Court of Dougherty County, Georgia, which plat and the recorded copy thereof is incorporated herein by reference for all purposes, and being more particularly described as follows:

COMMENCE at a point where the extension of the north right of way of Dawson Road intersects the extension of the west right of way of Westover Boulevard, which point would be the extended northwest corner of Dawson Road and Westover Boulevard; from this point run north 36 degrees 36 minutes 56 seconds east along the west right of way of Westover Boulevard for a distance of 386.54 feet to a point, continue along the west right-of-way of Westover Blvd., around a curve to the left which has an arc of 263.64 feet and a radius of 495.00 feet, the chord being north 21 degrees 21 minutes 28 seconds east for a distance of 260.54 feet to a point, thence continue along the west right of way of Westover Boulevard north 06 degrees 06 minutes 00 seconds east for a distance of 42.68 feet to a point, thence continue along the west right of way of Westover Boulevard north 52 degrees 45 minutes 00 seconds west for a distance of 8.19 feet to a point; thence continue along the west right of way of Westover Boulevard north 06 degrees 06 minutes 00 seconds east for a distance of 103.41 feet to the POINT OF BEGINNING; from the POINT OF BEGINNING run south 71 degrees 00 minutes 34 seconds west for a distance of 28.26 feet to a point; thence run north 52 degrees 45 minutes 00 seconds west for a distance of 143.33 feet to a point; thence run north 10 degrees 11 minutes 55 seconds west for a distance of 144.52 feet to a point; thence run 37 degrees 15 minutes 00 seconds east for a distance of 299.91 feet to a point; thence run south 72 degrees 05 minutes 15 seconds east for a distance of 203.39 feet to a point which is on the west right of way of Westover Boulevard; thence run along the west right of way of Westover Boulevard around a curve to the left which has an arc of 282.74 feet and a radius of 580.00 feet, the chord being south 34 degrees 47 minutes 00 seconds west for a distance of 279.95 feet to a point; thence continue along the west right of way of Westover Boulevard north 69 degrees 10 minutes 56 seconds west for a distance of 12.00 feet to a point; thence continue along the west right of way Westover Boulevard around a curve to the left which has an arc of 152.07 feet and a radius of 592.00 feet, the chord being south 13 degrees 27 minutes 32 seconds west for a distance of 151.65 feet to a point; thence continue along the west right of way of Westover Boulevard south 06 degrees 06 minutes 00 seconds west for a distance of 22.95 feet to the POINT OF BEGINNING.

SAID plat is further shown and included on a plat of the property of Albany Square Subdivision by Ritchey M. Barbury, Registered Land Surveyor No. 1495, dated December 24, 1991, and recorded in Plat Cabinet No. 1, Slide No. B-100, aforesaid records.

TOGETHER with and subject to (1) Easements with Covenants and Restrictions Affecting Land dated April 29, 1992, filed for record May 29, 1992 and recorded in Deed Book 1203, Page 161, aforesaid records, and ratified pursuant to Ratification of Easements with Covenants and Restrictions Affecting Land filed for record August 20, 1993 and recorded in Deed Book 1314, Page 308; as modified by Modification Agreement dated September 22, 1995, recorded in Deed Book 1527, Page 282, permitting Lots 4 and 5 to be replatted as one lot; aforesaid records; (2) that certain Cross-Easement Agreement among Sears, Roebuck & Company; Belk's Department Store of Albany, Georgia; Monumental-Albany, Inc.; Aaron Aronov; Perry Mendel; Aaron Aronov, as Executor and Trustee under the Will of Herman Aronov, deceased; C. N. Spence, as Administrator of Will Annexed of Last Will and Testament of Herman Aronov, deceased, under Ancillary Probate Proceedings in Dougherty County, Georgia; John N. Beisel; Jake Aronov; and David R. Stambaugh, dated December 3, 1976, recorded in Deed Book 574, beginning at Page 8, Dougherty County Land Records, as amended by Amendment to Cross-Easement Agreement, dated April 24, 1981, recorded in Deed Book 678, beginning at Page 364, Dougherty County Land Records, as amended by Second Amendment to Cross-Easement Agreement, executed in two counterparts, dated June 1, 1987, recorded in Deed Book 885, beginning at Page 100 and ending at Page 142, Dougherty County Land Records, and as further amended by Third Amendment to Cross-Easement Agreement, dated May 9, 1988, recorded in Deed Book 922, Page 153, Dougherty County Land Records; and (3) that certain Cross-Easement Agreement for ingress and egress among Sears, Roebuck and Company; Belk's Department Store of Albany, Georgia; The Equitable Life Assurance Society of the United States; McDonald's Corporation; Rex Radio and Television, Inc., Aaron Aronov, Perry Mendel, Aaron Aronov as Trustee of Trust B and Trust E under Item 4 of the Last Will and Testament of Herman Aronov, deceased, John N. Beisel, Jake Aronov and David R. Stambaugh, dated April 24, 1981, recorded in Deed Book 678, beginning at Page 364, Dougherty County Land Records, as amended by Agreements amending Easements for Ingress and Egress executed in two counterparts, dated June 1, 1987, and June 21, 1987, recorded in Deed Book 885, Page 143, and Deed Book 885, Page 171, Dougherty County Land Records, and as further amended by Second Amendment to Easement for Ingress and Egress, dated May 9, 1988, recorded in Deed Book 922, Page 168, Dougherty County Land Records, from Aaron Aronov, Perry Mendel, Jake Aronov, David R. Stambaugh, Rand Warren Aronov, Jane A. Naftel, Freddi Lynn Aronov, Owen Aronov, and Teri A. Diamond, to The Equitable Life Assurance Society of the United States, Aaron Aronov, as Trustee of the trust under Item IV of the Last Will and Testament of Herman Aronov, deceased, Aaron Aronov, Perry Mendel, Jake Aronov, David R. Stambaugh, Rand Warren Aronov, Jane A. Naftel, Freddi Lynn Aronov, Owen Aronov and Teri A. Diamond, Sears, Roebuck & Co., Belk's Department Store of Albany, Georgia, J.C. Penny Properties, Inc., and J.C. Penny Company, Inc., McDonald's Corporation and Rex Radio and Television, Inc., dated October 31, 1989, recorded in Deed Book 1020, beginning on Page 159, aforesaid Dougherty County, Georgia, Records.

Parcel 2-6J on tax Map 352

58. FEE PARCEL DESCRIPTION: UNIT 1135

All that tract or parcel of land situate, lying and being in Land Lot 15 of the 12 th District of Lowndes County, Georgia, containing 1.710 acres, designated as Tract No. 2 on a map or play of survey prepared

by Transportation Systems Design, Inc. Engineers & Surveyors, dated December 11, 1996, and being more particularly described as follows: To find the TRUE POINT OF BEGINNING, commence at the intersection of southerly right of way of Georgia Highway No. 94 (84 foot right of way) and the westerly right of way of Club House Drive (60 foot right of way), said point being a concrete monument; thence south 25 degrees 56 minutes 06 seconds west for a distance of 189.22 feet along said right of way of Club House Drive to a 1/2 inch rebar; thence south 26 degrees 48 minutes 27 seconds west for a distance of 99.17 feet along said right of way to a 1/2 inch rebar; thence south 25 degrees 16 minutes 24 seconds west for a distance of 140.91 feet along said right of way to a 1/2 inch rebar; thence south 25 degrees 17 minutes 56 seconds west for a distance of 60.02 feet along said right of way to a 1/2 inch rebar, said point being the TRUE POINT OF BEGINNING; thence south 25 degrees 16 minutes 16 seconds west for a distance of 256.76 feet along said right of way to a 1/2 inch rebar; thence, leaving said right of way north 64 degrees 44 minutes 04 seconds west for a distance of 259.93 feet to a 1/2 inch rebar; thence north 87 degrees 54 minutes 48 seconds west for a distance of 197.51 feet to a concrete monument; thence north 65 degrees 06 minutes 53 seconds west for a distance of 98.87 feet to a 1/2 inch rebar; thence north 07 degrees 20 minutes 03 seconds east for a distance of 32.57 feet to a 1/2 inch rebar; thence north 82 degrees 39 minutes 57 seconds east for a distance of 35.30 feet to a 1/2 inch rebar; thence south 07 degrees 20 minutes 03 seconds east for a distance of 30.00 feet to a 1/2 inch rebar; thence south 82 degrees 39 minutes 57 seconds west for a distance of 30.00 feet to a 1/2 inch rebar; thence 65 degrees 06 minutes 53 seconds east for a distance of 95.05 feet to a 1/2 inch rebar; thence north 78 degrees 09 minutes 30 seconds east for a distance of 145.15 feet to a 1/2 inch rebar; thence 56 degrees 31 minutes 16 seconds east for a distance of 88.95 feet to a 1/2 inch rebar; thence north 55 degrees 20 minutes 53 seconds east for a distance of 79.82 feet to a 1/2 inch rebar; thence north 25 degrees 16 minutes 16 seconds east for a distance of 96.85 feet to a 1/2 inch rebar; thence 64 degrees 43 minutes 44 seconds east for a distance of 240.33 feet to the TRUE POINT OF BEGINNING. Said property is the same as that designated at TRACT 2 on map or play of survey entitled “Jenkins & Roberts Property Subdivision” recorded in Plat Cabinet A, Page/Folio 151, in the Lowndes County, Georgia deed records.

TOGETHER with and subject to (1) Reciprocal Easement Agreement by and between JDN Acquisitions, Inc. and James F. Roberts and R.F. Jenkins, dated July 10, 1984, recorded at Deed Book 442, page 655, Lowndes County, Georgia Records; (2) Cross Easement Agreement by and between Robert D. Jenkins and James D. Roberts and Outback Steakhouse of Florida, Inc, dated February 12, 1997, recorded at Deed Book 1385, page 314, Lowndes County, Georgia Records; and (3) Reciprocal Easement by and between Robert D. Jenkins and James D. Roberts, and Outback Steakhouse of Florida, Inc., dated February 12, 1977, recorded at Deed Book 1385, page 321, and re-recorded at Deed Book 1397, page 42, Lowndes County, Georgia Records.

Parcel 0009 on Tax Map 083B

59. FEE PARCEL DESCRIPTION: UNIT 1137

ALL that tract of land situate lying and being in Land Lot 95 of the Fifth District, Houston County, Warner Robins, Georgia being more particularly described as follows:

FROM an iron pin at the corner common to the easterly right of way of Willie Lee Parkway and the northerly right of way of State Route No. 247 Connector, proceed north 75 degrees 30 minutes 20 seconds east, along the northerly right of way of State Route 247 Connector for 300.00 ft. to the point of beginning.

FROM the point of beginning, proceed north 14 degrees 29 minutes 40 seconds west for 250.00 ft. to an iron pin; thence north 75 degrees 30 minutes 20 seconds east for 340.03 ft. to an iron pin on the westerly right of way of a proposed public street having a 70 ft. right of way; thence along the westerly right of way of the proposed public street south 14 degrees 29 minutes 40 seconds east for 250.00 ft. to an iron pin on the northerly right of way of State Route 247 Connector thence south 75 degrees 30 minutes 20 seconds west, along the northerly right of way of the 247 Connector, 340.03 ft. to an iron pin at the point of beginning.

SAID property contains 1.951 acres and is more particularly described as 1.951 acres on that ALTA/ACSM Land Title Survey for First American Title Insurance Company, Outback Steakhouse of Florida, Inc., a Florida corporation and Blymen Corporation, Inc., a Delaware Corporation, dated 6-18-2001 prepared by Scarborough Land Surveys, Inc., bearing the stamp and seal of Terry M. Scarborough, Georgia Registered Land Surveyor No. 2223, said survey being incorporated herein by reference.

TOGETHER with as an appurtenance: all those real property rights which benefit the property as contained in that ingress and egress easement agreement by and between Blymen Corporation, Inc. and Outback Steakhouse of Florida, Inc., dated 6-22-2001, filed 6-27-2001 and recorded at Deed Book 1796, page 212, aforesaid records.

Tax Account Numbers 24532R and 1393IP

60. FEE PARCEL DESCRIPTION: UNIT 1201

Parcel 1 of Certified Survey Map No. 1925, recorded on August 21, 1973 in Volume 13 of Certified Survey Maps, at Pages 191, 192 and 193, as Document No. 860635, being a part of the Southwest 1/4 of Section 28, Township 7 North, Range 20 East, in the City of Brookfield, County of Waukesha, State of Wisconsin;

AND a parcel of land in said Southwest 1/4, both of which are bounded and described as follows:

COMMENCING at the West 1/4 corner of said Section 28; thence South 00°34’51” East a distance of 1203.12 feet along the West line of said Section 28; thence North 83°56’ 09” East, a distance of 1147.58 feet; thence South 00° 02’ 25” East, a distance of 85.48 feet; thence North 83° 56’ 09” East, a distance of 190.07 feet along the South right-of-way line of Bluemound Road, 170 feet wide, to THE POINT OF BEGINNING of this description, said point being the Northwest corner of Parcel 1 of the aforementioned Certified Survey Map; thence North 83° 56’ 09” East, a distance of 380.23 feet along the South right-of-way line of Bluemound Road; thence South 87°49’18” East, a distance of 34.85 feet; thence South 00° 02’ 25” East, a distance of 383.47 feet; thence South 83° 56’ 09” West, a distance of 415.24 feet; thence North 00° 02’ 25” West a distance 388.49 feet to the POINT OF BEGINNING.

61. FEE PARCEL DESCRIPTION: UNIT 1264

All that tract or parcel of land lying and being in the Houston County, Alabama, and being more particularly described as follows:

One lot or parcel of land in the City of Dothan, Houston County, Alabama as surveyed by Branton Land Surveyors as per plat dated May 2, 1997 and being more particularly described as follows: Commencing at the Southwest corner of Section 22, T3N, R26E and from said point run North 00

degrees 01 minutes East along the West line of said section a distance of 780.27 feet to the Easterly R/W of Honeysuckle Road (80' R/W); thence run in a Northerly direction along the East R/W of said Honeysuckle Road a distance of 371.43 feet; thence North 87 degrees 56 minutes 47 seconds East a distance of 342.25 feet; thence North 01 decrees 52 minutes 35 seconds West a distance of 471.28 feet; thence North 87 degrees 50 minutes 16 seconds East a distance of 49.56 feet to a set iron pipe and the POINT OF BEGINNING; thence continue North 87 degrees 50 minutes 16 seconds East a distance of 474.44 feet to an existing nail in pavement on the West R/W of Ross Clark Traffic Circle {250' R/W); thence South 16 degrees 38 minutes 54 seconds East along said R/W a distance of 199.18 feet to an existing iron pipe and the Northeast comer of the Big 10 Tire Store; thence South 87 degrees 53 minutes 46 seconds West along the North line of said Big 10 Tire Store a distance of 524.97 feet to an existing iron pipe and the Northwest comer thereof; thence North 01 degrees 57 minutes 01 seconds West a distance of 192.31 feet to the POINT OF BEGINNING.

Said land being located in the NW 1/4 of the SW 1/4 of the above mentioned section and containing 2.20 acres.

Being the same property conveyed to Private Restaurant Properties, LLC, a Delaware limited liability company by Quit Claim Deed from Outback Steakhouse of Florida, Inc., a Florida corporation, dated June 14, 2007, recorded July 06, 2007, in Deed Book 656, Page 171, Houston County, Alabama Records.

62. FEE PARCEL DESCRIPTION: UNIT 1410

PARCEL 1:

That part of Lot 1 in River Oaks West Unit Number 1, being a subdivision of part of the Northwest 1/4 of Section 24 and that part of Lot 1 lying north of the center of the Little Calumet River in the subdivision of the Southwest 1/4 of said Section 24, Township 36 North, Range 14, East of the Third Principal Meridian, described as follows:

BEGINNING at the intersection of the new south right-of-way line of 159th street, as dedicated by document no. 25546780, and the west line of Park Avenue, as dedicated by document no. 24296287; thence due south 205 feet along last said west line; thence due West 400 feet; thence north 11 degrees 33 minutes 37 seconds west 203.08 feet to said new south right-of-way line; thence north 87 degrees 08 minutes 15 seconds east 120.99 feet along said right-of-way line; thence continuing due east 319.82 feet along last said line to THE PLACE OF BEGINNING, all in Cook County, Illinois.

PARCEL 2:

Easements for benefit of Parcel 1 pursuant to Declaration of Easements and Maintenance dated December 21, 1964 and recorded November 15, 1971 as document # 21721313.

PARCEL 3:

Easements for Storm Sewer and Flood Control for the benefit of Parcel 1 pursuant to Grant of Easement recorded December 13, 1982 as document # 26437720.

63. FEE PARCEL DESCRIPTION: UNIT 1411

PARCEL 1:

Lot 1 in Buffalo Grove Business Park Unit 8, being a Subdivision in the North 1/2 of Section 5, Township 42 North, Range 11, East of the Third Principal Meridian, In Cook County, Illinois.

PARCEL 2:

Easement for the Benefit of Parcel 1 for Ingress, Egress and Driveway Purposes through Lot 2 in Buffalo Grove Business Park Unit 9 as created by Second Amendment to Buffalo Grove Business Park Declaration of Road Easement dated January 27, 1994 and recorded February 2, 1994 as Document 94110519 by and among The Riggs National Bank of Washington D.C.; Freedom I Limited Partnership, an Illinois Limited Partnership; Freedom Two Limited Partnership, an Illinois Limited Partnership; and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated February 15, 1992 and known as Trust No. 115180-08 and State Street Bank And Trust Company, a Massachusetts Banking Corporation, as Trustee under that certain Pooling And Servicing Agreement dated as Of December 1, 1993 for CBA Mortgage Pass-Through Certificate Series 1993-C1 as Assignee of CBA Conduit, Inc., a Delaware Corporation (such Document amending the Buffalo Grove Business Park Declaration of Road Easement, dated August 8, 1989 and recorded December 4, 1989 as Document 89576281 as amended by Amendment to Buffalo Grove Business Park Declaration of Road Easement, dated November 12, 1992 and recorded as Document 93797080).

PARCEL 3:

Exclusive Easement (subject only to equal rights of usage for Grantor) for the benefit of Parcel 1 for the sole purpose of constructing and maintaining 30 parking spaces for restaurant patrons of Grantee's successor to park their automobiles and a Non-Exclusive Easement for the sole purpose of permitting restaurant patrons to park their automobiles in not more than 11 parking spaces as created by Easement Agreement dated January 27, 1994 and recorded February 2, 1994 as Document 94110518 by and between Riggs National Bank of Washington D.C. and Freedom I Limited Partnership, an Illinois Limited Partnership.

PARCEL 4:

Non-Exclusive Easement for the benefit of Parcel 1 to use 9 parking spaces as created by Easement Agreement made by and between Freedom Two Limited Partnership, an Illinois Limited Partnership, and Outback Steakhouse of Florida, Inc. a Florida Corporation dated January 27, 1994 and Recorded February 2, 1994 as Document 94110521, over Lot 1 in Buffalo Grove Business Park Unit 10, being a Subdivision in The North 1/2 of Section 5, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 5:

Non-Exclusive Easement for the benefit of Parcel 1 as created by Declaration of Easements, Covenants and Restrictions for the Buffalo Grove Business Park, as Amended by First Amendment to Declaration of Easements, Covenants and Restrictions for the Buffalo Grove Business Park, Second Amendment to

Declaration of Easements, Covenants and Restrictions for the Buffalo Grove Business Park and Third Amendment to Declaration of Easements, Covenants and Restrictions for the Buffalo Grove Business Park, which Declaration and Amendments were recorded in Cook County, Illinois as Document Number 89576281, and in Lake County, Illinois as Document Numbers 2251413, 2268766, 2286521 and 2856803, for ingress, egress and driveway purposes, over the following described Land:

(a)

That portion of Lot 2 in Buffalo Grove Business Park Unit 9 recorded as Document Number 88504177 described in said Third Amendment to Declaration as Easement Premises "A."

(b)

That portion of Lot 1 in Buffalo Grove Business Park Unit 10 recorded as Document Number 88504178 described in said Third Amendment to Declaration as Easement Premises "B."

64. FEE PARCEL DESCRIPTION: UNIT 1412

PARCEL 1:

Lot 11 in Golf-Roselle Development Unit 4, being a Subdivision of Lot 1 in Golf-Roselle Development Unit 1, being A resubdivision of Lots 11 and 12 in Golf-Roselle Development in the Southeast 1/4 of Section 10, Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Non-Exclusive, Perpetual Easement for Pedestrian and Vehicular Traffic for the benefit of Parcel 1, as created in the Reciprocal Easement Agreement made March 15, 1994 by and between Chicago Title and Trust Company as Trustee under Trust Agreement dated February 21, 1989 and known as Trust Number 1092773 and Outback Steakhouse of Florida, Inc., recorded March 16, 1994 as Document 94236803.

PARCEL 3:

Non-Exclusive Easement to share driveway access to Golf Road as created in that Agreement for Reciprocal Easement of Ingress and Egress dated November 22, 1988 and recorded March 22, 1989 as Document 89125394 made by and between Berkshire Life Insurance Company, LaSalle National Bank, as trustee under Trust Agreement dated May 13, 1987 and known as Trust Number 112307 and Chicago Title and Trust Company, as Trustee under Trust Agreement dated June 19, 1968 and known as Trust Number 52271.

65. FEE PARCEL DESCRIPTION: UNIT 1414

PARCEL 1:

That portion of Lot 1 in Fox River Commons, being a subdivision of those parts of Sections 22 and 27, Township 38 North, Range 9, East of the Third Principal Meridian, recorded January 29, 1990 as Document R90-012324, In DuPage County, Illinois, described as follows:

COMMENCING at the Southernmost Corner of said Lot 1; thence North 67 Degrees, 07Minutes, 55 Seconds East along the Southeasterly Line of said Lot 1, a distance of 441.70 Feet; thence North 69 Degrees, 28 Minutes, 36 Seconds East along said Southeasterly Line of Lot 1, a distance of 49.82 Feet; thence North 20 Degrees, 31 Minutes, 24 Seconds West, perpendicular to said Southeasterly Line of said Lot 1, a distance of 74.10 Feet to THE POINT OF BEGINNING;

Thence North 22 Degrees, 52 Minutes, 05 Seconds West, a distance of 111.50 Feet; thence North 67 Degrees, 07 Minutes, 55 Seconds East, a distance of 64.00 Feet; thence North 22 Degrees, 52 Minutes, 05 Seconds West, a distance of 11.50 Feet; thence North 67 Degrees 07 Minutes, 55 Seconds East, a distance of 19.00 Feet; thence South 22 Degrees, 52 Minutes, 05 Seconds East, a distance of 11.50 Feet; thence North 67 Degrees, 07 Minutes 55 Seconds East, a distance of 12.00 Feet; thence South 22 Degrees, 52 Minutes, 05 Seconds East, a distance of 111.50 Feet; thence South 67 Degrees, 07 Minutes, 55 Seconds West, a distance of 95.00 Feet to THE POINT OF BEGINNING;

ALSO KNOWN AS:

Lot 2 in Fox River Commons Assessment Plat No. 2, being a subdivision of those parts of Sections 22 and 27, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded December 11, 1996 as Document R96-198444, all In Dupage County, Illinois.

PARCEL 2:

Non-Exclusive Easement rights for the benefit of Parcel 1 as created by Easements with Covenants and Restriction Affecting Land ("ECR") recorded May 16, 1989 as Document R89-057392; First Amendment recorded September 22, 1994 as Document R94-192656; Second Amendment recorded May 30, 2002 as Document R2002-142271.

PARCEL 3:

Non-Exclusive Easement rights for the benefit of Parcel 1 as created by Access and Parking Easement Agreement dated September 8, 1994 and recorded September 22, 1994 as Document R94-192657, made by and between American National Bank and Trust Company of Chicago, as trustee under Trust Agreement dated May 10, 1988 and known as Trust Number 10093 and Outback Steakhouse of Florida, Inc.

66. FEE PARCEL DESCRIPTION: UNIT 1416

PARCEL 1:

The East 370.66 Feet of Lot 2 in Metidiero's Subdivision of Lot 1 in Clearview Gardens, a subdivision of part of the Northeast 1/4 of the Southeast 1/4 of Section 13, Township 36 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

The West 35 Feet and the South 20 Feet of Lot 1 in Silver Lake Gardens Unit 9 of part of the North 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 13, Township 36 North, Range 12 East of the Third Principal Meridian in Cook County, Illinois.

PARCEL 3:

Easement for Ingress, Egress, Parking, Construction and Maintenance created in the Declaration recorded October 10, 1995 as Document 95687034 made by and between Outback Steakhouse of Florida, Inc., a Florida Corporation and Gordon Food Service, Inc., a Michigan Corporation over, upon, and across the land described in Exhibits B-1 and B-2 attached thereto.

PARCEL 4:

Non-Exclusive Easement for Ingress and Egress created in the Declaration of Easements, Covenants and Restrictions recorded October 14, 1988 as Document 88473551 and Certificate of Correction recorded February 21, 1989 as Document 89077237 made by South Holland Trust and Savings Bank as Trustee under Trust Agreement dated September 1, 1987 known As Trust Number 8704.

67. FEE PARCEL DESCRIPTION: UNIT 1418

PARCEL 1:

Lot One (1) as designated upon Plat No. 4 of Forest Plaza, being a Re-subdivision of Lot One (1) of Plat No. 1 of Forest Plaza, part of Section 27, Township 44 North, Range 2 East of the Third Principal Meridian, the Plat of which first named Subdivision is recorded in Book 40 of Plats on Page 199B in the Recorder's Office of Winnebago County, Illinois; situated in the County of Winnebago and State of Illinois.

PARCEL 2:

Easements created in that Declaration of Easement recorded November 24, 1987 on Microfilm No. 8741-1335 as Document No. 1776878

PARCEL 3:

Easements created in Section 4(b) and (c) in that certain Covenants, Conditions and Restrictions Agreement dated October 9, 1996 by and between Simon Property Group (Illinois), L.P., an Illinois limited partnership and Outback Steakhouse of Florida, Inc., a Florida Corporation recorded October 17, 1996 as Document No. 9652496

68. FEE PARCEL DESCRIPTION: UNIT 1419

PARCEL 1:

Lot 5 in Northridge Plaza, being a subdivision of part of Sections 15 and 16, both in Township 45 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded September 9, 1992 as Document No. 3209739, In Lake County, Illinois.

PARCEL 2:

Non-Exclusive Easements created by that certain Declaration of Covenants, Easements and Restrictions for Northridge Plaza dated September 4, 1992 and recorded September 9, 1992 as Document 3209740, and the Addendum thereto recorded as Document 3209741 and amended by Instrument recorded as Document 3352623 and Addendum recorded June 22, 1993 as Document 3352624, by MidTown Bank And Trust Company of Chicago, as Trustee Under Trust Agreement dated July 10, 1989 and known as Trust Number 1719.

69. FEE PARCEL DESCRIPTION: UNIT 1424

PARCEL 1:

Lot 5 and the Southwesterly 54.00 Feet of Lot 8 running parallel with and measured perpendicular to the Southerly Line of said Lot 8 in ChicagoLand Center, being a subdivision of part of the East half of the Southeast Quarter of Section 23, Township 36 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded March 25, 2003 as Document No. R2003068026, in Will County, Illinois.

PARCEL 2:

Non-Exclusive Drainage easement created by Paragraph 4(b) of that certain Declaration of Covenants, Restrictions and Easements for Chicagoland Center Association dated March 12, 2004 and recorded March 22, 2004 as Document No. R2004-047069; First Amendment dated April 21, 2005 and recorded April 26, 2005 as Document Number R-2005-068371.

70. FEE PARCEL DESCRIPTION: UNIT 1450

PARCEL 1:

Lot No. 4 of “1st Addition to 159 Commerce Center, being a part of Lot 4 of U.S. Survey 368; also part of Lots 1 and 2 of Garden Forest; also Part Of Lot 6 in the Northwest Quarter of Section 3, T. 1 N. R. 8 W. of 3rd P.M.; Also part of the Northeast Quarter Section 3, T. 1 N. R. 8 W. of 3rd P.M., all situated in St. Clair County, Illinois”; reference being had to the Plat thereof recorded in the Recorder’s Office of St. Clair County, Illinois, in Book of Plats “92” On Page 97.

Except the Coal, Oil, Gas and Other Minerals underlying the surface of said Land and all rights and easements in favor of the Estate of said Coal, Oil, Gas and Other Minerals.

PARCEL 2:

Easement for the benefit of Parcel 1 as contained in Detention Easement and Maintenance Agreement made by and between Daniel A. Grimmig, As Trustee of the Daniel A. Grimmig Revocable trust dated February 22, 2001 and Outback Steakhouse of Florida, Inc., recorded September 26, 2005 as Document No. A01936334 in book 4240 on page 913.

71. FEE PARCEL DESCRIPTION: UNIT 1452

Tract 1:

Lot 408 in Champaign Town Center Fourth Subdivision, as per plat recorded July 16, 1997 as Document Number 97R 16313, in Champaign County, Illinois.

Tract 2:

A non-exclusive easement for the benefit of Tract 1 as created by the Easement Agreement dated July 15, 1997 and recorded July 17, 1997 as Document Number 97R 16545 from Champaign-Prospect Limited Partnership, an Illinois limited partnership, and Outback Steakhouse of Florida, Inc., a Florida corporation, (as amended by instrument recorded October 8, 1999 as Document NO. 99R 30073) for the purpose of parking of automobiles over the following described land:

Lot 407 of Champaign Town Center Fourth Subdivision as per plat recorded July 16, 1997 as Document Number 97R 16313, in Champaign County, Illinois.

Tract 3:

A non-exclusive easement for the benefit of Tract 1 as created by Covenants, Conditions, Restrictions, Easements and Reciprocal Rights Agreement dated August 15, 1996 and recorded August 15, 1996 as Document Number 96R 20422, as modified by an Amendment recorded July 16, 1997 as Document Number 97R 16316, and further modified by an Amendment recorded November 21, 2003 as Document Number 2003R 51895.

72. FEE PARCEL DESCRIPTION: UNIT 1453

Lot 2 and Lot 3 of BI-PETRO OFFICE PARK SUBDIVISION, PLAT 2, to the City of Springfield, Illinois, recorded July 24, 1998 as Document Number 98-38113 in the Office of the Recorder of Sangamon County, Illinois.

Except all coal, minerals and mining rights heretofore conveyed or reserved of record.

73. FEE PARCEL DESCRIPTION: UNIT 1516

TRACT I:

A part of the Northeast quarter of Section 1, Township 8 North, Range 2 West, Monroe County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Northeast quarter; thence North 89 degrees 27 minutes 38 seconds West on and along the North line of said Section 366.36 feet; thence leaving said Section line South 00 degrees 23 minutes 08 seconds East 100.00 feet to the Point of Beginning; thence continuing South 00 degrees 23 minutes 08 seconds East along the West line of a tract of land owned by Whitehall Associates 205.15 feet; thence North 89 degrees 27 minutes 38 seconds West along the North line of Whitehall Associates 136.37 feet; thence North 00 degrees 23 minutes 08 seconds West along the East line of Bob Evans Farms, Inc., 217.37 feet to a point on the South right of way of State Road 48; thence

South 79 degrees 44 minutes 19 seconds East, along the South right of way line of State Road 48, 72.35 feet; thence South 89 degrees 27 minutes 38 seconds East, along the South right of way line of State Road 48, 65.25 feet and to the Point of Beginning.

TRACT II:

Easement rights limited to utilities as set forth in Roadway and Utility Easement dated May 22, 1979 and recorded August 21, 1979 in Deed Record 270, pages 89-92, in the Office of the Recorder of Monroe County, Indiana.

TRACT III:

Easement rights and privileges as set forth in Covenants For Operation, Maintenance and Reciprocal Easements dated May 27, 1980 and recorded September 11, 1980 in Miscellaneous Record 117, pages 439-463, and Modification of Covenants For Operation, Maintenance and Reciprocal Easements recorded June 19, 1990 in Miscellaneous Record 200, pages 350-361, in the Office of the Recorder of Monroe County, Indiana.

TRACT IV:

Easement rights and privileges as set forth in Easement Agreement dated August 23, 1979 and recorded August 28, 1979 in Deed Record 270, pages 245-248, in the Office of the Recorder of Monroe County, Indiana.

74. FEE PARCEL DESCRIPTION: UNIT 1518

Lot 1 in Commerce Place Subdivision, Phase 1, an Addition in Fairfield Township, Tippecanoe County, Indiana, the plat of which was recorded February 6, 1995 as Instrument No. 9501895 in Plat Cabinet E, Slide E-44, in the Office of the Recorder of Tippecanoe County, Indiana.

75. FEE PARCEL DESCRIPTION: UNIT 1519

Lot A2 and the adjoining West 38.28 feet of Lot A4 in Cross Pointe, Section 1, Subdivision of part of the Southwest quarter of Fractional Section 19, Township 6 South, Range 9 West in Vanderburgh County, Indiana, as per plat thereof as recorded in Plat Book O, Page 17, in the Office of the Recorder of Vanderburgh County, Indiana, and being more particularly described as follows:

Beginning at the Southwest corner of Lot A2; thence along the West line thereof North 00 degrees 32 minutes 33 seconds East 258.89 feet to the Northwest corner; thence along the North line of said Lot A2 and Lot A4, North 89 degrees 27 minutes 55 seconds East 228.28 feet; thence South 00 degrees 32 minutes 33 seconds West, parallel with the West line of said Lot A2, 258.86 feet to a point on the South line of Lot A4; thence along the South line of said Lot A4 and A2, South 89 degrees 27 minutes 24 seconds West 228.28 feet to the POINT OF BEGINNING.

ALSO,

An easement for parking and other rights over the following described real estate located in Vanderburgh County, Indiana, and pursuant to Access and Parking Easement Agreement dated July 7, 1995 and recorded July 13, 1995 in Deed Drawer 9, Card 5652, in the Office of the Recorder of Vanderburgh County, Indiana:

Part of the Southwest quarter of Section 19, Township 6 South, Range 9 West, in Vanderburgh County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said quarter section; thence along the South line of said quarter section, North 89 degrees 26 minutes 35 seconds East 2154.38 feet to the extended West line of Cross Pointe Section 1, as recorded in Plat Book O, page 17, in the Office of the Recorder of Vanderburgh County, Indiana; thence along said extended West line, North 00 degrees 32 minutes 33 seconds East, 110.48 feet to the Southwest corner of said Cross Pointe Section 1 and also the North right of way line of SR 66 (Lloyd Expressway), said point being the POINT OF BEGINNING;

thence along said North right of way line, South 89 degrees 27 minutes 24 seconds West, 73.00 feet; thence North 00 degrees 32 minutes 31 seconds West, 258.86 feet to the extended South right of way line of Indiana Street as platted in said Cross Pointe Section 1; thence along said extended South right of way line, North 89 degrees 27 minutes 55 seconds East, 77.90 feet to the West line of said Cross Pointe, Section 1; thence along said West line, South 00 degrees 32 minutes 33 seconds West, 258.89 feet to the POINT OF BEGINNING.

76. FEE PARCEL DESCRIPTION: UNIT 1520

Part of the East Half of the Southeast Quarter of Section 30, Township 16 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana described as follows:

COMMENCING at the Northeast corner of said Half-Quarter Section; thence on an assumed bearing of South 89 degrees 52 minutes 44 seconds West along the North line of said Half-Quarter Section a distance of 1336.21 feet to the Northwest corner of said Half-Quarter Section; thence South 00 degrees 09 minutes 54 seconds East along the West line of said Half-Quarter Section a distance of 846.93 feet to the Point of Beginning; thence North 89 degrees 52 minutes 44 seconds East a distance of 189.47 feet; thence South 00 degrees 07 minutes 16 seconds East a distance of 19.01 feet; thence South 25 degrees 43 minutes 37 seconds East a distance of 296.71 feet to the North limited access right of way line of Interstate 70 per Indiana State Highway plans for Project #I-70-3(47)86, 1964 (sheet 34 of 218); thence South 69 degrees 31 minutes 59 seconds West along said North limited access right of way line a distance of 141.49 feet; thence South 85 degrees 45 minutes 29 seconds West along said North limited access right of way line a distance of 185.25 feet to the West line of said Half-Quarter Section; thence North 00 degrees 09 minutes 54 seconds West along said West line a distance of 349.08 feet to the POINT OF BEGINNING.

TOGETHER WITH

All rights and non-exclusive easements for ingress, egress, utilities and access granted in that certain Declaration of Covenants and Restrictions for Post 70 Commerce Park recorded August 28, 1992 as Instrument No. 92-113250. Amended by First Addendum to Declaration of Covenants and Restrictions for Post 70 Commerce Park recorded August 28, 1992 as Instrument No. 92-113251. Further amended by Second Addendum to Declaration of Covenants and Restrictions for Post 70 Commerce Park recorded August 28, 1992 as Instrument No. 92-993256, further amended by Third Addendum to Declaration of Covenants and Restrictions for Post 70 Commerce Park recorded October 8, 1992 as Instrument No. 92-134042 and lastly amended by Fourth Addendum to Declaration of Covenants and Restrictions for Post 70 Commerce Park recorded February 13, 1995 as Instrument No. 95-16369.

77. FEE PARCEL DESCRIPTION: UNIT 1521

TRACT I:

Part of Lot number 3, Section 1 in Terrace Meadows Subdivision, City of Kokomo, Center Township, Howard County, Indiana, and part of vacated Garden Place, West of and adjacent to said Lot 3 as recorded in Recorder's Plat Book 5, page 207, being part of the Northwest quarter of Section 18, Township 23 North, Range 4 East, Center Township, Howard County, Indiana, described as follows, to-wit:

COMMENCING at the Southwest corner of said quarter; thence North 89 degrees 49 minutes 00 seconds East (assumed bearing) 414.12 feet; thence North 18 degrees 24 minutes 00 seconds East 37.92 feet; thence North 51 degrees 33 minutes 00 seconds West 64.00 feet to a concrete right of way marker (found 0.55' South 0.30' East); thence Northeast 606.81 feet along the East right of way of US 31 and a 6052.83 foot radius curve to the right, the radius point of which bears South 70 degrees 39 minutes 02 seconds East 6052.83 feet through a clockwise central angle of 5 degrees 44 minutes 38 seconds; thence South 64 degrees 30 minutes 43 seconds East 28.48 feet to the Point of Beginning marked by a railroad spike; thence Northeast 46.94 feet along a non tangent 135.00 foot radius curve to the right, the radius point of which bears South 84 degrees 26 minutes 02 seconds East 135.00 feet, through a clockwise central angle of 19 degrees 55 minutes 13 seconds; thence North 25 degrees 29 minutes 17 seconds East 47.00 feet; thence South 64 degrees 30 minutes 43 seconds East 136.00 feet; thence South 25 degrees 29 minutes 17 seconds West 93.00 feet; thence North 64 degrees 30 minutes 43 seconds West 127.92 feet to the POINT OF BEGINNING.

TRACT II:

A non-exclusive easement described in Grant of Easement Agreement dated August 13, 1987, recorded August 18, 1987 in Deed Record 251, Page 2517.

78. FEE PARCEL DESCRIPTION: UNIT 1522

TRACT I:

A part of the Southeast Quarter of Section 34, Township 21 North, Range 10 East, more particularly described as follows, to-wit:

Commencing at the Southwest corner of the Southeast Quarter of Section 34, Township 21 North, Range 10 East; thence North 00 degrees 00 minutes 21 seconds West and on the West line of the said Southeast Quarter 50.0 feet to the North right-of-way line of McGalliard Road; thence North 89 degrees 50 minutes 51 seconds East and on said North right-of-way line 805.48 feet to its intersection with the Westerly right-of-way line of Granville Avenue; thence North 33 degrees 17 minutes 11 seconds East and on said Westerly right-of-way line 508.86 feet; thence continuing North 20 degrees 40 minutes 15 seconds East and on said right-of-way line 65.99 feet; thence North 69 degrees 19 minutes 45 seconds West 42.94 feet to a point, which point, is the point of beginning for the land herein described; thence continuing North 69 degrees 19 minutes 45 seconds West 23.48 feet; thence South 20 degrees 40

minutes 18 seconds West 22.15 feet; thence North 69 degrees 22 minutes 37 seconds West 20.06 feet; thence North 20 degrees 47 minutes 35 seconds East 18.62 feet; thence North 69 degrees 19 minutes 35 seconds West 59.46 feet; thence North 20 degrees 32 minutes 59 seconds East 93.76 feet; thence South 69 degrees 23 minutes 30 seconds East 104.96 feet; thence South 20 degrees 30 minutes 27 seconds West 29.85 feet; thence North 69 degrees 29 minutes 33 seconds West 1.89 feet; thence South 20 degrees 40 minutes 15 seconds West 60.48 feet to the point of beginning.

TRACT II:

Non-exclusive Easement rights for parking and ingress and egress for the benefit of TRACT I as set forth in that certain Covenants, Conditions and Restrictions Agreement by and between Simon Property Group, L.P. and Outback Steakhouse of Florida, Inc., dated April 29, 1997 and recorded May 7, 1997 in Miscellaneous Record 1997, pages 1717-1740.

79. FEE PARCEL DESCRIPTION: UNIT 1550

TRACT I:

Part of parcel described to Whiteco Industries, Inc., in a Trustee's Deed recorded on January 14, 1991 as Document No. 91002056, said part described as follows: Part of Block "D", Lincoln Square, Merrillville, Indiana, as shown in Plat Book 43 Page 137 in Lake County, Indiana, more particularly described as follows:

COMMENCING at a point on the Southwesterly line of said Block "D" and 386.09 feet Southeasterly from the Northwest corner thereof; thence South 30 degrees 48 minutes 05 seconds East 233.70 feet; thence North 59 degrees 11 minutes 55 seconds West 364.00 feet, more or less, to the Northeasterly line of said Block "D"; thence Northwesterly along a curve to the left with a radius of 666.2 feet for a distance of 253.00 feet; thence South 59 degrees 11 minutes 55 seconds West 271.15 feet to the POINT OF BEGINNING, in Lake County, Indiana.

TRACT II:

A Non-Exclusive Easement for the construction, operation and maintenance of a goal-post type Pylon Sign, created in Sign Easement Agreement dated July 19, 2002 and recorded October 7, 2002 as Document No. 2002-090345, made by and between Whiteco Industries, Inc. and Outback Steakhouse of Florida, Inc., a Florida corporation, described as follows:

A parcel of land being a part of the land described to Whiteco Industries, Inc., in a Trustee's Deed recorded on January 14, 1991 as Document No. 91002056, in the Office of the Recorder of Lake County, Indiana, said parcel also being part of Lot 1, Resubdivision of Part of Block "D", Lincoln Square, as shown in Plat Book 65 Page 8, in said Recorder's Office, said parcel also being Part of Lot 1, Final Plat C. S. Subdivision, as shown in Plat Book 93 Page 86, in said Recorder's Office, said parcel being more particularly described as follows:

COMMENCING at a point on the Southwesterly line of Block "D" (as shown in Plat Book 43 Page 137 in said Recorder's Office) and 386.09 feet Southeasterly from the Northwest corner thereof; thence South 30 degrees 48 minutes 05 seconds East, 233.70 feet along the Westerly line of said Block "D"; thence North 59 degrees 11 minutes 55 seconds East 313.03 feet to a point that is 50.00 feet by radial

measurement from the Northeasterly line of said Block “D” and being the point of beginning; thence continuing North 59 degrees 11 minutes 55 seconds East 35.00 feet; thence South 30 degrees 48 minutes 05 seconds East, 35 feet; thence South 59 degrees 11 minutes 55 seconds West, 70 feet; thence North 30 degrees 48 minutes 05 seconds West, 35.00 feet; thence North 59 degrees 11 minutes 55 seconds East, 35.00 feet to the POINT OF BEGINNING, all in Lake County, Indiana.

80. FEE PARCEL DESCRIPTION: UNIT 1611

All that part of Lot Sixteen (16), Irregular Survey of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section Eleven (11), lying Southeasterly of the Southeasterly line of First Avenue, Kenwood Road, now known as First Avenue East in the City of Cedar Rapids, Iowa, said line being parallel with and Sixty (60) feet Southeasterly from the center line of said First Avenue East, as now used and monumented, and Northeasterly of the following described line: Beginning at a point on the Southeasterly line of said First Avenue East, and Seven Hundred Thirty-five and Three Tenths (735.3) feet Southwesterly from the intersection of the North line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section Eleven (11) with the Southeasterly line of said First Avenue East and measured along the Southeasterly line of said First Avenue East; thence Southeasterly Three Hundred Seventy-four and Seven Tenths (374.7) feet along a line drawn at right angles to the Southeasterly line of said First Avenue East to its intersection with the Northwesterly line of the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, excepting therefrom the premises described in Warranty Deed recorded in Volume 890 at Page 244 of the Records of the County Recorder, Linn County, Iowa, and also excepting therefrom the premises described in Quit Claim Deed recorded in Volume 1143 at Page 141 of the Records of the County Recorder of Linn County, Iowa, all in Township Eighty-three (83) North, Range Seven (7) West of the 5th P.M., Linn County, Iowa.

ALSO DESCRIBED AS:

Part of Lot 16, Irregular Survey in the Northeast Quarter of the Northwest Quarter of Section II, Township 83 North, Range 7 West of the 5th Princiapl Meridian, City of Cedar Rapids, Linn County, Iowa, as recorded in Irregular Plat Book Volume 3 at Page 90, more particularly described as follows:

Commencing at the intersection of the southeasterly right of way line of First Avenue East and the north line of said Northeast Quarter of the Northwest Quarter; thence South 32 degrees 00 minutes 00 seconds West along said southeasterly right of way line, a distance of 735.30 feet to the POINT OF BEGINNING as marked by a found “PK” nail; thence South 58 degrees 00 minutes 000 seconds East, a distance of 374.68 feet to a found #5 rebar on the northwesterly right of way line of a former railroad; thence North 41 degrees 47 minutes 58 seconds East along said northwesterly line, a distance of 177.67 feet to a set #4 rebar at the most southerly corner of the property formerly owned by the Iowa Electric Light and Power Company; thence North 48 degrees 12 minutes 02 seconds West, a distance of 50 feet to a set #4 rebar; thence North 41 degrees 47 minutes 58 seconds East, a distance of 42.3 **4** feet to a sawed “X’ on a concrete sidewalk at the intersection with the southwesterly right of way line of 40th Street Drive SE; thence North 67 degrees 40 minutes 00 seconds West along said southwesterly right of way line, a distance of 368.08 feet to a sawed “X” on a concrete sidewalk at the intersection with said southeasterly right of way line of First Avenue East; thence South 32 degrees 00 minutes 00 seconds West, a distance of 163. 50 feet to the POINT OF BEGINNING; said described tract containing 75, 254 square feet (1.73 acres), more or less.

81. FEE PARCEL DESCRIPTION: UNIT 1614

A parcel of land described as Lot Two (2) and the Northwesterly Thirty-seven and Eighty Hundredths feet (37.80') of Lot Three (3) along with the Westerly portion of the Northerly 20 feet of Lot 1, lying immediately adjacent to and South of Lot 2 and the Northwesterly 37.80 feet of said Lot 3 of Lakeport Park 1st Filing, Replat 1, being a replat of Lot One (1) and Lot Two (2), Lakeport Park 1st Filing, a subdivision located in the Northwest Quarter (NW 1/4) Northwest Quarter (NW 1/4) and the Southwest Quarter (SW 1/4) Northwest Quarter (NW 1/4) of Section Seventeen (17), Township Eighty-eight (88) North, Range Forty-seven (47) West of the Fifth Principal Meridian, City of Sioux City, Woodbury County, Iowa.

Said parcel being more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter (NW 1/4) Northwest Quarter (NW 1/4): thence Northerly along the West line of said Quarter-Quarter (1/4 1/4) on an assumed bearing of North one degree fifty-three minutes twelve seconds (N 01 53 12) East (with all subsequent bearings referenced therefrom) for a distance of Two Hundred and Ninety-two Hundredths feet (200.92') to a point on the Southerly right-of-way of Southern Hills Drive; thence Easterly along said right-of-way line and along a cure concave Northeasterly, with a radius of One Thousand Eighty-one and Thirty Hundredths feet (1081.30') and a central angle of ten degrees thirty-two minutes nine seconds (10 32 09) for a distance along said curve of One Hundred Ninety-eight and Eighty-two hundredths feet (198.82') to the Northwest corner of said Lot Two (2) and the POINT OF BEGINNING; thence continuing Easterly along said street right-of-way and along said curve, having a radius of One Thousand Eighty-one and Thirty Hundredths feet (1081.30') and a central angle of ten degrees twenty minutes thirty-four seconds (10 20 34) for a distance along the curve of One Hundred Ninety-five and Nineteen Hundredths feet (195.19') to the Northeast corner of the Northwesterly Thirty-seven and Eighty Hundredths feet (37.80') of Lot three (3); thence South Sixteen degrees six minutes eight seconds (S 16 06 08) West along a line parallel with and Thirty-seven and Eighty Hundredths feet (37.80') equal distance to the Southeasterly line of Lot Two (2) for a distance of 316.23 feet to a point on the South line of the Northerly 20 feet of said Lot 1; thence North seventy-five degrees forty-two minutes thirty-seven seconds (N75 42 37) West along a line parallel with and 20 feet equal-distance to the Northerly line of Lot 1 for a distance of Two Hundred Twenty-nine and Twenty-seven Hundredths feet (229.27') to a point on the East right-of-way line of South Lancelot Lane; thence North one degree fifty-one minutes thirty seconds (01 51 30) East along said right-a -way for a distance of 61.30 feet; thence continuing Northerly along said right-of-way line and along a curve, concave Easterly with a radius of 150.00 feet and a central angle of forty degrees 42 minutes 25 seconds (40 42 25) for a distance along said curve of 106.57 feet; thence North forty-two degrees 33 minutes 55 seconds (42 33 55) East along said right-of-way line for a distance of 26.83 feet; thence continuing Northerly along said right-or-way line and along a curve, concave Northwesterly, having a radius of 261.55 feel and a central angle of twenty-eight degrees 20 minutes 00 seconds (28 20 00) for a distance along said curve of 129.34 feet; thence North fourteen degrees 13 minutes 55 seconds (N 14 13 55) East along said right-of way line for a distance of 21.99 feet to the Northwest corner of said Lot 2 and the POINT OF BEGINNING. Woodbury County. Iowa.

82. FEE PARCEL DESCRIPTION: UNIT 1715

Lot 1, Westview 3rd Addition, Wichita, Sedgwick County, Kansas,

EXCEPT that part described as BEGINNING at the Southwest corner of said Lot 1; thence North 00° East along the West line of said Lot 1 a distance of 188 feet; thence N 89°19'30" East, parallel with the West 62 feet of the South line of said Lot 1, 137 feet; thence North 00° East, 22 feet; thence North 89°19'30" East 49 feet; thence South 00° West 10 feet to a point on the North line of Lot 2 in said Addition; thence South 89°19'30" West along the North line of said Lot 2, 24 feet to the Northwest corner of said Lot 2; thence South 00° West 175 feet to the Southerly most corner common to said Lots 1 and 2; thence South 75°19'45" West along the Southerly line of said Lot 1 103.36 feet to the point of intersection in the South line of said Lot 1; thence South 89°19'30" West along the South line of said Lot 1, 62 feet to the PLACE OF BEGINNING.

83. FEE PARCEL DESCRIPTION: UNIT 1716

TRACT 1:

Lot 7, Southgate Retail Center, a subdivision in the City of Olathe, Johnson County, Kansas, as recorded in Plat Book 125, Page 28, except that part of said Lot 7 replated as part of Lot 6, Southgate Retail Center, Second Plat, as recorded in Plat Book 200605, Page 001353, a subdivision in the City Of Olathe, Johnson County, Kansas.

TRACT 2:

Non-Exclusive Appurtenant Easements for Access, Utilities, Storm Drainage and Detention as established by the Reciprocal Easement and Operating Agreement recorded in Book 7882, Page 54 (Supplemental Agreement filed in Book 200607, Page 009202).

TRACT 3:

Non-Exclusive Appurtenant Easement for Signage, as established by Signage Easement Agreement recorded in Book 200607, Page 009202.

84. FEE PARCEL DESCRIPTION: UNIT 1813

BEING Lot 3, as shown on plat of Signature Inn. of record in Plat and Subdivision Book 36, Page 18, in the Office of the Clerk of Jefferson County, Kentucky.

BEING the same property conveyed to Insured by Quit Claim Deed from Outback Steakhouse of Florida, Inc., dated June 14, 2007, recorded June 28, 2007, in Deed Book 9061, Page 401, Jefferson County, Kentucky, Records.

85. FEE PARCEL DESCRIPTION: UNIT 1851

Lot No. 2-1 of the Amendment No. 1 of the Major Subdivision- Drury Inn Subdivision as shown on a plat as said Amendment No. 1 of said subdivision of record in Plat Book 29, Page 78, in the Warren County Court of Clerk's Office.

Being the same property conveyed to Private Restaurant Properties, LLC, a Delaware limited liability company by Quit Claim Deed from Outback Steakhouse of Florida, Inc., a Florida corporation, dated June 14, 2007, recorded July 19, 2007, in Book 954, Page 241, Warren County, Kentucky Records.

Together with the non-exclusive access rights, and subject to the terms, conditions and provisions and limitations of the following:

Easement and Restriction Agreement by and between Outback Steakhouse of Florida, Inc., a Florida corporation, and Druco, Inc., a Missouri corporation, dated September 4, 1997, and recorded in Deed Book 749, Page 741, aforesaid records.

Statement of Binding Elements, dated August 3, 1995, and recorded September 21, 1995, in Book 713, Page 264, aforesaid records.

86. FEE PARCEL DESCRIPTION: UNIT 1901

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

FEE PARCEL

A CERTAIN TRACT OR PARCEL OF GROUND, situated in the Parish of East Baton Rouge, State of Louisiana, in Section 94, Township 7 South, Range 1 East, and being designated as TRACT A-1 on a survey by Ferris & Associates Engineering, Inc., entitled "Map Showing Subdivision of Tract A of a Portion of Lot 38, Richland Plantation, Located in Section 94, T7S, R1E, Greensburg Land District, East Baton Rouge Parish, Louisiana, into Tract A-1 and A-2, . . .", a copy of which is on file and of record in Original 927, Bundle 10224 of the official records of this Parish and State, said tract having such size, shape and dimensions and being subject to such servitudes as are shown on said map.

SERVITUDE PARCEL I

THAT CERTAIN SERVITUDE created in Agreement by The City of Baton Rouge, The Parish of East Baton Rouge and Acadian Place, Ltd., dated June 7, 1978, recorded as Original 242, Bundle 9265, COB 2656, folio 410 on June 9, 1978; as amended by Agreement by The City of Baton Rouge, The Parish of East Baton Rouge and Joseph T. Spinosa, Jr. dated April 26, 1979, recorded as Original 189, Bundle 9318, COB 2720, folio 876, MOB 3061, folio 352 on May 3, 1979; as supplemented by Supplemental Agreement by The City of Baton Rouge, The Parish of East Baton Rouge and Joseph T. Spinosa, Jr., dated June 1, 1983, recorded as Original 269, Bundle 9577, on June 2, 1983 of the conveyance records; as further supplemented and amended by Servitude Agreement by Joseph T. Spinosa, Jr., Chanda Jan Covington Spinosa, The City of Baton Rouge, The Parish of East Baton Rouge, and Acadian Centre Partnership in Commendam, dated June 16, 1986, recorded as Original 961, Bundle 9852, on July 29, 1986 of the conveyance records; and as corrected by Notarial Act of Correction dated August 5, 1986, recorded as Original 29, Bundle 9855, on August 6, 1986 of the conveyance records; which servitude area is more fully described as follows:

A CERTAIN PARCEL OF LAND containing .0708 acres (3,083 square feet) being a portion of property located in Section 94, Township 7 South, Range 1 East, Greensburg Land District, Baton Rouge, Louisiana, formerly being a portion of Lot 36 of the Richland Plantation:

Commencing at a point being the intersection of the Eastern right of way line of Acadian Thruway and the Northern right of way line of the Kansas City Southern Railroad Right of way; thence proceed along the Eastern right of way of Acadian Thruway North 28 degrees, 06 minutes, 38 seconds East along a line a distance of 100.37 feet to the point of beginning. Thence proceed North 28 degrees, 06 minutes, 38 seconds East a distance of 56.91 feet to a point; thence proceed South 44 degrees, 02 minutes, 35 seconds East a distance of 88.13 feet to a point; thence proceed South 28 degrees 37 minutes, 44 seconds West a distance of 31.43 feet to a point; thence proceed North 44 degrees, 02 minutes, 35 seconds West a distance of 31.92 feet to a point; thence proceed along the arc of a curve to the left having a radius of 60.00 feet a distance of 55.85 feet to the point of beginning.

SERVITUDE PARCEL II

THAT CERTAIN SERVITUDE created in Servitude Agreement by Joseph T. Spinosa, Jr., Chanda Jan Covington Spinosa and Acadian Centre Partnership in Commendam, dated August 6, 1986, recorded as Original 30, Bundle 9855, on August 6, 1986 of the conveyance records, which servitude area is more fully described as follows:

A CERTAIN PARCEL OF LAND containing .0978 acres (4,258 square feet) being a portion of Tract B located in Section 94, Township 7 South, Range 1 East, Greensburg Land District, Baton Rouge, Louisiana, formerly being a portion of Lot 38 of the Richland Plantation:

Commencing at a point being the intersection of the Eastern right of way line of Acadian Thruway and the Northern right of way line of the Kansas City Southern Railroad right of way; thence proceed along the Northerly right of way line of Kansas City Southern Railroad South 56 degrees, 29 minutes, 22 seconds East a distance of 83.01 feet to a point; thence proceed along a line North 28 degrees, 37 minutes, 44 seconds East a distance of 106.66 feet to the point of beginning. Thence proceed North 28 degrees, 37 minutes, 44 seconds East a distance of 31.43 feet to a point; thence proceed South 44 degrees, 02 minutes, 35 seconds East a distance of 13.57 feet to a point; thence proceed North 82 degrees, 17 minutes, 35 seconds East a distance of 11.85 feet to a point; thence proceed North 28 degrees, 37 minutes 44 seconds East a distance of 62.28 feet to a point; thence proceed South 34 degrees, 00 minutes, 00 seconds East a distance of 39.41 feet to a point; thence proceed South 28 degrees, 37 minutes, 44 seconds West a distance of 96.50 feet to a point; thence proceed North 44 degrees, 02 minutes 35 seconds West a distance of 60.23 feet to the point of beginning.

87. FEE PARCEL DESCRIPTION: UNIT 1912

THE LAND REFERRED TO HEREINBELOWIS SITUATED IN THE PARISH OF ST. TAMMANY, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

FEE PARCEL

A certain tract or parcel of land containing 1.99 acres located in Section 1, T-9-S, R-14-E, Greensburg Land District, St. Tammany Parish, Louisiana, and being more particularly described as follows:

Commence at the southeast corner of the southeast quarter of the southwest quarter of Section 1, T-9-S, R-14-E, thence proceed N 01°08'00" W, a distance of 96.15 feet to a point and corner; thence S 89°05'56" W, a distance of 333.46 feet to a point and a corner; thence proceed S 87°37'52" W, a distance of 90.42 feet to a point and a corner; thence proceed N 22°22'18" W, a distance of 99.83 feet to the POINT OF BEGINNING;

THENCE from the POINT OF BEGINNING PROCEED S 85°43'06' W, a distance of 141.78 feet to a point and a corner;

THENCE PROCEED N 01°08'00" W, a distance of 305.34 feet to a point and a corner;

THENCE PROCEED N 88°52'00" E, a distance of 396.70 feet to a point and a corner;

THENCE PROCEED S 01°08'00" E, a distance of 173.17 feet to a point and a corner;

THENCE PROCEED S 89°05'56" W, a distance of 252.65 feet to a point and a corner;

THENCE PROCEED S 00°00'00" W, a distance of 125.43 feet to the POINT OF BEGINNING.

Said tract of land contains 86,878.68 square feet and is designated as "Parcel 2" on the "Map showing Subdivision of the Racetrac Petroleum, Inc. Property" by Ferris Engineering & Surveying, Inc., dated September 7, 1993, approved by the Slidell Planning Commission on October 18, 1993, recorded as Map File No. 1170 in the records of St. Tammany Parish, and according to a plat of survey by Ronald K. Ferris, Land Surveyor, dated October 28, 1993, recorded as Map File No. E1571, said parcel has the same dimensions and measurements.

LESS AND EXCEPT

A certain tract or parcel of land containing 0.53 acres located in Section 1, T-9-S, R-14-E, Greensburg Land District, St. Tammany Parish, Louisiana, and being more particularly described as follows:

Commence at the southeast corner of the southeast quarter of the southwest quarter of Section 1, T-9-S,R-14-E, then proceed N 01°08'00" W, a distance of 96.15 feet to a point and corner, thence S 89°05'58" W, a distance of 204.89 feet to a point and corner, thence N 01°08'00" W, a distance of 216.00 feet to the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING, PROCEED S 89°05'56" W, a distance of 132.50 feet to a point and a corner;

THENCE PROCEED N 01°06'00" W, a distance of 172.63 feet to a point and a corner;

THENCE PROCEED N 88°52'00" E, a distance of 132.50 feet to a point and a corner;

THENCE PROCEED S 01°06'00" E, a distance of 173.17 feet to the POINT OF BEGINNING.

SERVITUDE PARCEL

A non-exclusive perpetual servitude of ingress and egress over and across a portion of property which is more particularly described as the "Access Road" in Act Establishing Servitudes, recorded November 28, 1990, under Instrument No. 767690, COB 1443, folio 838, MOB 1407, folio 80.

88. FEE PARCEL DESCRIPTION: UNIT 1914

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF ST. TAMMANY, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

FEE PARCEL

ALL THAT CERTAIN PIECE OR PORTION OF GROUND, together with all buildings and improvements thereon, situated in Section 15, Township 7 South, Range 11 East, ST. TAMMANY Parish, Louisiana, being LOT 3, ST. TAMMANY OAKS SUBDIVISION, St. Tammany Parish, Louisiana which lot is created by the official subdivision plat of Dufrene Surveying & Engineering, Inc., Tildon J. Dufrene, Jr. Professional Land Surveyor dated November 16, 1994 revised on various dates through March 21, 1995, approved by the necessary parish authorities and recorded with the Clerk of Court, St. Tammany Parish as Map File No. 1313.

SERVITUDE PARCEL I

Non-exclusive servitude created pursuant to that certain Declaration of Restrictive Use by St. Tammany Oaks, L.L.C. and BVI St. Tammany Oaks, L.L.C., dated March 19, 1997, recorded under Instrument No. 1045645 on May 8, 1997 in the conveyance records.

SERVITUDE PARCEL II

Non-exclusive servitude created pursuant to that certain Agreement for Water and Service by and between St. Tammany Oaks, L.L.C. and Utilities Inc. of Louisiana, dated March 30, 1995, recorded under Instrument No. 944791 on April 7, 1995 in the conveyance records.

89. FEE PARCEL DESCRIPTION: UNIT 1921

THAT CERTAIN TRACT OR PARCEL OF GROUND containing approximately 72,650 square feet and designated as “Lot 1” on the Plat of Survey dated February 19, 1993, prepared by Domingue, Szabo & Associates, Inc., located in Section 46, Township 10 South, Range 4 East, City of Lafayette, Louisiana, more particularly described as follows:

Commencing at an “x” in concrete, being the northeast corner of Lot 1—Building “A,” 1602 West Pinhook Road, shown as Point “H” on plat prepared by Roland W. Laurent titled “A Map of Survey Showing Property and Improvements of Building Site ‘A’ and Building Site ‘B’ Number of Lots ‘2’ belonging to PNB Securities Corp” dated May 21, 1992, which Map of Survey is recorded as part of File No. 9241346 of the records of the Clerk of Court for Lafayette Parish, Louisiana, said point being the Point of Beginning; thence South 75 degrees 59 minutes 50 seconds West a distance of 185.54 feet to a nail in asphalt; thence South 75 degrees 59 minutes 50 seconds West a distance of 30.80 feet to an iron rod; thence North 14 degrees 19 minutes 21 seconds West a distance of 314.35 feet to the approximate Mean Low Water Line of the Vermilion River; thence along the Mean Low Water Line of the Vermilion River approximated by the following courses:

North 56 degrees 52 minutes 06 seconds East a distance of 54.43 feet; thence North 76 degrees 49 minutes 04 seconds East a distance of 63.14 feet; thence North 57 degrees 39 minutes 45 seconds East a distance of 43.71 feet; thence North 68 degrees 00 minutes 50 seconds East a distance of 56.41 feet

thence North 69 degrees 17 minutes 13 seconds East a distance of 4.24 feet; thence South 14 degrees 19 minutes 22 seconds East along the westerly right-of-way of La. Highway 182 (Pinhook Road) a distance of 66.35 feet to an iron rod; thence South 14 degrees 19 minutes 22 seconds East along the westerly right-of-way of La. Highway 182 (Pinhook Road) a distance of 287.01 feet to an “x” in concrete, the Point of Beginning; said property containing approximately 1.668 acres.

Said property is bounded to the North by the Vermillion River, to the South by property owned, now or formerly, by William Mills, et ux, to the East by the right of way Pinhook Road, and to the West by property owned now or formerly by The Becnel Company, et al.

90. FEE PARCEL DESCRIPTION: UNIT 1941

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF CALCASIEU, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

A CERTAIN TRACT OF LAND containing 1.306 acres, located in the Northwest Quarter of Section 15, Township 10 South, Range 8 West, City of Lake Charles, Calcasieu Parish, Louisiana, being more fully described as follows:

Commencing at the Southwest corner of the Northwest Quarter of Section 15, Township 10 South, Range 8 East, proceed along the southern line of said Northwest Quarter a bearing of South 89° 20’ 36” East a distance of 55.00 feet to a point on the easterly right of way of Louisiana Highway No. 14, said right of way established for State Project No. 193-06-15; thence proceed along said right of way of Louisiana Highway No. 14 a bearing of North 00° 14’ 31” East a distance of 350.00 feet to a point; thence continue along said right of way of Louisiana Highway No. 14 a bearing of South 89° 20’ 36” East a distance of 10.00 feet to a point; thence continue along said right of way of Louisiana Highway No. 14 a bearing of North 00° 14’ 31” East a distance of 596.80 feet to a point; thence continue along said right of way of Louisiana Highway No. 14 a bearing of North 89° 12’ 33” West a distance of 10.00 feet to a point; thence continue along said right of way of Louisiana Highway No. 14 a bearing of North 00° 14’ 31” East a distance of 393.50 feet to a point; thence continue along said right of way of Louisiana Highway No. 14 a bearing of South 89° 12’ 33” East a distance of 15.00 feet to a point; thence continue along said right of way of Louisiana Highway No. 14 a bearing of North 00° 14’ 31” East a distance of 50.00 feet to a point; thence proceed along a bearing of South 89° 12’ 33” East a distance of 185.00 feet to a point; said point hereinafter to be known as the Point of Beginning; thence proceed along a bearing of South 89° 12’ 33” East a distance of 210.00 feet to a point; thence proceed along a bearing of South 00° 14’ 31” West a distance of 257.80 feet to a point on the northerly right of way of the proposed Derek Drive; thence proceed along said right of way of the proposed Derek Drive along a curve to the left having a radius of 460.81 feet, an arc length of 20.66 feet, a delta angle of 03° 48’ 46”, a chord bearing of South 85° 01’ 57” West and a chord distance of 30.66 feet to a point; thence continue along said right of way of the proposed Derek Drive a bearing of South 83° 07’ 34” West a distance of 150.00 feet to a point; thence continue along said right of way of the proposed Derek Drive along a curve to the right having a radius of 496.36 feet, an arc length of 30.76 feet, a delta angle of 03° 33’ 05”, a chord bearing of South 84° 54’ 07” West and a chord distance of 30.76 feet to a point; thence proceed along a bearing of North 00° 14’ 31” East a distance of 284.04 feet to the Point of Beginning.

91. FEE PARCEL DESCRIPTION: UNIT 1951

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF OUACHITA, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

A certain tract or parcel of land situated in Lot 2, Unit No. 1, Constitution Centre, SE 1/4 of the NE 1/4 of Section 33, T18N, R3E, District North of the Red River, Ouachita Parish, Louisiana, being more particularly described as follows:

Commence at the intersection of the Southerly right-of-way Line of Interstate 20 Highway with the West line of the NE 1/4 of the NE 1/4 of Section 33, TI8N, R3E, and run South 00°18'29.7" East along the West line of the NE 1/4 of the NE 1/4 of Section 33, TI8N, R3E, for a distance of 72.96 feet to the Southerly right-of-way line of the service road known as Constitution Drive; thence continue South 00°18'29.7" East along said West line for a distance of 597.85 feet to the NW corner of the SE 1/4 of NE 1/4 of Section 33; thence run South 00°18'29.7" East along the West line of the SE 1/4 of the NE 1/4 of Section 33, TI8N, R3E, for a distance of 62.02 feet; thence run South 89°50'39.6" East for a distance of 188.22 feet to the POINT OF BEGINNING; thence run North 00°18'29.7" West for a distance of 255.37 feet; thence run North 36°30'21.0" East for a distance of 224.88 feet to the Southerly right-of-way line of the service road known as Constitution Drive; thence run South 53°29'39.0" East along said right-of-way line for a distance of 190.00 feet; thence run South 36°30'21.0" West for a distance of 324.21 feet; thence run South 00°00'31.6" West for a distance of 62.74 feet; thence run North 89°50'39.6" West for a distance of 92.24 feet to the POINT OF BEGINNING containing 66,878.91 square feet or 1.535 acres.

92. FEE PARCEL DESCRIPTION: UNIT 1961

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF BOSSIER, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

A tract located in the Northwest Quarter (NW/4) of Section 27, Township 18 North, Range 13 West, Bossier City, Bossier Parish, Louisiana, being more particularly described as follows:

From the Southwest corner of the Northwest Quarter (NW/4) of said Section 27, run North 0°08' East along the West line thereof, a distance of 477.10 feet, thence South 83°41' East, a distance of 543.73 feet, thence South 83°17' East, a distance of 299.20 feet, to a point on the West right-of-way line of Village Lane; thence run North 0°11' East along said right-of-way line a distance of 272.70 feet; thence run North 85°34' East, with the North right-of-way line of Village Lane, a distance of 462.01 feet, to the point of beginning of the tract herein described; thence run North 4°26' West a distance of 360.46 feet to a point on the South right-of-way line of the Illinois Central Railroad; thence run North 85°05'40" East along said right-of-way line a distance of 361.05 feet; thence run South 4°26' East a distance of 363.44 feet to a point on the North right-of-way line of Village Lane; thence run South 85°34' West along said right-of-way line, a distance of 361.04 feet, to the point of beginning.

LESS AND EXCEPT:

A TRACT OF LAND in the NW/4 of said Section 27, Township 18 North, Range 13 West, Bossier Parish, Louisiana. Said tract more fully described as follows:

From the Southwest corner of the NW/4 of said Section 27, Run North 0 degrees 8’ East along the West line thereof, a distance of 477.10 feet, thence run South 83 degrees 41’ East, a distance of 543.73 feet, thence run South 83 degrees 17’ East a distance of 299.20 feet to a point on the West right-of-way line of Village Lane. Thence run North 0 degrees 11’ East along said right-of-way line a distance of 272.70 feet. Thence run North 85 degrees 34’ East with the North right-of-way line of Village Lane a distance of 462.01 feet to the point of beginning. From the point of beginning, run North 4 degrees 26’ West a distance of 360.70 feet to a found iron pipe, thence run North 85 degrees 5’45” East a distance of 173.32 feet to a found iron pipe. Thence run South 4 degrees 23’22” East a distance of 362.12 feet to a found iron pipe. Thence run South 85 degrees 33’55” West a distance of 173.04 feet to the point of beginning.

Said Tract containing 1.44 acres more or less.

93. FEE PARCEL DESCRIPTION: UNIT 1971

A CERTAIN PARCEL OF GROUND known as the Easterly 144.61 feet of Lot 4 and all of Lot 5, formerly being a portion of Lot 2 of eight subdivision; and also, formerly being a portion of Lots 13 & 14 of Evergreen Plantation. Located in the City of Alexandria, Rapides Parish, Louisiana, Section 47, Township 3 North, Range 1 West, being more particularly described as follows:

Commencing at the intersection of the westerly right-of-way line of Sterkx Road and the northerly right-of-way line of MacArthur Drive; thence, along the northerly right-of-way of MacArthur Drive; N51°41’00” W—159.15 feet to a point, said point being the Point-of-Beginning.

Thence, along the Northerly right-of-way of MacArthur Drive, N51°41’00” W—144.61 feet to a point; thence, departing said right-of-way, N38°19’12” E—329.45 feet to a point; thence S60°49’00”E—262.38 feet to a point and corner, said point being on the Westerly right-of-way of Sterkx Road; thence, along the Westerly right-of-way of Sterkx Road, S16°55’00” W—92.35 feet to a point and corner; thence, S36°04’00”W—52.92 feet to a point and corner; thence, departing said right-of-way, N51°41’00” W—151.38 feet to a point and corner; thence S38°02’00” W—232.24 feet to the Point-of-Beginning. Being more particularly described as Lot 4-A and Lot 5 of a plat of survey by David L. Patterson, Registered Land Surveyor, dated June 6, 1997, a copy of which is recorded in conveyance Book 1508, Page 632.

94. FEE PARCEL DESCRIPTION: UNIT 2001

Lot 2 of CORNERSTONE PLAZA, according to the map or plat thereof as recorded in Plat Book 88, Page 22 of the Public Records of Hillsborough County, Florida.

TOGETHER WITH those certain easements as set forth in Declaration of Covenants, Restrictions and Easements recorded in Official Records Book 10225, Page 596, of the Public Records of Hillsborough County, Florida.

95. FEE PARCEL DESCRIPTION: UNIT 2014

PARCEL 1:

Lot 1, TOWNSGATE WEST, according to map or plat thereof recorded in Plat Book 73, page 44, of the public records of Hillsborough County, Florida; LESS that portion as taken by the State of Florida Department of Transportation in Stipulated Final Judgment in Official Records Book 8159, page 512.

PARCEL 2:

TOGETHER WITH those certain non-exclusive easements for drainage and retention areas for the benefit of the above described parcel as created by and set forth in Exhibit D of that certain Easement Agreement executed by and between Whitestone Plant City Partners, a Florida general partnership, Inland Southern Development Corporation, a Florida corporation, and Inland Townsgate Limited Partnership, a Florida limited partnership recorded in Official Records Book 5295, page 1857, of the public records of Hillsborough County, Florida, LESS AND EXCEPT that part described in Order of Taking recorded in Official Records Book 7936, page 234, public records of Hillsborough County, Florida; ALSO LESS AND EXCEPT that part described in Stipulated Order of Taking recorded in Official Records Book 7917, page 491, public records of Hillsborough County, Florida, ALSO LESS AND EXCEPT that part described in Final Judgment recorded in Official Records Book 8159, page 512, public records of Hillsborough County, Florida.

PARCEL 3:

TOGETHER with those certain non-exclusive easements for drainage, ingress/egress and utilities for the benefit of Parcel 1 above as created by and set forth in that certain Declaration of Easements and Maintenance Agreement executed by and between Northlake Development, Inc., a Florida corporation and Northlake Drainage Association, Inc., a Florida not-for-profit corporation recorded in Official Records Book 7371, page 670, public records of Hillsborough County, Florida; LESS AND EXCEPT that part described in Stipulated Order of Taking recorded in Official Records Book 7917, page 491, public records of Hillsborough County, Florida and Stipulated Final Judgment recorded in Official Records Book 8159, page 512, public records of Hillsborough County, Florida.

96. CONDOMINIUM PARCEL DESCRIPTION: UNIT 2015

All that part of Lot 39 lying East of the Seaboard Airline Railroad right-of-way of FLETCHER HEIGHTS, according to the plat thereof, as recorded in Plat Book 1, Page 41, of the Public Records of Citrus County, Florida.

LESS and EXCEPT right-of-way for State Road Number 44, as described in Deed Book 96, Page 326, and Order of Taking recorded in Official Records Book 1028, Page 1388, of the Public Records of Citrus County, Florida.

LESS Limric Unit of OS Inverness Land Condominium, recorded August 16, 2006, in Official Records Book 2039, Page 2443, of the Public Records of Citrus County, Florida, as amended and/or supplemented from time to time, being more particularly described as follows:

A parcel of land lying in and being a part of Section 13, Township 19 South, Range 19 East, Citrus County, Florida being further described as follows:

Begin at the Southeast corner of Lot 39 of FLETCHER HEIGHTS SUBDIVISION as recorded in Plat Book 1, Page 41 of the Public Records of Citrus County, Florida; thence North 87°28’43” West, a distance of 213.00 feet; thence North 01°47’52” East, a distance of 233.81 feet; thence South 83°07’02” East, a distance of 159.33 feet; thence South 87°28’43” East, a distance of 68.50 feet; thence South 01°47’52” West, a distance of 168.00 feet to the POINT OF BEGINNING.

All of the above described lands being also described as follows:

OS Unit of the OS Inverness Land Condominium, recorded August 16, 2006, in Official Records Book 2039, Page 2443, of the Public Records of Citrus County, Florida, as amended and/or supplemented from time to time, being more particularly described as follows:

A parcel of land lying in and being a part of Section 13, Township 19 South, Range 19 South, Citrus County, Florida being further described as follows:

Commence at the Southeast corner of Lot 39 of FLETCHER HEIGHTS SUBDIVISION as recorded in Plat Book 1, Page 41 of the Public Records of Citrus County, Florida; thence North 87°28'43" West, a distance of 213.00 feet to the POINT OF BEGINNING; thence North 87°28'43" West, a distance of 281.15 feet; thence North 34°13'49" East, a distance of 760.07 feet to a point on the Southwesterly right-of-way line of S.R. 44; thence South 54°58'00" East, a distance of 103.40 feet; thence South 01°47'52" West, a distance of 423.09 feet; thence North 87°28'43" West, a distance of 68.50 feet; thence North 63°07'02" West, a distance of 159.53 feet; thence South 01°47'52" West, a distance of 233.81 feet to the POINT OF BEGINNING.

TOGETHER with the non-exclusive easements set forth in that certain Declaration of Land Condominium of OS Inverness Land Condominium, recorded in Official Records Book 2039, Page 2443, of the Public Records of Citrus County, Florida.

97. FEE PARCEL DESCRIPTION: UNIT 2017

PARCEL I: (Fee Simple)

A portion of the Southeast 1/4 of Section 10, Township 28 South, Range 17 East, including a portion of Tract F shown on the Condominium Plat of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida, and all of said land being more particularly described as follows:

From the Southeast corner of Section 10, Township 28 South, Range 17 East, Hillsborough County, Florida; run thence North 00°21'33" East, 535.61 feet along the East boundary of said Section 10; thence North 89°40'49" West, 88.00 feet to the West right-of-way line of Sheldon Road for a POINT OF BEGINNING; thence North 89°40'49" West, 2.00 feet to the Northeast corner of Lot 1, of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida; thence North 89°40'49" West, 274.96 feet along the North boundary of Lots 1 through 6 inclusive of said SHELDON WEST; thence South 84°52'59" West, 155.06 feet along the North boundary of Lots 6, 7 and 8 of SHELDON WEST; thence North 89°54'05" West, 110.68 feet along the North boundary of Lots 8, 9 and 10 of said SHELDON WEST; thence North 00°21'33" East, 506.79 feet along the West boundary of the East 630.00 feet of the Southeast 1/4 of said Section 10, (also being along the East boundary of CYPRESS PARK GARDEN HOMES, a Condominium filed in Condominium Plat Book 5, Page 33, Public Records of Hillsborough County, Florida) to the South boundary of an access easement as recorded in Official Records Book 9135, Page 931, Public Records of Hillsborough County, Florida; thence South 89°10'19" East, 542.01 feet along the South boundary of said easement to the West right-of-way line of Sheldon Road; thence South 00°21'33" West, 486.87 feet along said West right-of-way line to the Point of Beginning;

LESS AND EXCEPT the following parcel described as a portion of the Southeast 1/4 of Section 10, Township 28 South, Range 17 East, including a portion of Tract F shown on the Condominium Plat of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida, and all of said land being more particularly described as follows:

From the Southeast corner of Section 10, Township 28 South, Range 17 East, Hillsborough County, Florida; run thence North 00°21'33" East, 535.61 feet along the East boundary of said Section 10; thence North 89°40'49" West, 88.00 feet to the West right-of-way line of Sheldon Road for a POINT OF BEGINNING; thence North 89°40'49" West, 2.00 feet to the Northeast corner of Lot 1, of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida; thence North 89°40'49" West, 219.00 feet along the North boundary of Lots 1 through 5 inclusive of said SHELDON WEST for a POINT OF BEGINNING; thence continue North 89°40'49" West, 55.96 feet along the North boundary of Lot 5 of said SHELDON WEST; thence South 84°52'59" West, 155.06 feet along the North boundary of Lots 6, 7 and 8 of SHELDON WEST; thence North 89°54'05" West, 110.68 feet along the North boundary of Lots 8, 9 and 10 of said SHELDON WEST; thence North 00°21'33" East, 506.79 feet along the West boundary of the East 630.00 feet of the Southeast 1/4 of said Section 10, (in part along the East boundary of CYPRESS PARK GARDEN HOMES, a Condominium filed in Condominium Plat Book 5, Page 33, Public Records of Hillsborough County, Florida) to the South boundary of an access easement as recorded in Official Records Book 9135, Page 931, Public Records of Hillsborough County, Florida; thence South 89°10'19" East, 294.00 feet along the South boundary of said easement; thence South 00°21'33" West, 42.54 feet to a point of curvature; thence Southerly 52.56 feet along the arc of a curve to the left having a radius of 100.00 feet, a central angle of 30°07'02" and a chord bearing and distance of South 14°41'58" East, 51.96 feet to a point of reverse curvature; thence Southerly 52.56 feet along the arc of a curve to the right having a radius of 100.00 feet, a central angle of 30°07'02" and a chord bearing and distance of South 14°41'58" East, 51.96 feet to a point of tangency; thence South 00°21'33" West, 346.15 feet to the Point of Beginning;

PARCEL II: (Easement)

Non-exclusive easement for access contained in the Access Easement Agreement recorded in Official Records Book 9135, Page 931, as amended by the Amendment thereto recorded in Official Records Book 10548, Page 1946, re-recorded in Official Records Book 10594, Page 1849, Public Records of Hillsborough County, Florida.

PARCEL III: (Easement)

Non-exclusive easement for drainage contained in Drainage Easement recorded in Official Records Book 3898, Page 559; as assigned to Outback Steakhouse of Florida, Inc., a Florida corporation, by Assignment of Drainage Easement recorded in Official Records Book 11130, Page 612, Public Records of Hillsborough County, Florida.

PARCEL IV: (Easement)

Non-exclusive easement for drainage contained in the Drainage Easement recorded in Official Records Book 11130, Page 615, Public Records of Hillsborough County, Florida.

PARCEL V: (Easement)

Non-exclusive easement for drainage contained in the following instruments: (i) Parcel 6 Drainage Easement recorded in Official Records Book 9489, Page 1554; (ii) the Amendment thereto recorded in Official Records Book 9696, Page 1946; and (iii) the Second Amendment thereto recorded in Official Records Book 10995, Page 263, all in the Public Records of Hillsborough County, Florida.

PARCEL VI: (Easement)

Non-exclusive easement for drainage contained in the Drainage Easement recorded in Official Records Book 11130, Page 623, Public Records of Hillsborough County, Florida.

PARCEL VII: (Easement)

Easements which benefit the insured property as created by and set forth in Declaration of Covenants, Restrictions and Easements for "Outback Plaza at Citrus Park" recorded in Official Records Book 13513, Page 1374, Public Records of Hillsborough County, Florida.

98. FEE PARCEL DESCRIPTION: UNIT 2034

BEING KNOWN AND DESIGNATED as Lots Numbered Thirty (30) and Thirty-One (31) in the Tidewater Subdivision situate at or near the Village of Waldorf in the Sixth Election District of Charles County, Maryland.

TOGETHER WITH rights of ingress and egress on the adjoining streets and alleys including Waldorf Avenue, Naylor Avenue and a 15 foot alley which lie adjacent to said Lots 30 and 31.

Tax ID No. 06-035043

99. FEE PARCEL DESCRIPTION: UNIT 2039

BEGINNING FOR THE SAME at a point on the southern right of way line of Maryland Route 103, where it intersects the western right of way line of Long Gate Parkway, thence running with the said western right of way line the following five courses and distances, viz:

1) South 32 degrees 22 minutes 52 seconds West 32.14 feet to a point,

2) South 09 degrees 31 minutes 44 seconds East 32.99 feet to a point,

3) North 38 degrees 16 minutes 17 seconds West 131.54 feet to a point,

4) 50.70 feet along the arc of a curve to the right, which curve is subtended by a chord bearing South 39 degrees 01 minutes 13 seconds West 50.70 feet, the curve being of radius 1940.00 feet, and

5) South 39 degrees 46 minute 08 seconds West 67.73 feet to the point, thence departing the said western right of way line and running with the line of division between Parcel K and Parcel J as shown on the Plat entitled "Long Gate Center, Parcels I, J & K" and recorded among the Land Records of Howard County, Maryland as Plat No. 12357, the following course and distances, viz:

6) North 50 degrees 13 minutes 52 seconds West 300.00 feet to a point, thence leaving said line and running for the following two courses and distances, viz:

7) North 39 degrees 46 minutes 08 seconds East 89.15 feet, thence

8) North 38 degrees 16 minutes 17 seconds East 187.53 feet to a point in the southern right of way line of the said Route 103, thence with the right of way line the following two courses and distances, viz:

9) 59.19 feet along the arc of a curve to the right, which curve is subtended by a chord bearing South 56 degrees 23 minutes 05 seconds East 59.19 feet, the curve being a radius of 2,435.00 feet and

10) South 55 degrees 41 minutes 19 seconds East 213.78 feet to the point of beginning encompassing 86,364 square feet or 1.983 acres of land, more or less.

BEING all that parcel known as Parcel K on a Plat entitled “Long Gate Center, Parcels I, J & K” and recorded among the Land Records of Howard County, Maryland as Plat No. 12357.

TOGETHER WITH EASEMENTS APPURTENANT to the above described property as defined in Article VI, Shopping Center Easements” in that certain Declaration of Covenants recorded among the Land Records of Howard County, Maryland in Liber 3645, folio 105, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Easement recorded among the aforesaid Land Records in Liber 3645, folio 176.

Tax ID No. 02-381710

100. FEE PARCEL DESCRIPTION: UNIT 2315

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF KENTWOOD, KENT COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

Part of the Northeast 1/4 of Section 14, Town 6 North, Range 11 West, City of Kentwood, Kent County, Michigan, described as:

Beginning at a point on the North line of said Section 14 a distance of 165.00 feet South 87°04’10” East of the North 1/4 corner of said Section 14; thence continuing South 87°04’10” East on said North Section line 165.00 feet; thence South 00°17’50” West parallel with the North—South 1/4 line of said Section 14 a distance of 660.00 feet; thence North 87°04’10” West parallel with the North line of said Section 14 a distance of 165.00 feet; thence North 00°17’50” East parallel with said 1/4 line 660.00 feet to the point of beginning.

EXCEPT THEREFROM the following described property:

Part of the Northeast 1/4 of Section 14, Town 6 North, Range 11 West, City of Kentwood, Kent County, Michigan, described as: Commencing at the North 1/4 corner of said Section 14; thence South 87°04’10” East on the North line of said Section 14 a distance of 330.00 feet; thence South 00°17’50” West parallel with the North-South 1/4 line of said Section 14 a distance of 392.97 feet to the point of beginning of the land herein described; thence continuing South 00°17’50” West parallel with said 1/4 line 267.03 feet to a point that is 660.00 feet South 00°17’50” West of the North line of said Section 14; thence North 87°04’10” West parallel with said North Section line 165.00 feet to a point that is 165.00 feet South 87°04’10” East of the North-South 1/4 line of said Section 14; thence North 00°17’50” East parallel with said 1/4 line 266.73 feet to a point that is 393.27 feet South 00°17’50” West of said North Section line; thence South 87°10’10” East (Deeded South 87°10’25” East) 164.98 feet to the point of beginning.

TOGETHER WITH the non-exclusive rights, and subject to the terms, conditions and limitations contained in the Reciprocal Parking Easement Agreement dated September 9, 1994 recorded in Liber 3451, page 26.

Parcel ID: 41-18-14-201-051
Street Address: 3650 28th St. SE, Kentwood

101. FEE PARCEL DESCRIPTION: UNIT 2319

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF KOCHVILLE, SAGINAW COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

A parcel of land in the Southeast 1/4 of Section 35, Township 13 North, Range 4 East, Kochville Township, Saginaw County, Michigan, described as follows:

Commencing at a point on the North and South 1/4 line of said Section 240.63 feet, North 05 degrees 19 minutes 21 seconds East, from the South 1/4 corner of said Section 35; thence North 05 degrees 19 minutes 21 seconds East on said North and South 1/4 line, 97.32 feet; thence South 89 degrees 22 minutes 54 seconds East, parallel with the South line of the Southwest 1/4 of said Section 372.78 feet; thence South 00 degrees 37 minutes 06 seconds West, perpendicular to the South line of said Southwest 1/4, 280.70 feet; thence North 88 degrees 49 minutes 29 seconds West, parallel with and 60.00 feet, measured at right angles, North of the South line of the Southeast 1/4 of said Section, said line being the North right-of-way line of so-called Tittabawassee Road, 234.92 feet; thence North 05 degrees 19 minutes 21 seconds East, parallel with and 160.25 feet, measured at right angles, East of the North and South 1/4 line of said Section, 180.47 feet; thence North 88 degrees 49 minutes 29 seconds West, parallel with and 240.00 feet, measured at right angles, North of the South line of said Southeast 1/4, 160.67 feet to the Point of Beginning.

TOGETHER WITH the non-exclusive rights, and subject to the terms, conditions and limitations contained in the Declaration of Easements and Restrictions recorded in Liber 1749, page 249, and as further amended in Liber 1750, page 1990, Liber 1879, page 494, Liber 1898, page 1527, and Liber 1898, page 1552.

Tax Number: 18-13-4-35-3005-006
Tax Number: 18-13-4-35-3005-011
Street Address: 2468 Tittabawassee, Saginaw

102. FEE PARCEL DESCRIPTION: UNIT 2320

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADISON HEIGHTS, OAKLAND COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

A parcel of land located in the West 1/2 of the Northwest 1/4 of Section 2, Town 1 North, Range 11 East, City of Madison Heights, Oakland County, Michigan, more particularly described as:

Beginning at a point South 00 degrees 05 minutes 30 seconds West, 60.00 feet, South 89 degrees 02 minutes 50 seconds East, 60.00 feet, South 00 degrees 05 minutes 30 seconds West, 81.64 feet and

South 89 degrees 02 minutes 50 seconds East, 55.32 feet from the Northwest corner of said Section 2; thence South 89 degrees 02 minutes 50 seconds East, 93.17 feet; thence South 00 degrees 57 minutes 10 seconds West, 86.00 feet; thence South 89 degrees 02 minutes 50 seconds East, 9.00 feet; thence South 00 degrees 57 minutes 10 seconds West, 24.33 feet; thence North 89 degrees 02 minutes 50 seconds West, 102.17 feet; thence North 00 degrees 57 minutes 10 seconds East, 110.33 feet to the Point of Beginning.

TOGETHER WITH the non-exclusive rights, and subject to the terms, conditions and limitations contained in the Easement Agreement by and between Campbell Corners Limited Partnership and Outback Steakhouse of Florida, In. dated September 11, 1995, recorded on September 18, 1995 in Liber 15682, page 252.

Parcel ID: 25-02-101-063
Street Address: 1515 W. Fourteen Mile, Madison Heights

103. FEE PARCEL DESCRIPTION: UNIT 2321

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF BLACKMAN, JACKSON COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

Parcel I—Fee Parcel:

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the center of Section 28; thence along the North-South 1/4 line of said Section 28, North 01’47’00” 275.37 feet to the Southerly right-of-way line of Boardman Road as defined by the Michigan Department of Transportation; thence along the Southerly right-of-way line of said Boardman Road, South 70’48’00” West, 135.97 feet to the Point of Beginning; thence South 00’47’00” East, 205.05 feet; thence South 89’13’00” West, 338.92 feet; thence North 00’47’00” West, 92.20 feet to the Southerly right-of-way line of said Boardman Road; thence along the Southerly right-of-way line of said Boardman Road, North 70’48’00” East, 357.22 feet to the Point of Beginning.

Parcel II—Easement Parcels:

Together with a non-exclusive easement to be used, if at all, solely for vehicular and pedestrian access to and from the Fee Parcel described above to Wisner Street and Boardman Street over the following described parcel (“Roadway”):

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the center of Section 28; thence along the North-South 1/4 line of said Section 28, South 00’47’00” East, 21.39 feet to the Point of Beginning; said point being the point of intersection with a non-tangent curve, thence 8.38 feet along a curve to the right, radius 25.00 feet, central angle 19°12’03”, chord bearing South 79°34’32” West, 8.34 feet to the curve’s end; thence South 89’10’33” West, 49.15 feet; thence North 66°50’12” West, 74.25 feet; thence South 89°13’00” West, 347.50 feet; thence North

00°47’00” West, 112.20 feet; thence South 70°48’00” West, 37.94 feet; thence South 00’47’00” East, 130.21 feet; thence North 89’13’00” East, 377.14 feet; thence South 66°50’12” East, 74.26 feet; thence North 89°10’33” East, 55.53 feet to a curve; thence 8.35 feet along a curve to the right, radius 25.00 feet, central angle 19’08’50”, chord bearing South 81°15’02” East, 8.32 feet to a non-tangent line; thence North 00°47’00” West, 32.77 feet to the Point of Beginning.

And together with a non-exclusive easement to be used, if at all, solely for vehicular parking purposes over the automobile parking spaces located upon the following described parcel:

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the Center of Section 28; thence along the North-South 1/4 line of said Section 28, North 01 °47’00” West, 275.37 feet to the Southerly right of way line of Boardman Road as defined by the Michigan Department of Transportation; thence along the Southerly right-of-way line of said Boardman Road, South 70’48’00” West, 135.97 feet; thence South 00°47’00” East, 205.05 feet to the Point of Beginning; thence North 89’13’00” East, 27.41 feet; thence South 00’47’00” East, 8.67 feet; thence South 66°50’12” East, 57.82 feet; thence North 89°10’34”, East 30.00 feet; thence South 00°49’26” East, 18.87 feet; thence South 89’10’34” West, 34.01 feet; thence North 66°50’12” West, 73.93 feet; thence South 89°13’00” West, 347.61 feet; thence North 00°47’00” West, 21.00 feet; thence North 89°13’00” East, 338.92 feet to the Point of Beginning.

And together with a easement to be used, if at all, solely for activities associated with the construction, maintenance and repair of a paved parking area upon and for vehicular parking purposes over the automobile parking spaces located or to be constructed upon the following described parcel:

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the Center of Section 28; thence along the North-South 1/4 line of said Section 28, North 01 ’47’00” West, 275.37 feet to the Southerly right of way line of Boardman Road as defined by the Michigan Department of Transportation; thence along the Southerly right of way line of said Boardman Road, South 70°48’00” West, 135.97 feet; thence South 00°47’00” East, 34.05 feet to the Point of Beginning; thence North 89°13’00” East, 27.41 feet; thence South 00°47’00” East, 171.00 feet; thence South 89°13’00” West, 27.41 feet; thence North 00°47’00” West, 171.00 feet to the Point of Beginning.

And together with a easement to be used, if at all, solely for activities associated with the construction, maintenance and repair of a trash corral and for the use thereof for a trash dumpster to service solely the business being conducted from the Fee Parcel described above, upon the following described parcel:

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the Center of Section 28; thence along the North-South 1/4 line of said Section 28, North 01 °47’00” West, 275.37 feet to the Southerly right-of-way line of Boardman Road as defined by the Michigan Department of Transportation; thence along the Southerly right-of-way line of said Boardman Road, South 70°48’00” West, 135.97 feet; thence South 00°47’00” East, 167.05 feet to the Point of

Beginning; thence North 89°13’00” East, 27.41 feet; thence South 00°47’00” East, 22.00 feet; thence South 89°13’00” West, 27.41 feet; thence North 00°47’00” West 22.00 feet to the Point of Beginning.

And together with a non-exclusive easement to be used, if at all, solely for activities associated with construction, maintenance and repair of an underground storm water drainage pipe, over the following described parcel:

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the Center of Section 28; thence along the North-South 1/4 line of said Section 28, North 01 °47’00” West, 275.37 feet to the Southerly right-of-way line of Boardman Road as defined by the Michigan Department of Transportation; thence along the southerly right-of-way line of said Boardman Road, South 70°48’00” West, 135.97 feet; thence South 00°47’00” East, 90.05 feet to the Point of Beginning; thence North 89°13’00” East, 40.00 feet; thence South 00°47’00” East, 15.00 feet; thence South 89°13’00” West, 40.00; thence North 00°47’00” West, 15.00 feet to the Point of Beginning.

And for the use of such pipe for the drainage of storm water from the Fee Parcel described above into the storm water detention pond, together with any outfall pipe contained within such pond, located upon the following described parcel, and together with the right to use such pond and such outfall pipe on a non-exclusive basis for such storm water drainage purposes:

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the Center of Section 28; thence along the North-South 1/4 line of said Section 28, North 01 °47’00” West, 275.37 feet to the Southerly right-of-way line of Boardman Road as defined by the Michigan Department of Transportation; thence along the southerly right-of-way line of said Boardman Road, South 70°48’00” West, 135.97 feet; thence South 00°47’00” East, 109.29 feet to the Point of Beginning; thence North 25°09’20” East, 44.84 feet; thence East, 31.35 feet; thence South, 20.00 feet; thence West, 18.65 feet; thence South 25°09’20” West, 73.26 feet; thence North 00°47’00” West, 45.72 feet to the Point of Beginning.

And together with a non-exclusive easement to have the lines supplying electric power to the Fee Parcel described above tap into and use the electric power transformer located upon the following described parcel:

Part of Section 28, Township 2 South, Range 1 West, Jackson County, Michigan, more particularly described as follows:

Commencing at the Center of Section 28; thence along the North-South 1/4 line of said Section 28, North 01 °47’00” West, 275.37 feet to the southerly right-of-way line of Boardman Road as defined by the Michigan Department of Transportation; thence along the southerly right-of-way line of said Boardman Road, South 70°48’00” West, 135.97 feet; thence South 00°47’00” East, 189.05 feet to the Point of Beginning; thence North 89°13’00” East, 10.00 feet; thence South 00°47’00” East, 16.00 feet; thence South 89°13’00” West, 10.00 feet; thence North 00°47’00” West, 16.00 feet to the Point of Beginning.

Parcel lD: 000-08-28-177-001-00
Street Address: 1501 Boardman, Jackson

104. FEE PARCEL DESCRIPTION: UNIT 2325

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF INDEPENDENCE, OAKLAND COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

Parcel (B) North:
Part of the East 1/2 of Section 32, Town 4 North, Range 9 East, Independence Township, Oakland County, Michigan, described as:

Beginning at a point on the Southwesterly Right-of-Way line of Dixie Highway, located South 89 degrees 51 minutes 15 seconds East 23.97 feet and North 33 degrees 21 minutes 47 seconds West 349.89 feet and South 49 degrees 31 minutes 48 seconds West 60.46 feet and North 33 degrees 21 minutes 47 seconds West 291.96 feet from the East 1/4 corner of Section 32, Town 4 North, Range 9 East; thence from said Point of Beginning South 58 degrees 05 minutes 24 seconds West 197.01 feet; thence South 83 degrees 15 minutes 05 seconds West 115.11 feet (as recorded), South 83 degrees 05 minutes 57 seconds West, 115.11 feet (as measured); thence North 33 degrees 21 minutes 47 seconds West 360.10 feet; thence East 359.19 feet to the Southwesterly Right-of-Way line of Dixie Highway; thence South 33 degrees 21 minutes 47 seconds East 218.86 feet along said Right-of-Way line to the Point of Beginning,

EXCEPT that part of the East 1/2 of Section 32, Town 4 North, Range 9 East, Independence Township, Oakland County, Michigan, described as:

Beginning at a point on the Southwesterly Right-of-Way line of Dixie Highway, located South 89 degrees 51 minutes 15 seconds East 23.97 feet and North 33 degrees 21 minutes 47 seconds West 349.89 feet and South 49 degrees 31 minutes 48 seconds West 60.46 feet and North 33 degrees 21 minutes 47 seconds West 291.96 feet from the East 1/4 corner of Section 32, Town 4 North, Range 9 East; thence from said Point of Beginning South 58 degrees 05 minutes 24 seconds West 197.01 feet; thence South 83 degrees 15 minutes 57 seconds West 115.11 feet; thence North 33 degrees 21 minutes 47 seconds West 32.47 feet; thence on a curve to the left (Radius = 210.00 feet, Long Chord = North 85 degrees 37 seconds East 123.53) an arc distance of 125.38 feet; thence North 43 degrees 53 minutes 30 seconds East 70.58 feet; thence North 56 degrees 39 minutes 20 seconds East 123.00 feet to the Southerly Right-of-Way line of Dixie Highway; thence South 33 degrees 21 minutes 47 seconds East 45.00 feet along said Right-of-Way line to the Point of Beginning.

PARCEL 2:

TOGETHER WITH the non-exclusive rights, and subject to the terms, conditions and limitations contained in the Declaration of Easements, Covenants, Conditions and Restrictions for the Clarkston Bluffs Community, recorded in Liber 10090, page 139.

Parcel ID: PART OF 08-32-277-111
Street Address: 6435 Dixie Hwy, Clarkson

105. FEE PARCEL DESCRIPTION: UNIT 2326

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF GENOA, LIVINGSTON COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

Part of the Northeast 1/4 of Section 24, Town 2 North, Range 5 East, Genoa Township, Livingston County, Michigan, being more particularly described as follows:

Commencing at the East 1/4 corner of said Section 24; thence North 00 degrees 29 minutes 54 seconds West, along the East line of said Section and the Township line, 90.27 feet to the West 1/4 corner of Section 19, Town 2 North, Range 6 East; thence continuing North 00 degrees 29 minutes 54 seconds West, along the East line of said Section 24 and the Township line, 566.06 feet to the South line of "Grand Ravines" Subdivision, as recorded in Liber 25 of Plats, page 7, Livingston County Records; thence South 88 degrees 40 minutes 31 seconds West along the South line of said Subdivision, 314.16 feet to the Point of Beginning; thence South 18 degrees 18 minutes 40 seconds West, 518.24 feet to the North right of way line of I-96 Expressway (300 feet wide limited access right of way); thence along a non tangent curve to the left along said Northerly right of way line, radius of 3,061.79 feet, through a central angle of 04 degrees 12 minutes 55 seconds, arc distance of 225.26 feet, chord bearing North 74 degrees 10 minutes 04 seconds West 225.21 feet; thence North 18 degrees 18 minutes 40 seconds East 447.70 feet to the South line of said subdivision; thence North 88 degrees 40 minutes 31 seconds East, along said Subdivision line, 238.89 feet to the Point of Beginning, containing 2.488 acres.

TOGETHER WITH and subject to a 66 foot wide easement for ingress, egress, public and private utilities, being part of the Southwest 1/4 of Section 19, Town 2 North, Range 6 East, Brighton Township and part of the East 1/2 of Section 24, Town 2 North, Range 5 East, Genoa Township, Livingston County, Michigan, more particularly described as:

Commencing at the Southeast corner of said Section 24; thence North 00 degrees 19 minutes 55 seconds West, along the East line of said Section 24 and Township line, 2,599.29 feet to the Point of Beginning; thence along a non-tangent curve to the right, radius of 533.00 feet, through a central angle of 20 degrees 44 minutes 10 seconds, an arc distance of 192.90 feet, chord bearing North 76 degrees 29 minutes 41 seconds West, 191.85 feet to the Northerly right-of-way line of I-96 expressway (300 feet wide limited access) and point of reverse curve; thence along said right-of-way line along a curve to the left, radius a 3,061.79 feet; through a central angle of 16 degrees 40 minutes 35 seconds, an arc distance of 891.16 feet, chord bearing North 74 degrees 27 minutes 53 seconds West 888.02 feet; thence North 07 degrees 11 minutes 49 seconds East 66.00 feet; thence along a non-tangent curve to the right, radius of 3,127.79 feet, through a central angle of 16 degrees 40 minutes 35 seconds, an arc distance of 910.37 feet, chord bearing South 74 degrees 27 minutes 53 seconds East 907.16 feet to a point of reverse curve; thence along a curve to the left, radius of 467.00 feet; through a central angle of 20 degrees 13 minutes 18 seconds, an arc distance of 164.82 feet, chord bearing South 76 degrees 14 minutes 15 seconds East 163.97 feet to the East line of said Section 24 and Township line; thence continuing along a curve to the left, radius of 467.00 feet, through a central angle of 14 degrees 34 minutes 37 seconds, an arc distance of 118.81 feet, chord bearing North 86 degrees 21 minutes 47 seconds East 118.49 feet to a point of reverse curve; thence along a curve to the right, radius of 533.00 feet, through a central angle of 11 degrees 28 minutes 08 seconds, an arc distance of 106.69 feet, chord bearing North 84 degrees 48 minutes 33 seconds East 106.51 feet; thence South 89 degrees 27 minutes 23 seconds East 50.00 feet to

a point of curve; thence along a curve to the right, radius of 533.00 feet, through a central angle of 10 degrees 13 minutes 23 seconds, an arc distance of 95.10 feet; chord bearing South 84 degrees 20 minutes 41 seconds East 94.98 feet to a point of reverse curve; thence along a curve to the left, radius of 467.00 feet; through a central angle of 11 degrees 08 minutes 11 seconds, an arc distance of 90.77 feet, chord bearing South 84 degrees 48 minutes 05 seconds East 90.63 feet; thence North 89 degrees 37 minutes 49 seconds East 582.51 feet to the Westerly right-of-way line of Grand River Avenue (100 feet wide); thence along said right-of-way line along a non-tangent curve to the right, radius of 2,241.88 feet, through a central angle of 01 degrees 42 minutes 17 seconds, an arc distance of 66.70 feet, chord bearing South 08 degrees 39 minutes 20 seconds East 66.70 feet; thence South 89 degrees 37 minutes 49 seconds West 592.13 feet to a point of curve; thence along a curve to the right, radius of 533.00 feet, through a central angle of 11 degrees 08 minutes 11 seconds, an arc distance of 103.60 feet, chord bearing North 84 degrees 48 minutes 05 seconds West 103.44 feet to a point of reverse curve; thence along a curve to the left, radius of 467.00 feet, through a central angle of 10 degrees 13 minutes 23 seconds, an arc distance of 83.33 feet, chord bearing North 84 degrees 20 minutes 41 seconds West 83.22 feet; thence North 89 degrees 27 minutes 23 seconds West 50.00 feet to a point of curve; thence along a curve to the left, radius of 467.00 feet; through a central angle of 11 degrees 28 minutes 08 seconds, an arc distance of 93.48 feet, chord bearing South 84 degrees 48 minutes 33 seconds West, 93.32 feet to a point of reverse curve; thence along a curve to the right, radius of 533.00 feet, through a central angle of 14 degrees 03 minutes 46 seconds, an arc distance of 130.82 feet, chord bearing South 86 degrees 06 minutes 21 seconds West, 130.49 feet to the Point of Beginning.

TOGETHER WITH the non-exclusive rights, and subject to the terms, conditions and limitations contained in the Sign Easement recorded in Liber 2026, page 819.

Parcel ID: 4711-24-200-063
Street Address: 7873 Conference Center Dr., Brighton

106. FEE PARCEL DESCRIPTION: UNIT 2411

Parcel 1:

Tract A, Registered Land Survey No. 178, Anoka County, Minnesota.

Parcel 2:

Together with the benefits for a perpetual non-exclusive easement for ingress and egress purposes over that part of Tract B, Registered Land Survey No. 178, Anoka County, Minnesota, described as commencing at the Southwest corner of Tract A, said Registered Land Survey No. 178; thence east along the South line of said Tract A for a distance of 79 feet to the actual Point of Beginning of the easement to be hereby described; thence south at right angles a distance of 30.00 feet; thence east parallel with said South line of Tract A to intersect the east line of said Tract B; thence northerly along said east line of Tract B to the Southeast corner of said Tract A; thence west along said South line of Tract A to the Point of Beginning, as described in Easement and Maintenance Agreement dated April 7, 1997, filed June 11, 1997 as Document No. 297317.

107. FEE PARCEL DESCRIPTION: UNIT 2415

Parcel 1:

All of Lot 5, Block 1, Bishop Heights, Dakota County, Minnesota.

AND

That part of Lot 4, Block 1, Bishop Heights, Dakota County, Minnesota lying Southerly of the following described line: Commencing at the Northwest corner of said Lot 4; thence Southeasterly along the Westerly line of said Lot 4 on an assumed bearing of South 21 degrees 15 minutes 20 seconds East, a distance of 107.57 feet to the point of beginning of the line to be described: thence North 68 degrees 44 minutes 40 seconds East, a distance of 80.50 feet; thence South 21 degrees 15 minutes 20 seconds East, a distance of 17.04 feet; thence South 18 degrees 58 minutes 24 seconds East a distance of 65.59 feet; thence North 89 degrees 59 minutes 25 seconds East, a distance of 216.22 feet: thence North 37 degrees 12 minutes 54 seconds East, a distance of 28.52 feet: thence North 89 degrees 25 minutes 20 seconds East a distance of 47.10 feet more or less to the Easterly line of said Lot 4 and there terminating.

Parcel 2:

The benefit of easements as set forth in Declaration of Reciprocal Easements and Restrictive Covenants dated April 15, 1997 filed April 24, 1997, as Document No. 1417203, Office of County Recorder, Dakota County, Minnesota; as amended by that certain Amended and Restated Declaration of Reciprocal Easements and Restrictive Covenants, dated May 27, 1998 filed May 29, 1998, as Document No. 1503592, Office of County Recorder, Dakota County, Minnesota.

108. FEE PARCEL DESCRIPTION: UNIT 2420

Lot Five (5) and the Southerly 61.00 feet of Lot Six (6), Ronding Acre Tracts, County of St. Louis, Minnesota.

Torrens Property
Certificate of Title No. 305711

TOGETHER WITH drainage and parking easements contained in Easement Agreement recorded April 11, 2006 as Document No. 815880.

109. FEE PARCEL DESCRIPTION: UNIT 2619

All of a tract located in the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 19, Township 27 North, Range 32 West, further described as follows:

A tract of land in DRURY FIRST SUBDIVISION in Section 19, Township 27 North, Range 32 West, in the City of Joplin, Newton County, Missouri, designated as a future parcel on the recorded Plat thereof, being more particularly described as follows:

Beginning at a cross in a manhole lid at the Northeast comer of Parcel 2 in DRURY FIRST SUBDIVISION in Section 19, Township 27 North, Range 32 West, Newton County, Missouri, thence South 89°05’14” East 220.50 feet along the South right-of-way line of 36th Street to an iron pin set at the Northeast corner of the tract, thence South 01°15’02” West 300.00 feet to an iron pin found at the Southeast corner of the tract, thence North 89°04’40” West 220.50 feet to an iron pin set at the Southwest corner of the tract, thence North 01°15’02” East 299.96 feet to the point of beginning.

110. FEE PARCEL DESCRIPTION: UNIT 3002

Lot 3 of CORNERSTONE PLAZA, according to the map or plat thereof as recorded in Plat Book 88, Page 22 of the Public Records of Hillsborough County, Florida.

TOGETHER WITH those certain easements as set forth in Declaration of Covenants, Restrictions and Easements recorded in Official Records Book 10225, Page 596, of the Public Records of Hillsborough County, Florida.

111. FEE PARCEL DESCRIPTION: UNIT 3101

PARCEL I:

BEGINNING at a point on the Eastern right of way line of Black Horse Pike, said point referenced as North 11 degrees 23 minutes 38 seconds East a distance of 92.53 feet east of an iron pin on the southern right of way line of Vacated Border Avenue; thence from said point of beginning, the following fourteen courses and distance

1. North 11 degrees 23 minutes 38 seconds East a distance of 334.20 feet to a point; thence
2. South 78 degrees 36 minutes 22 seconds East a distance of 229.00 feet to a point; thence
3. North 11 degrees 23 minutes 38 seconds East a distance of 312.88 feet to a point; thence
4. South 78 degrees 36 minutes 22 seconds east a distance of 171.00 feet to a point; thence
5. South 11 degrees 23 minutes 38 seconds West a distance of 47.26 feet to a point; thence
6. South 64 degrees 31 minutes 26 seconds West a distance of 25.00 feet to a point; thence
7. South 11 degrees 23 minutes 38 seconds West a distance of 113.46 feet to a point; thence
8. South 01 degrees 45 minutes 44 seconds east a distance of 87.87 feet to a point; thence
9. South 11 degrees 23 minutes 38 seconds West a distance of 201.13 feet to a point; thence
10. North 78 degrees 36 minutes 22 seconds West a distance 5.00 feet to a point; thence
11. South 11 degrees 23 minutes 38 seconds West a distance of 100.00 feet to a point; thence
12. South 78 degrees 36 minutes 22 seconds a distance of 5.00 feet to a point; thence

13. South 11 degrees 23 minutes 38 seconds West a distance of 96.42 feet to a point; thence

14. North 76 degrees 55 minutes 22 seconds West a distance of 400.17 feet to a point, said point being the point of BEGINNING.

PARCEL II:

Together with an easement 80.03 feet in width along the southerly side of the fourteenth course herein and further described as follows:

BEGINNING at a point in the easterly right of way line of Route 42, said point being the intersection of the Centerline of Border Avenue Vacated) with the easterly right of way line of New Jersey State Highway Route 42 shown on Sheet 21 of the official tax map of Washington Township, Gloucester County, revised October 1989; thence

Along said right of way line of said Route 42 North 11 degrees 23 minutes 38 seconds East, a distance of 80.03 feet to the point of beginning of the above described Deed; thence

Along the final course of said Deed South 76 degrees 55 minutes 22 seconds East, a distance of 400.17 feet to the point of termination of the thirteenth course of said Deed; thence

Cont……

Extending the said thirteenth course in a southerly direction South 11 degrees 23 minutes 38 seconds West, a distance of 80.03 feet to a point in the aforesaid centerline of Border Avenue; thence

Along said centerline of Border Avenue South 76 degrees 55 minutes 22 seconds West, a distance of 400.17 feet to the point of BEGINNING.

PARCEL III:

Together with a right-of-way of ingress and egress as set forth in Mutual Access Non-Exclusive Agreement in Deed Book 2647, page 67.

PARCEL IV:

Together with a right-of-way of ingress and egress as set forth in Easement Agreement in Deed Book 4304, page 5.

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 1.01 Block 118 on the Tax Map of the Township of Washington, Gloucester County, NJ

112. FEE PARCEL DESCRIPTION: UNIT 3102

BEGINNING at a point in the southerly right of way line of New Jersey State Highway Route 38, said point being 1513.13 feet easterly along said right of way line from its intersection with the easterly right o way line of Rudderow Avenue; thence

1. Along said right of way line North 84 degrees 27 minutes 00 seconds East, a distance of 98.30 feet to an angle point therein; thence

2. Along the same South 05 degrees 33 minutes 36 seconds East a distance of 3.00 feet to the beginning of an offset portion in said right of way line; thence

3. Along said Right of way offset North 845 degrees 42 minutes 24 seconds East a distance of 197.80 feet to a point therein; thence

4. Along the northwesterly line of Lot 2.05 in Block 173.01 shown on the Official Tax Map of Maple Shade Township South 21 degrees 08 minutes 00 seconds West, a distance of 726.20 feet to a point in the southwesterly bank of the Pennsauken Creek; thence

5. Partially along the said stream bank and partially along the stream roper North 58 degrees 19 minutes 00 seconds West, a distance of 116.60 feet to an angle point therein; thence

6. Along the stream proper and close to the southwesterly bank of said stream North 43 degrees 30 minutes 00 seconds West, a distance of 150.00 feet to a point in the approximate centerline of said creek, said point being the southeasterly corner of Lot 2 in Block 173.01 feet; thence

7. Along the southeasterly line of Lot 2 North 19 degrees 10 minutes 00 seconds East, a distance of 514.50 feet to the point of BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 2.04 Block 173.01 on the Tax Map of the Township of Maple Shade, Burlington County, NJ

113. FEE PARCEL DESCRIPTION: UNIT 3110

PARCEL I:

BEGINNING at a point in the southerly line of New Jersey State Highway Route 38 (90.00 feet wide), where the same is intersected by the easterly line of Block 284-A, Lot 20-BB as illustrated on a plan entitled “Major Subdivision, Woodland Falls Corporation Park,” prepared by Taylor, Wiseman and Taylor (DWG No. 316-17058), dated March 1985, revised to November 01, 1985 and filed in the Camden County Clerk’s Office on November 14, 1985 as Map No. 398-9 (Duplicate #709-9) and from said beginning point extends; thence, along New Jersey State Highway Route 38.

1. North 84 degrees 34 minutes 40 seconds East, 39.00 feet to a point of curvature, being a connecting curve between the southerly line of New Jersey Highway Route 38 with the westerly line of Lake Drive East (50.00 feet wide); thence on a curve to the right, having a radius of 80.00 feet

2. Southeastwardly, an arc distance of 125.66 feet to a point of tangency; thence, along said westerly line

3. South 05 degrees 25 minutes 20 seconds East, 196.88 feet (erroneously shown as 226.88 feet on said plan) to a point of curvature; thence still along the same, on curve to the left having a radius of 175.00 feet

4. Southeastwardly, an arc distance of 106.95 feet to a point in the same; thence along Block 284-A, Lot 4

5. South 49 degrees 33 minutes 38 seconds West, 53.26 feet to a point; thence still along same

6. North 76 degrees 54 minutes 46 seconds West, 231.00 feet to a point in line of Block 284-A, Lot 20-BCA; thence , along same and further along aforementioned Lot 20-BB

7. North 13 degrees 05 minutes 14 seconds Eat, 352.78 feet to the point and place of BEGINNING.

PARCEL II:

Together with rights under Declaration of Restrictions, Covenants and Easements recorded in Deed Book 4092, page 25; and as amended by as amended by First Amendment as set forth in Deed Book 4221, page 897 and as further amended by Second Amendment as set forth in Deed Book 4392, page 539; and as further amended by Third Amendment as set forth in Deed Book 4608, page 765

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 12 (XLot: 6) Block 284.02 on the Tax Map of the Township of Cherry Hill, Camden County, NJ

114. FEE PARCEL DESCRIPTION: UNIT 3114

BEGINNING at a point and concrete monument in the westerly right of way line of New Jersey State Highway No. 34 (80 feet wide), said point being the southeasterly most corner of Lot 1 Block 10.257 as depicted on the current tax assessment map of the Township of Old Bridge and running thence,

1. North 88 degrees 38 minutes 00 seconds West, a distance of 253.34 feet to a point: thence,

2. North 59 degrees 05 minutes 30 seconds West, a distance of 69.75 feet to a point; thence,

3. North 20 degrees 46 minutes 50 seconds West, a distance of 49.24 feet to a concrete monument in the easterly right of way line of New Jersey State Highway No. 9 (140 feet wide); thence,

4. North 30 degrees 45 minutes 16 seconds East, along said easterly right of way, a distance of 43.76 feet to a concrete monument; thence,

5. North 36 degrees 13 minutes 52 seconds East, still along said easterly right of way, a distance of 409.70 feet to a concrete monument and point of curvature; thence,

6. Along a non-tangent curve to the right, having a radius of 30.00 feet, an arc length of 64.29 feet, chord bearing of South 57 degrees 39 minutes 03 seconds East and a chord length of 52.67 feet to a concrete monument in the westerly right of way of New Jersey State Highway No. 34; thence,

7. South 03 degrees 44 minutes 20 seconds West, along said westerly right of way, a distance of 68.60 feet to a railroad spike and point of curvature; thence,

8. Still along said westerly right of way line and a curve tangent to the left, having a radius of 1,313.57 feet, an arc length of 361.43 feet to the point of BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 1 Block 10257 on the Tax Map of the Township of Old Bridge, Middlesex County, NJ

115. FEE PARCEL DESCRIPTION: UNIT 3116

PARCEL I:

BEGINNING at a point on the Eastern right of way line of Black Horse Pike, said point referenced as North 11 degrees 23 minutes 38 seconds East a distance of 92.53 feet east of an iron pin on the southern right of way line of Vacated Border Avenue; thence from said point of beginning, the following fourteen courses and distance

1. North 11 degrees 23 minutes 38 seconds East a distance of 334.20 feet to a point; thence
2. South 78 degrees 36 minutes 22 seconds East a distance of 229.00 feet to a point; thence
3. North 11 degrees 23 minutes 38 seconds East a distance of 312.88 feet to a point; thence
4. South 78 degrees 36 minutes 22 seconds east a distance of 171.00 feet to a point; thence
5. South 11 degrees 23 minutes 38 seconds West a distance of 47.26 feet to a point; thence
6. South 64 degrees 31 minutes 26 seconds West a distance of 25.00 feet to a point; thence
7. South 11 degrees 23 minutes 38 seconds West a distance of 113.46 feet to a point; thence
8. South 01 degrees 45 minutes 44 seconds east a distance of 87.87 feet to a point; thence
9. South 11 degrees 23 minutes 38 seconds West a distance of 201.13 feet to a point; thence
10. North 78 degrees 36 minutes 22 seconds West a distance 5.00 feet to a point; thence
11. South 11 degrees 23 minutes 38 seconds West a distance of 100.00 feet to a point; thence
12. South 78 degrees 36 minutes 22 seconds a distance of 5.00 feet to a point; thence
13. South 11 degrees 23 minutes 38 seconds West a distance of 96.42 feet to a point; thence
14. North 76 degrees 55 minutes 22 seconds West a distance of 400.17 feet to a point, said point being the point of BEGINNING.

PARCEL II:

Together with an easement 80.03 feet in width along the southerly side of the fourteenth course herein and further described as follows:

BEGINNING at a point in the easterly right of way line of Route 42, said point being the intersection of the Centerline of Border Avenue Vacated) with the easterly right of way line of New Jersey State Highway Route 42 shown on Sheet 21 of the official tax map of Washington Township, Gloucester County, revised October 1989; thence

Along said right of way line of said Route 42 North 11 degrees 23 minutes 38 seconds East, a distance of 80.03 feet to the point of beginning of the above described Deed; thence

Along the final course of said Deed South 76 degrees 55 minutes 22 seconds East, a distance of 400.17 feet to the point of termination of the thirteenth course of said Deed; thence

Cont……

Extending the said thirteenth course in a southerly direction South 11 degrees 23 minutes 38 seconds West, a distance of 80.03 feet to a point in the aforesaid centerline of Border Avenue; thence

Along said centerline of Border Avenue South 76 degrees 55 minutes 22 seconds West, a distance of 400.17 feet to the point of BEGINNING.

PARCEL III:

Together with a right-of-way of ingress and egress as set forth in Mutual Access Non-Exclusive Agreement in Deed Book 2647, page 67.

PARCEL IV:

Together with a right-of-way of ingress and egress as set forth in Easement Agreement in Deed Book 4304, page 5.

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 1.01 Block 118 on the Tax Map of the Township of Washington, Gloucester County, NJ

116. FEE PARCEL DESCRIPTION: UNIT 3117

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situated and lying in Green Brook Township, County of Somerset, State of New Jersey, more particularly described as follows:

BEGINNING at a monument set at the intersection of the westerly sideline of Jefferson Avenue with the northerly sideline of New Jersey State Highway Route #22 and running; thence

1. along said northerly sideline of New Jersey State Highway Route #22, South 52 degrees 34 minutes West, a distance of 264.16 feet to a monument set at the beginning of a curve; thence

2. along said New Jersey State Highway #22 and curving to the right on a regular radius of 11409.19 feet, an arc distance of 169.36 feet to an iron pipe and the southeasterly corner of lands now or formerly Duraladd Products Corporation; thence

3. along the line of said lands, North 33 degrees 26 minutes West, a distance of 300.00 feet to a point; thence

4. North 52 degrees 52 minutes East, a distance of 233.56 feet to a point and corner of lands now or formerly Samuel Garboos; thence

5. along the line of said lands, South 33 degrees 26 minutes East, a distance of 100.23 feet to a point and corner; thence

6. continuing along said lands, North 52 degrees 34 minutes East, a distance of 200.00 feet to a point and corner in the westerly sideline of Jefferson Avenue; thence

7. along said line of Jefferson Avenue, South 33 degrees 26 minutes East, a distance of 200.49 feet to a monument being the point and place of BEGINNING.

The above description is drawn in accordance with a survey made by Lippincott, Jacobs and Gouda, dated June 4, 1996.

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 15.01 Block 82 on the Tax Map of the Township of Green Brook, Somerset County, NJ

117. FEE PARCEL DESCRIPTION: UNIT 3120

BEGINNING at a point in the northeasterly Right-of-Way line of Klockner Road (width varies) as located North 30 degrees 52 minutes 08 seconds West, a distance of 23.78 feet from the northerly end of a curve, with a radius of 25.00 feet connecting the said Northeasterly Right-of-Way line of Klockner Road with the Northerly Right-of-Way line of Jug Handle of U.S. Route 130; Thence

1. North 30 degrees 52 minutes 08 seconds West, along the said Northeasterly Right-of-Way line of Klockner Road, a distance of 423.17 feet to a point for a corner; Thence

2. North 59 degrees 07 minutes 52 seconds East, leaving the Northeasterly Right-of-Way line of Klockner, a distance of 107.00 feet to a point of curvature; Thence

3. Along the arc of a circle curving to the right with a radius of 140.00 feet, an arc length of 219.91 feet and a central angle of 90 degrees, to a point of tangency; Thence

4. South 30 degrees 52 minutes 08 seconds East, a distance of 283.17 feet to a point for a corner; Thence

5. South 59 degrees 07 minutes 52 seconds West, a distance of 247.00 feet to the point of BEGINNING.

Together with the use and benefit of the non-exclusive easements and rights as set forth in Reciprocal Easement and Operation Agreement by and between Outback Steakhouse of Florida, Inc., and HD

Development of Maryland, Inc., dated December 29, 2006, recorded January 1, 2007 in Deed Book 5549, page 001.

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 5.09 Block 2612 on the Tax Map of the Township of Hamilton, Mercer County, NJ

118. FEE PARCEL DESCRIPTION: UNIT 3122

PARCEL I:

ALL that certain lot, parcel or tract of land, situate and lying in the Township of Evesham, County of Burlington, State of New Jersey, and being more particularly described as follows:

BEGINNING at a point in the Westerly line of New Jersey State Highway Route 73 (126 feet wide) a distance of 618.92 feet Southwardly from a monument corner to lands now or formerly of Theodore Plaska (Block 36, Lot 4, Evesham Township Tax Map) said point also being in the division line between Lots 4.02 and 4.05, Block 36 on the Plan hereinafter mentioned and extending; thence

(1) South 89 degrees 07 minutes 43 seconds West along said division line a distance of 480.18 feet to a point said point being in the Township dividing line of the Township of Evesham (Burlington County) from the Township of Voorhees (Camden County); thence

(2) North 12 degrees 41 minutes 15 seconds West along said Township line a distance of 605.95 feet to a point in the line of lands now or formerly of Theodore Plaska (Lot 4, Block 36, Tax Map); thence

(3) North 86 degrees 42 minutes 36 seconds East along said lands of Plaska, a distance of 610.91 feet to a point in the Westerly line of New Jersey State Highway Route 73; thence

(4) South 00 degrees 18 minutes 23 seconds East along the Westerly line of New Jersey State Highway Route 73, a distance of 618.92 feet to the first mentioned point and place of beginning.

PARCEL II:

Together with rights under the Declaration of Cross Easements as set forth in Deed Book 3888 page 264; Amended & Restated Declaration of Cross Easement as set forth in Deed Book 6352, page 230; Supplement to Amended and Restated Declaration of Cross Easements as set forth in Deed Book 6352, page 259; First Amendment to Supplement to Amended and Restated Declaration of Cross Easements in Deed Book 6399, page 960 and First Amendment to Amended and Restated Declaration of Cross Easements as set forth in Deed Book 6399, page 968.

BEING shown and designated as Lot 4-BA, Block 36, on Plan of Minor Subdivision, Plate 6, Block 36, Lot 4, Evesham Township, Burlington County, prepared by Korab, McConnell & Dougherty Assoc., PA, dated 11/20/1985 and last revised 12/09/1987 and duly filed in the Burlington County Clerk's Office on 10/12/1988 as Map #04807.

FOR INFORMATIONAL PURPOSES ONLY:
Premises described herein is designated as Lot 4.05 Block 36 on the Tax Map of the Township of Evesham, Burlington County, NJ

119. FEE PARCEL DESCRIPTION: UNIT 3211

Parcel I:

That portion of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 21 South, Range 61 East, M.D. B. & M., according to the official plat of said land on file in the Office of the Bureau of Land Management, Clark County, Nevada, described as follows:

Parcel Two (2) of that certain Parcel Map in File 78 of Parcel Maps, Page 91, in the Office of the County Recorder of Clark County, Nevada, and recorded April 11, 1994 in Book 940411 as Instrument No. 00901, Official Records.

Parcel II:

A non-exclusive right for ingress, egress and access as set forth in that certain document entitled “Grant of Easement (Landscape Improvements) and Rights of Ingress and Egress”, recorded November 18, 1993, Instrument No. 00656, Book 931118, Official Records and amended by that “Amended and Restated Grant of Easement and Rights of Ingress and Egress” recorded November 21, 2000, Instrument No. 00781, Book 20001121, of Official Records.

APN: 162-24-503-006

120. FEE PARCEL DESCRIPTION: UNIT 3212

That portion of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4) of Section 23, Township 20 South, Range 60 East, MDM, described as follows:

Lot Two (2) of that certain Parcel Map in File 71 of Parcel Maps, Page 92 in the Office of the County Recorder of Clark County, Nevada, and recorded March 18, 1992 in Book 920318 as Instrument No. 00799, Official Records.

121. FEE PARCEL DESCRIPTION: UNIT 3213

Parcel One (1):

That portion of the North Half (N 1/2) of the Northwest Quarter (NW 1/4) of Section 5, Township 22 South, Range 62 East, MDM, described as follows:

Parcel One-Two (1-2) of that certain Parcel Map in File 79 of Parcel Maps, Page 81, in the Office of the County Recorder of Clark County, Nevada, and recorded July 28, 1994 in Book 940728 as Instrument No. 01640, Official Records.

Parcel Two (2):

Non-exclusive easements over Lot One-One (1-1) of Parcel Map in File 79 of Parcel Maps, Page 81, in the Office of the County Recorder of Clark County, Nevada, and as created by Mutual Easement

Agreements recorded May 31, 1989 in Book 890531 as Instrument No's 00561 and 00564, Official Records.

122. FEE PARCEL DESCRIPTION: UNIT 3114

Parcel One (1):

That portion of Lot One (1), Block One (1) of "Lakeside Plaza", a Commercial Subdivision on file in the Office of the County Recorder, in Book 38 of Plats, at Page 09 and that portion of Common Area Lot "AS" as shown on said plat of "Lakeside Plaza" situated in the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 8, Township 21 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, more particularly described as follows:

COMMENCING at the Northeast corner of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 8, being the centerline intersection of Sahara Avenue (150 feet wide) and Durango Drive (100 feet wide); Thence South 89°50'13" West, along the North line of said Section 8, coincident with the centerline of said Sahara Avenue, 472.00 feet; Thence South 00°09'47" East, departing said North line of said centerline, 75.00 feet to the South right-of-way of said Sahara Avenue, being the North boundary of said Common Area Lot "AS", also being the POINT OF BEGINNING;

Thence continuing South 00°09'47" East, departing the South right-of-way of said Sahara Avenue and the North boundary of said Common Area Lot "AS", 332.00 feet; Thence South 89°50'13"West, 141.06 feet to the beginning of a curve concave Northeasterly having a radius of 16.50 feet; Thence Northwesterly, 11.35 feet along said curve, through a central angle of 39°25'28" to the beginning of a reverse curve concave Southwesterly, having a radius of 70.50 feet, to which beginning a radial line bears North 39°15'41" East; Thence Northwesterly, 48.51 feet along said curve, through a central angle of 39°25"28"; Thence South 89°50'13" West, 7.19 feet; Thence North 00°09'47"West, 312.20 feet to the South right-of-way of Sahara Avenue and the North boundary of said Common Area Lot "AS"; Thence North 89°50'13" East, along said South right-of-way and said North boundary, 203.50 feet, to the POINT OF BEGINNING.

Said land further described as Lot 1-3 on Record of Survey recorded August 2, 1995 in File 77 of Surveys, Page 85, Official Records.

Parcel Two (2):

A perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress, parking and deliveries as provided for in and subject to that certain Declaration of Covenants, Conditions and Restrictions recorded February 15, 1995 in Book 950215 as Instrument No. 00044, Official Records and in the Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements recorded December 19, 1997 in Book 971219 as Instrument No. 01656 Official Records.

123. FEE PARCEL DESCRIPTION: UNIT 3115

PARCEL ONE (1):

Parcel Two (2) of Parcel Map No. 3256 filed in the office of the County Recorder of Washoe County, State of Nevada, on October 9,1997, as File No. 2143323, Official Records.

PARCEL TWO (2):

Easements as set forth and for the purposes stated therein as contained in that certain Agreement, Establishment of Restrictions and Grant of Reciprocal Easements recorded October 10, 1989 as File No. 1354798, of Official Records; Amendment recorded March 9, 1994 as File No. 1773777 of Official Records and Amendment recorded October 9,1997 as File No. 2143321, of Official Records.

124. FEE PARCEL DESCRIPTION: UNIT 3217

Parcel I:

That portion of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of Section 5, Township 20 South, Range 61 East, MDM, described as follows:

Parcel One-One (1-1) as shown by map thereof on file in File 115 of Parcel Maps, Page 39 in the Office of the County Recorder, Clark County, Nevada

Parcel II:

A non-exclusive right for ingress, egress and access as set forth in that certain document entitled “Declaration of Cross Easements and Restrictions” dated July 10, 2006, and recorded July 11, 2006, as Instrument No. 04204, Book 20060711, Official Records.

125. FEE PARCEL DESCRIPTION: UNIT 3220

Parcel One (1):

A description of a portion of Lot One (1) of Belz Commercial Subdivision Outlot 1, A Commercial Subdivision, file in Plat Book 80, Page 7, of Clark County, Nevada, Plat Records, situate in the Northwest Quarter of Section 9, Township 22 South, Range 61 East, M.D.M., Clark County, Nevada and being more particularly described as follows:

Commencing at the Southwest Corner of said Lot One (1), on the East line of Las Vegas Boulevard, a public right-of-way;

Thence North 00°00’22” West, along the East line of Las Vegas Boulevard and the West line of said Lot 1, 195.28 feet to the Southwest Corner and the Point of Beginning hereof;

Thence continuing North 00°00’22” West along the East line of Las Vegas Boulevard and the East line of said Lot 1, 127.71 feet to the Northwest corner hereof at the Southwest corner of Lot 1B shown on a map recorded in File 132 of Surveys at Page 54 of the Clark County, Nevada, Survey Records;

Thence North 89°49’31” East, departing said East line of Las Vegas Boulevard and along the South line of said Lot 1B, 260.00 feet to the East line of said Lot 1 for the Northeast corner hereof;

Thence South 00°00’22” East, along the East line of said Lot 1, 128.47 feet to the Southeast corner hereof;

Thence South 89°59’38” West, 260.00 feet to the Point of Beginning

Also known as Lot 1C as shown on that certain Record of Survey recorded July 6, 2004 in Book 20040706, as Instrument No. 02073 of Official Records, and filed in File 139 of Surveys, Page 28, in the Office of the County Recorder, Clark County, Nevada.

Parcel Two (2):

A non-exclusive easement for vehicular and pedestrian ingress and egress as contained in and limited to that Declaration of Covenants and Covenants and Easements recorded March 2, 1994 in Book 940302 of Official Records, Instrument No. 00074.

Parcel Three (3):

A non-exclusive easement for vehicular and pedestrian ingress and egress as contained in and limited to that certain Reciprocal Shopping Center Easement Agreement recorded August 7, 1997, in Book 970807 of Official Records, as Instrument No. 01270.

Parcel Four (4):

A non-exclusive easement and right to use entrances, exits and driveways as contained in and limited to that certain Declaration of Restrictions recorded August 19, 2003, in Book 20030819, of Official Records, as Instrument No. 02854.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitations of the following:

Access and Parking Easement Agreement dated November 19, 2004 recorded November 22, 2004, Instrument No. 03647, Book 20041122, Official Records

126. FEE PARCEL DESCRIPTION: UNIT 3357

PARCEL I:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Dewitt, County of Onondaga and State of New York, being part of Military Lot No. 50 in said Town, and being more particularly described as follows:

BEGINNING at a point in the southerly boundary of Erie Boulevard East, said point being the intersection of the easterly boundary of lands conveyed by Eileen R. Clifford to James G. Clifford and Raymond V. Grimaldi, Trustees of the Eileen R. Clifford Retained Annuity Trust by deed dated July 5, 1995 and recorded in Onondaga County Clerk's Office November 20, 1995 in Book 4042 of Deeds at Page 77 with said southerly boundary of Erie Boulevard East, said point also being 329.92 feet distant easterly, measured along said southerly boundary of Erie Boulevard East and its westerly prolongation, from the centerline of Thompson Road; running thence N 87° 28' 30" E along said southerly boundary of Erie Boulevard East, a distance of 243 .98 feet to an angle point therein; thence N 88° 41' 50" E continuing along said southerly boundary of Erie Boulevard East, a distance of 14.90 feet to the westerly boundary of lands conveyed by Martin N. Berry to The Berry Third Family Limited Partnership by deed dated February 13, 1992 and recorded in Onondaga County Clerk's Office March 20, 1992 in Book 3756 of Deeds at page 147; thence S 05° 38' 20" E along said westerly boundary of lands conveyed to The

Berry Third Family Limited Partnership, a distance of 119.70 feet to the northeasterly corner of lands conveyed by Richard A. Gerharz to John Herlosky by deed dated May 2, 1986 and recorded in Onondaga County Clerk's Office May 6, 1986 in Book 3254 of Deeds at page 27; thence S 78° 36' 30" W along the northerly boundary of said lands conveyed by Gerharz to Herlosky and along the northerly boundary of lands conveyed by OnBank & Trust Co., f/k/a The Merchants National Bank and Trust Company of Syracuse to Emeka C. Anumba, M.D. by deed dated March 15, 1995 and recorded in Onondaga County Clerk's Office March 17, 1995 in Book 3989 of Deeds at page 168, a distance of 441.47 feet to the easterly boundary of the aforementioned Thompson Road; thence N 31 ° 20' 30" W along said easterly boundary of Thompson Road, a distance of 17.57 feet to the southerly boundary of the aforementioned lands conveyed to Clifford and Grimaldi, Trustees; thence N 78° 36' 30" E along said southerly boundary of land conveyed to Clifford and Grimaldi, Trustees, a distance of 186.35 feet to the southeasterly corner thereof; thence N 04° 27' 10" W along the aforementioned easterly boundary of lands conveyed to Clifford and Grimaldi, Trustees, a distance of 143.85 feet to the POINT OF BEGINNING.

PARCEL II:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Dewitt, County of Onondaga and State of New York, being part of Military Lot No. 50 in said Town and being more particularly described as follows:

BEGINNING at the northeasterly corner of lands conveyed by OnBank & Trust Co., f/k/a The Merchants National Bank and Trust Company of Syracuse to Emeka C. Anumba, M.D. by deed dated March 15, 1995 and recorded in Onondaga County Clerk's Office March 17, 1995 in Book 3989 of Deeds at page 168, said northeasterly corner being 179.96 feet distant easterly, measured along said northerly boundary of lands conveyed to Anumba, M.D., from the easterly boundary of Thompson Road; running thence N78° 36' 30"E along the southerly boundary of lands conveyed by John Herlowski, a/k/a John Herlosky to Olga Herlowski, Frank Herloski and John Herlosky in Trust for Helen Reidor, et al by deed dated February 22, 1965 and recorded in Onondaga County Clerk's Office March 17, 1965 in Book 2239 of Deeds at page 516, a distance of 261.51 feet to the westerly boundary of lands conveyed by Martin N. Berry to The Berry Third Family Limited Partnership by deed dated February 13, 1992 and recorded in Onondaga County Clerk's Office March 20, 1992 in Book 3756 of Deeds at page 147; thence S05°38'20"E along said westerly boundary of lands conveyed to The Berry Third Family Limited Partnership, a distance of 151.95 feet to the northeasterly comer of lands conveyed by Angelo Dellomorte to Harris and Shirley Sarkin by deed dated March 17, 1966 and recorded in Onondaga County Clerk's Office March 18, 1966 in Book 2291 of Deeds at page 357; thence S 78° 36' 30" W along the northerly boundary of said lands conveyed to Sarkin, a distance of 191.40 feet to the northeasterly boundary of said lands conveyed to Anumba, M.D.; thence N 31 ° 20' 30" W along said northeasterly boundary of lands conveyed to Anumba, M.D., a distance of 160.84 feet to the POINT OF BEGINNING.

127. FEE PARCEL DESCRIPTION: UNIT 3402

COMMENCING at an existing iron rebar in the original southwest boundary of East Independence Boulevard (U.S. Highway 74), said point being the most northeasterly corner of a parcel of land acquired by the Department of Transportation for highway purposes and being more particularly described in Deed Book 7126, Page 292 recorded in the Mecklenburg County Public Registry; thence N 40-13-35 W along said southwesterly boundary, passing through an existing iron rebar at a distance of

10.05 feet, a total distance of 197.85 feet to a point of curvature; thence continuing along said southwesterly highway boundary following a curve to the right having a radius of 6711.05 feet which subtends a chord bearing N 37-38-54 W a distance of 603.81 feet, an arc distance of 604.01 feet to a set punch hold in concrete curb "THE TRUE POINT OF BEGINNING", running thence from said "TRUE POINT OF BEGINNING" along the common boundaries between said lands of High Equity Partners L.P.-Series 86 and part of lands conveyed to CK-Charlotte Retail #2(A) Limited Partnership and described in Deed Book 5985, Page 441 the following seven (7) courses:

1. S 54-51-06 W a distance of 189.07 feet to a new iron rebar;

2. N 35-08-54 W a distance of 180.00 feet to a set P.K. nail;

3. N 54-51-06 a distance of 148.00 feet to a set P.K. nail;

4. N 35-08-54 W a distance of 29.00 feet to a new iron rebar;

5. N 50-05-17 E a distance of 24.08 feet to a new iron rebar;

6. S 35-08-54 E a distance of 31.00 feet to a new iron rebar;

7. N 54-51-06 E a distance of 17.94 feet to a new iron rebar in the southwesterly right-of-way boundary of East Independence Boulevard

Thence along said right-of-way boundary the following two (2) courses:

1. S 34-51-23 E a distance of 154.99 feet to a point of curvature marked by a punch hole in the concrete curb;

2. following a curve to the left, having a radius of 6711.05 feet which subtends a chord bearing S 34-57-50 E a distance of 25.01 feet, an arc distance of 25.01 feet to the "TRUE POINT OF BEGINNING", continuing 0.7999 acres, more or less.

128. FEE PARCEL DESCRIPTION: UNIT 3403

BEING all of Lot 18-A of NORTHCROSS CORPORATE CENTER, Phase 1-Map 7, as the same is shown on a map thereof recorded in Map Book 28, at Page 979 in the Mecklenburg Public Registry; said map being a division of Lot 18 as originally shown on a map thereof recorded in Map Book 28, Page 511 in the Mecklenburg Public Registry.

Together with the non-exclusive easement, if any, and subject to the terms, conditions, provisions and limitations of the following: Declaration of Covenants, conditions and easements recorded in Book 6229, Page 610; as supplemented and amended in Book 6959, Page 250; as supplemented and amended in Book 7071, Page 803; Book 8845, Page 260; Book 7659, Page 569; Book 8325, Page 365 and Ratification and Consent in Book 8899, Page 267.

129. FEE PARCEL DESCRIPTION: UNIT 3420

BEING Lot 30 as shown on Map entitled “Survey for Home Depot” dated November 21, 1994, and recorded in Book of Maps 1994, Page 1954 and re-recorded in Book of Maps 2004, Page 1904, Wake County Registry, prepared by Matthew D. Foster, PLS, Derward W. Baker & Associates, P.A.

130. FEE PARCEL DESCRIPTION: UNIT 3444

Known as 302 South College Road, Wilmington, New Hanover County, North Carolina. Beginning at an iron pipe in the western right-of-way line of N.C. Highway #132 (200 foot right-of-way), said pipe being North 33-19 East 177.71 feet and North 31-31 East 180 feet (chord distance) from the intersection of the northern right-of-way line of New Centre Drive (75.0 foot right-of-way) and the western right-of-way line of said N.C. Highway 132. Running thence from said point of beginning North 55-46 West 307.40 feet to an iron pipe; thence North 34-14 East 172.50 feet to an iron pipe; thence South 55-46 East 288.50 feet to an iron pipe in the western right-of-way line of said N.C. Highway #132; thence with said western right-of-way line South 27-58-45 West 173.53 feet (chord distance) to the point of beginning and containing 1.18 acres.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitations of the following: Non-Exclusive Easement for parking, ingress and egress as set forth in document recorded July 26, 1977 in Book 1106, Page 734, New Hanover County Registry.

131. FEE PARCEL DESCRIPTION: UNIT 3446

BEGINNING at an existing iron pipe located in the southern right-of-way of US Highway 15-501, said iron pipe being a Control Corner having NC Grid Coordinates of N=801,559.951 and E=2,001,558.859; thence along a curve to the right having a radius of 19.30 feet and a chord bearing North 82-55-53 East, an arc distance of 14.06 feet to an existing iron pipe located in the western right-of-way of Mt. Moriah Road’ thence running with the western right-of-way of Mt. Moriah Road South 00-03-23 East 328.56 feet to an existing iron pipe; thence South 00-11-56 East 2.01 feet to an existing iron pipe; thence with a curve to the right having a radius of 25 feet and a chord bearing of South 44-48-04 West, an arc distance of 39.27 feet to an existing iron pipe in the northern right-of-way of Ladle Drive; thence continuing with the right-of-way of Ladle Drive South 89-48-04 West 16.87 feet to an existing iron pipe; thence along a curve to the right having a radius of 100 feet and a chord bearing of North 59-31-53 West, an arc distance of 107.05 feet to an existing iron pipe; thence North 28-51-49 West 183.86 feet to an existing iron pipe; thence along a curve to the right having a radius of 25 feet and a chord bearing of North 16-08-01 East, an arc distance of 39.27 feet to an existing iron pipe located in the southern right-of-way of US Highway 15-501; thence with the southern right-of-way of US Highway 15-501 North 61-07-52 East 222.28 feet to the POINT AND PLACE OF BEGINNING, and being all of Tract A, containing 1.371 acres, as shown on plat entitled “Final Plat for P&S Properties Ltd. Partnership,” prepared by Triangle Surveyors, dated May 10, 1993, recorded in Book of Maps 129, Page 175, Durham County Registry.

TOGETHER WITH all rights, title and interest in the easements created pursuant to the certain Dedication of Easement dated May 27, 1993 and recorded in Book 1852, Page 404, Durham County Registry.

132. FEE PARCEL DESCRIPTION: UNIT 3447

BEGINNING at a point in the center line of Highland Oaks Drive said point being the southeastern corner of property described in Book 1721, Page 1171, Forsyth County Registry; thence with the center line of Highland Oaks Drive North 60-07-54 East 10.44 feet to a point; thence continuing with said center line along a curve to the left having a chord bearing and distance of North 09-05-53 East 112.27 feet and a radius of 72.20 feet and an arc length of 128.62 feet to a point; thence continuing with said center line North 41-56-08 West 27.27 feet to a point; thence leaving said center line North 52-26-21 East 20.06 feet to a point in the eastern right-of-way line of Highland Oaks Drive; thence continuing North 52-26-21 East 200.00 feet to a point marked by an iron; thence South 37-33-39 East 280.00 feet to a point marked by an iron; thence South 52-26-21 West 223.54 feet to a point marked by an iron located in the northern line of property described in Book 1745, Page 4563; thence North 81-03-24 West 117.44 feet to a point marked by an iron; thence North 41-00-48 West 92.12 feet to the point and place of BEGINNING, containing 1.701 acres, more or less, as shown on survey prepared for Outback Steak House by United, LTD., dated May 17, 1993.

JOINT DRIVE

Together with the benefits as set for in that certain Joint Drive Agreement:

BEGINNING at a point in the center of Highland Oaks Drive as described in description for Highland Oaks Drive attached to this instrument, said point being the northernmost northwestern corner of the Property; running thence with the northernmost northwestern boundary line of the Property; running thence with said northernmost northwestern boundary line of the Property North 52-26-21 East 220.06 feet to a point marked by an iron at the northernmost corner of the Property. The line thus described is the center line of the Joint Drive, the northwesternmost line is 20 feet northwestwardly from the parallel to the center line; the southeasterly boundary thereof lies within the Property and is southeastwardly 20 feet from and parallel to said line; the southwestern boundary of the joint driveway is the northeastern right-of-way line of Highland Oaks Drive and the northeastern boundary of the Joint Drive is the northwesternmost 20 feet of the northeastern line of the Property and an extension of said line North 37-33-39 West 20 feet.

SIGHT EASEMENT

BEGINNING at a point in the center line of Highland Oaks Drive, said point being the intersection of the center line of Highland Oaks Drive with the southwestward extension of the northwestern line of the 40 foot easement described as the Joint Drive in this instrument, said point being located North 41-56-08 West 20.00 feet along the center line of Highland Oaks Drive from the northwestern corner of the Property; thence leaving the center line of said Highland Oaks Drive and running along a line 20 feet northwestward from and parallel to the center line of the Joint Drive North 52-26-21 East approximately 220.00 feet to a point located North 37-33-39 West 20 feet from the northeastern corner of the Property; thence from said point North 32-55-45 West 20 feet more or less to a point in the southeastern right-of-way line of Interstate 40; thence along the southeastern right-of-way line of Interstate 40 South 57-04-15 West 52.78 feet to a monument; thence continuing with said right-of-way line along a curve to the right having a chord bearing and distance of South 43-57-31 West 131.70 feet and a radius of 918.51 feet to a point in said right-of-way line; thence along a line 25 feet northwest of and parallel to the northern line of the Property South 52-26-21 West approximately 42.23 feet to a point in the center line of Highland Oaks Drive; thence with the center line of Highland Oaks Drive South 41-56-08 East 5.00 feet more or less to the point and place of BEGINNING.

DESCRIPTION FOR HIGHLAND OAKS DRIVE

BEGINNING at a point at the eastern terminus of the center line of Highland Oaks Drive as described in a deed recorded in Book 1721, Pages 1173 and 1174; thence North 65-22-39 West 6.15 feet to a point; thence North 26-52-17 West 15.01 feet to a point at the eastern terminus of the northwestern right-of-way line of Highland Oaks Drive as described in the deed referred to; thence North 60-07-54 East 13.23 feet to a point; thence along a curve to the left having a chord bearing and distance of North 09-05-53 East 81.17 feet, a radius of 52.20 feet and an arc length of 92.99 feet to a point; thence North 41-56-08 West 111.05 feet to a point in the southern right-of-way line of Hanes Mall Boulevard; thence along the southern right-of-way line of Hanes Mall Boulevard on a curve to the left having a chord bearing and distance of North 51-30-34 East 20.03 feet to a point; thence continuing along the southern right-of-way line of Hanes Mall Boulevard along a curve to the left having a chord bearing and distance of North 50-10-23 East 20.03 feet to a point; thence South 41-56-08 East 110.05 feet to a point; thence along a curve to the right having a chord bearing and distance of South 09-05-53 West 143-37 feet, a radius of 92.20 feet and arc length of 164.25 feet to a point; thence South 60-07-54 West 6.50 feet to a point; thence North 41-00-48 West 20.38 feet to the point and place of BEGINNING, Being an eastwardly and northerly extension of Highland Oaks Drive, as delineated on survey prepared for Outback Steak House by United, LTD., dated May 17, 1993.

PROPOSED PARKING EASEMENT

BEGINNING at an iron located in the easternmost corner of the Property; thence South 37-33-39 East 81.83 feet to a point; thence South 52-26-21 West 114.32 feet to a point; thence North 82-33-39 West 115.73 feet to a point in the corner line of the Property, said point being North 52-26-21 East 27.39 from an iron at the southernmost boundary line of the Property; thence North 52-26-21 East 196.15 feet to the point and place of BEGINNING, containing 12,702.90 square feet, as shown on survey prepared for Outback Steak House by United, LTD., dated May 17, 1993.

Together with the non-exclusive rights, if any, and subject to the terms, conditions, provisions and limitations of the following:

That certain storm drainage easement as set forth in Grant of Easement recorded in Book 1789, Page 240, Forsyth County Registry.

133. FEE PARCEL DESCRIPTION: UNIT 3448

Lying and being in Gaston County, North Carolina and being more particularly described as follows:

BEGINNING at an established iron pin situate on the southernmost margin of the right of way of Burt Avenue (formerly known as Goforth Avenue), a 60 foot right of way, at the northwesternmost corner of the property of Laurinburg KFC Take Home, Inc., now or formerly, as described in Deed Book 1424 at Page 842 in the Gaston County Public Registry: running thence from said point of BEGINNING with the division line of Laurinburg KFC Take Home, Inc., now or formerly, the following two courses and distances: (1) South 05°56’40” East 134.06 feet to an existing iron pin; and (2) North 84°01’25” East 183.96 feet to an existing iron pin situate on the westernmost margin of the right of way of N. New Hope Road (NC #279): thence with the westernmost margin of the right of way of N. New Hope Road the following four courses and distances: (1) South 03°43’20” West 57.80 feet to a concrete monument; (2) North 83°36’10” West 14.55 feet to an iron pin set; (3) South 03°44’48” West 35.73 feet to an iron

pin set; and (4) South 51°11’40” West 109.84 feet to a concrete monument situate at the point where the westernmost margin of the right of way of N. New Hope Road intersects with the northernmost margin of the right of way for Interstate Highway #85; thence with the northernmost margin of the right of way of Interstate Highway #85, the following seven courses and distances: (1) North 74°41’32” West 61.59 Feet to an existing iron pin; (2) North 74°33’04” West 47.58 feet to an existing iron pin: (3) North 74°37’22” West 52.38 feet to an existing iron pin: (4) North 72°47’13” West 100.17 feet to an existing iron pin; (5) North 70°59’03” West 100.88 feet to an existing iron pin; (6) North 68°17’09” West 99.29 feet to an existing iron pin; and (7) North 66°17’31” West 109.55 feet to an existing iron pin; thence leaving the northernmost margin of the right of way of Interstate Highway #85, North 08°28’28” West 41.12 feet to an existing iron pin situate on the southernmost margin of the right of way of Burt Avenue (formerly known as Goforth Avenue); thence with the southernmost margin of the right of way of Burt Avenue, North 83°59’12” East 457.25 feet to the point and place of Beginning, containing 2.134 acres according to an unrecorded survey prepared by D.P. Wilson, Registered Land Surveyor, dated December 16, 1994.

Being the identical property convey to Gastonia Land Development and Leasing, Inc. (now known as Western Steer of Gastonia, Inc.) by deed recorded in Deed Book 1294 at Page 554 in the Gaston County Public Registry.

134. FEE PARCEL DESCRIPTION: UNIT 3450

All that tract designated as Lots Eleven (11) and Twelve (12) in Block “C” of that certain Subdivision known as “South Side Commercial Center”, in the City of Greenville, Pitt County, North Carolina as shown on a map of said subdivision prepared by Rivers and Associates, Inc., dated April 27, 1965, which map is recorded in Map Book 15, Page 22, in the office of the Register of Deeds of Pitt County, North Carolina, reference to which is hereby made for a more specific description.

TOGETHER with an easement for drainage as described in that certain Grant Easement dated November 16, 1966, executed by Harry H. Lowry and wife, Marion T. Lowry to Maola Properties, Inc., recorded in Book O-36, at Page 478, Pitt County Register of Deeds, said drainage easement extending from the above described property across the northern portion of Lot No. 13 and being more particularly described as follows:

The northern 5 feet only of Lot No. 13 of the South Side Commercial Center, as shown on map of same made by Rivers & Associates, Inc., dated April 27, 1965, which duly appears of record in Map Book 15, page 22, of the Pitt County Register of Deeds, and which 5 foot strip of land abuts the common boundary line between Lot Nos. 13 and 18 in the aforesaid Subdivision. The easement herein granted is limited solely to the installation and maintenance of an underground pipe or tile for the drainage of surface water only from the lands owned by the grantor to the drainage easement as shown on the aforesaid map of South Side Commercial Center and for no other purpose.

BEING all of that property conveyed to Maola Milk and Ice Cream Company from Regional Properties Co., by deed dated March 28, 1994, identified as Tract One in that certain deed recorded in Deed Book 504, Page 499 in the Pitt County Register of Deeds.

135. FEE PARCEL DESCRIPTION: UNIT 3451

New Tract Z of the Final Plat for Outback Steakhouse, a plat of which is recorded in Plat Book 117, Page 121, in the Office of the Register of Deeds, Guilford County, North Carolina.

136. FEE PARCEL DESCRIPTION: UNIT 3452

That certain parcel or tract of land lying and being in Sandhills Township, Moore County, North Carolina. Bounded on the north by W M Pinehurst Associates Limited Partnership, on the east by Southern Road, on the south by W M Pinehurst Associates Limited Partnership, on the west by Sandhills Area Land Trust conservation easement and being more particularly described as follows:

BEGINNING at a new iron rod in an east line of the 3.25 acre conservation easement area #2 as shown on a plat recorded in Plat Cabinet 6, Slide 252, Moore County Registry, said rod being located North 04-04-17 West 359.57 feet from an existing concrete monument, the most southwesterly corner of Lot #2, W M Pinehurst Associates Limited Partnership, as shown on said plat; thence continuing as said conservation East line the following courses: North 20-13-59 West 106.76 feet to a new iron rod, South 44-11-42 West 55.43 feet to a new iron rod, North 18-24-28 W. 249.94 feet to a new iron rod; thence leaving said conservation line, North 18-24-28 West 34.81 feet to a new iron rod; thence North 27-21-27 East 74.99 feet to a new iron rod; thence North 71-25-25 East 90.00 feet to a new iron rod in the west R/W (60 foot R/W) of Southern Road; thence as said R/W South 28-18-00 East 93.31 feet to an existing iron rod, the P.C. of a curve to the left having a radius of 294.00 feet, a delta angle of 55-24-07, an arc length of 284.28 feet, a chord bearing and distance of South 56-00-04 East 273.34 feet to an existing iron rod, a P.O.C. of said curve; thence leaving said R/W South 12-22-28 West 127.35 feet to a new iron rod; thence South 71-25-25 West 208.72 feet to the beginning containing 1.98 acres, more or less, as computed by coordinates and being all of Lot 2, Parcel A, of W M Pinehurst Associates Limited Partnership as shown in Plat Cabinet 6, Slide 252, Moore County Registry. Bearings herein are to above said reference and distances are horizontal ground.

TOGETHER WITH those easements appurtenant to the above-described real property provided in that Reciprocal Easement Agreement recorded in Book 1199, Page 325, Moore County Registry.

137. FEE PARCEL DESCRIPTION: UNIT 3453

Situated on the north side of Gateway Boulevard, Rocky Mount, Nash County, North Carolina.

BEGINNING at a point located by extending a line from a Concrete Monument in the northeastern property line of Curtis Ellis Drive at its intersection with the sight distance line between the northeastern property line of Curtis Ellis Drive and the southeastern property line of Winstead Avenue Extension, South 44-47-24 East 127.12 feet to a stake, North 68-27-10 East 418.22 feet to an existing pipe and South 68-00-00 East 209.76 feet to an existing iron pipe, a southeast corner with Rocky Mount Tectel I, LLC (Comfort Inn) in the northern property line of Gateway Boulevard, the point of beginning, and from such beginning point running thence along the northern property line of Gateway Boulevard, South 68-00-00 East 160.28 feet to an iron pipe set, a new corner with Harry William Hull, Jr.; thence along a new line with Hull, North 45-12-36 East 323.58 feet to an iron pipe set in the southern property line of U.S. Highway 64 Bypass; thence along the southern property line of U.S. Highway 64 Bypass, North 51-53-17 West 29.55 feet to a right of way monument and North 60-44-56 West 261.50 feet to an existing iron pipe, a northeast corner of Rocky Mount Tectel I, LLC; thence along the line of Rocky

Mount Tectel I, LLC, South 22-00-00 West 338.60 feet to an existing iron pipe in the northern property line of Gateway Boulevard, the point of beginning, containing 1.68 acres according to Map of Survey for Outback Steakhouse by Mack Gay Associates, P.A., dated October 31, 1996, revised December 13, 1996, and being Lot 2, Block A of Property of Harry William Hull, Jr. and further being a portion of that property conveyed by Murveree F. Deans, et al, to Michael V. Barnhill and Harry William Hull, Jr. by deed dated August 1, 1988, recorded in Book 1259, Page 28, Nash County Registry. See also those deeds from Michael V. Barnhill to Harry William Hull, Jr. dated September 3, 1992, recorded in Book 1389, Page 66, Nash County Registry, and from Carol L. Barnhill to Harry William Hull, Jr. dated December 22, 1992, recorded in Book 1396, Page 3, Nash County Registry.

138. FEE PARCEL DESCRIPTION: UNIT 3454

BEING known and designated as Lot 18-B of NORTHCROSS CORPORATE CENTER, Phase 1-Map 7, as the same is shown on a map thereof recorded in Map Book 28, at Page 979 in the Mecklenburg Public Registry.

Together with the non-exclusive easement, if any, and subject to the terms, conditions, provisions and limitations of the following: Declaration of Covenants, conditions and easements recorded in Book 6229, page 610; as supplemented and amended in Book 6959, Page 250; Book 7071, Page 803; Book 7659, Page 569; Book 8325, Page 365; Book 8421, Page 491; Book 8845, Page 260 and Book 8899, Page 267.

139. FEE PARCEL DESCRIPTION: UNIT 3455

A tract of land in Boone Station Township, City of Burlington, Alamance County, North Carolina, adjoining Longpine Road, and BEING ALL OF LOT ONE (1), Final Plat, Re-division of property of HOLT MANUFACTURING COMPANY, INC., as the same is recorded in Plat Book 58, Page 175 of the Alamance County Registry, to which reference is hereby made for a more complete and accurate description of the same.

Together with a non-exclusive easement for underground sanitary sewer line as described in Deed Book 1106, Page 94.

140. FEE PARCEL DESCRIPTION: UNIT 3458

COMMENCING at North Carolina Geodetic Station “Ransom”, NAD 83 grid coordinates of North 874,973.5795 East 1,211,216.7508, North 11-29-25 West 556.14 feet (grid bearing and grid distance, combined factor .09998233) to the point and place of beginning, said beginning point being a new iron pipe and having NAD 83 grid coordinates of North 875,518.5736 East; 1,211,105.9668, said beginning point also being in the proposed new northern property line of (now or formerly) Northwest Construction, Inc., Tract II, said line also being the proposed new southern boundary line of (now or formerly) Northwest Construction, Inc., Tract I Deed Book 199, Page 805; thence South 83-36-48 West 158.58 feet (horizontal ground distances given from here forth) to a new iron pipe; thence continuing with proposed new property line South 83-40-42 West 155.44 feet to a new iron pipe, said iron pipe being in the western line of (now or formerly) Northwest Construction, Inc., Tract II Deed Book 199, Page 805, said point also being in the eastern line of (now or formerly) Pitts Oil Company, Inc., Deed Book 84, Page 164 further describing said point as being located North 04-32-03 East 40.73 feet of

northwest corner of (now or formerly) Northwest Construction, Inc., Tract II Deed Book 199, Page 805; thence with the eastern line of (now or formerly) Pitts Oil Company, Inc. Deed Book 84, Page 164, same line being the previous western boundary of (now or formerly) Northwest Construction, Inc., Tract II Deed Book 199, Page 805, North 04-32-03 East 9.18 feet to a point, said point being the northwest corner of (now or formerly) Northwest Construction, Inc., Tract II Deed Book 199, Page 805, said point also being the southwest corner of (now or formerly) Northwest Construction, Inc., Tract I Deed Book 199, Page 805; thence continuing with the eastern line of (now or formerly) Pitts Oil Company, Inc., Deed Book 84, Page 164 and (now or formerly) Velma J. Hayes, Deed Book 95, Page 584 eastern property line North 04-32-03 East 300.00 feet to an existing iron pipe, said point being the southwest corner of (now or formerly) David G. Cox (Deed Book 204, Page 941); thence with the southern line of (now or formerly) David G. Cox North 88-16-23 East 266.53 feet to a new iron pipe, said point being the southeast corner of (now or formerly) David G. Cox; thence continuing North 88-16-23 East 50.05 feet to a point in the centerline of US Highway 321; thence with the centerline of US Highway 321 South 04-18-57 East 278.22 feet to a point; thence leaving the centerline of US Highway 321 South 83-36-48 West 50.03 feet to the point and place of beginning. The above described property contains 2.279 acres, more or less, (area including right of way, area excluding right of way is 1.957 acres, more or less, DMD.

Together with a 40 foot easement for ingress, egress and regress over the Grantors' property located South of the above described tract consisting of 12,689 square feet, more or less, acquired under deed recorded in Book 1296, Page 190, Watauga County Registry, and more particularly described as follows:

COMMENCING at NCGS Monument Ransom which has NC grid NAD 83 coordinates of North 874,973.5795 East 1,211,216.7508 North 11-29-25 West (NC NAD 83 grid meridian) 556.14 feet (average combined grid factor is 0.9998233) to the point and place of beginning, a new iron pipe which has coordinates of North 875,518.5736 East 1,211,105.9668, said point being in the western right of way of US Highway 321, said point also being the southeast corner of proposed Tract 1; thence with the western right of way of US Highway 321 South 04-18-57 East 17.48 feet to a point; thence continuing South 05-02-06 East 22.54 feet to a point; thence with the proposed southern line of 40' ingress, egress and regress easement South 83-36-48 West 157.46 feet to an existing iron pipe; thence continuing South 83-40-42 West 163.11 feet to an existing iron pipe, said point being a southwest corner of proposed 40' ingress, egress and regress easement, said point also being the southeast corner of (now or formerly) Pitt Oil Company, Inc. (Deed Book 84, Page 164); thence with the eastern line of (now or formerly) Pitt Oil Company, Inc. North 04-32-03 East 40.73 feet to a new iron pipe, said point being the southwest corner of proposed Tract 1; thence with the southern line of proposed Tract 1 North 83-40-42 East 155.44 feet to a new iron pipe; thence continuing North 83-36-48 East 158.58 feet to the point and place of beginning. The above described property contains 12,289 square feet, more or less, DMD.

141. FEE PARCEL DESCRIPTION: UNIT 3460

Lying in the City of Hendersonville, in Henderson County, North Carolina and being a portion of the properties of Ken-Ken Corp. as described in Deed Book 976, Pages 96 and 99 of the Henderson County Records and being a portion of that sixty-foot wide right of way for Mitchell Drive (SR 1896) as approved for abandonment by the State of North Carolina Department of Transportation (NCDOT) on December 3, 1999 (reference: Petition No. 44091, dated October 8, 1999). Being more particularly described as follows:

BEGINNING at an iron rod with a cap set on the northern edge of the existing sixty-foot wide right of way for Mitchell Drive, said point being located South 27-58-24 East for a distance of 744.77 feet from the NCGS Monument “Hendersonville”;

THENCE along a curve to the right having a radius of 656.94 feet and an arc length of 193.12 feet, being subtended by a chord of South 56-02-35 East for a distance of 192.42 feet to an iron rod with a cap set on the edge of the controlled access right of way for Interstate Highway 26;

THENCE along a curve to the right having a radius of 205.21 feet and an arc length of 80.31 feet, being subtended by a chord of South 36-24-36 East for a distance of 79.80 feet to an iron rod with a cap set on the edge of the controlled access right of way for Interstate Highway 26;

THENCE South 05-23-48 West for a distance of 71.44 feet to an iron rod with a cap set, formerly a 3/4 inch iron pipe found as shown on slide 3217 of the Henderson County Records, on the edge of the controlled access right of way for Interstate Highway 26;

THENCE South 07-45-15 West for a distance of 35.14 feet to an iron rod with a cap set on the edge of the controlled access right of way for Interstate Highway 26;

THENCE South 83-55-00 East for a distance of 28.43 feet to an iron rod with a cap set, formerly a concrete monument found as shown on slide 3217 of the Henderson County Records, on the edge of the controlled access right of way for Interstate Highway 26;

THENCE South 31-57-25 East for a distance of 99.43 feet to an iron rod with a cap set, formerly a concrete monument found as shown on slide 3217 of the Henderson County Records, on the edge of the controlled access right of way for Interstate Highway 26;

THENCE South 31-49-08 East for a distance of 36.40 feet to an iron rod with a cap set on the edge of the controlled access right of way for Interstate Highway 26;

THENCE North 83-07-38 West for a distance of 338.66 feet to an iron rod with a cap set on the eastern edge of the new fifty-foot wide right of way for Mitchell Drive;

THENCE North 06-31-13 East for a distance of 357.73 feet to an iron rod with a cap set on the eastern edge of the new fifty foot wide right of way for Mitchell Drive which intersects the existing sixty-foot wide right of way for Mitchell Drive, being the Point of Beginning, and being as shown on survey by G. Marcus Brittain, Job No. 99062R1, dated October 1999, and last revised December 18, 1999.

Appurtenant Easement:

TOGETHER WITH AN EASEMENT FOR ACCESS AND UTILITES over a portion of the right-of-way known as Mitchell Drive as described in Declaration of Restrictions recorded in Book 1013, Page 483, Henderson County Registry, said easement being more particularly described as follows:

BEGINNING at a point where the eastern edge of the new fifty-foot wide right of way for Mitchell Drive intersects the southern edge of the existing sixty-foot wide right of way for Mitchell Drive. Said point being located South 06-31-13 West for a distance of 63.86 feet from the Point of Beginning of the parcel described;

THENCE South 06-31-13 West for a distance of 293.89 feet to an iron rod with a cap set on the eastern edge of the new fifty-foot wide right of way for Mitchell Drive and at the southwest corner of the parcel shown;

THENCE South 06-31-13 West for a distance of 15.27 feet to a point on the edge of the new fifty-foot wide right of way for Mitchell Drive;

THENCE along a curve to the left having a radius of 25.00 feet and an arc length of 21.03 feet, being subtended by a chord of South 17-34-29 East for a distance of 20.41 feet to a point of the edge of the new fifty-foot wide right of way for Mitchell Drive;

THENCE along a curve to the right having a radius of 50.00 feet and an arc length of 241.19 feet, being subtended by a chord of North 83-28-47 West for a distance of 66.67 feet to a point on the edge of the new fifty-foot wide right of way for Mitchell Drive;

THENCE along a curve to the left having a radius of 25.00 feet and arc length of 21.03 feet, being subtended by a chord of North 30-36-54 East for a distance of 20.41 feet to a point of the edge of the new fifty-foot wide right of way for Mitchell Drive;

THENCE North 06-31-13 East for a distance of 256.24 feet to a point on the edge of the new fifty-foot wide right of way for Mitchell Drive;

THENCE North 83-28-47 West for a distance of 5.00 feet to a point on the edge of the new fifty-foot wide right of way for Mitchell Drive;

THENCE along a curve to the left having a radius of 90.60 feet and an arc length of 123.07 feet, being subtended by a chord of North 32-23-43 West for a distance of 113.82 feet to a point of the edge of the new fifty-foot wide right of way for Mitchell Drive where it intersects the Southern edge of the existing sixty-foot wide right of way for Mitchell Drive;

THENCE along a curve to the right having a radius of 1313.99 feet and an arc length of 72.24 feet, being subtended by a chord of South 69-44-09 East for a distance of 72.23 feet to a point on the Southern edge of the existing sixty-foot wide right of way for Mitchell Drive;

THENCE along a curve to the right having a radius of 596.94 feet and an arc length of 59.32 feet, being subtended by a chord of South 65-18-51 East for a distance of 59.29 feet to a point where the eastern edge of the new fifty-foot wide right of way for Mitchell Drive intersects the southern edge of the existing sixty-foot wide right of way for Mitchell Drive, being the Point of Beginning, and being as shown on survey by G. Marcus Brittain, Job No. 99062R1, dated October 1999, and last revised December 18, 1999.

142. FEE PARCEL DESCRIPTION: UNIT 3461

BEGINNING at a found railroad spike located North 23-26-47 West 562.72 feet from NCGS monument “Innes” (per survey for Towne Creek Commons, LP and Regency Land Corporation, GP, by Donald J. Moore, RLS-3482, dated 1-18-96, revised 5-8-96: “Innes” x = 1,566,543.57 Y = 697,443.04 NAD 83; CG factor 0.9998692); said spike also being the southeastern corner of Quality Oil (now or formerly;

Deed Book 610, Page 491); hereinafter all references to the Rowan County Registry of Deeds; thence from said point of Beginning, with the common line of Quality Oil, North 35-47-06 West 134.99 feet to a found railroad spike, the northeastern corner of Quality Oil; thence with four (4) new lines the following calls and distances: (1) North 32-37-33 East 110.76 feet to a point; (2) with the arc of circular curve to the left having a radius of 223.00 feet for an arc distance of 283.70 feet (chord: North 86-00-48 East 264.95 feet) to a point; (3) with the arc of a circular curve to the right having a radius of 235.00 feet for an arc distance of 10.70 feet (chord: North 50-52-19 East 10.70 feet) to a point; and (4) South 35-37-10 East 210.66 feet to a point on the right of way of Interstate 85; thence with the right of way of Interstate 85, South 54-22-50 West 272.57 to a found iron; thence North 35-48-16 West 172.89 feet to a found nail; thence South 54-09-13 West 65.50 feet to the POINT AND PLACE OF BEGINNING, containing 1.830 acres and being a portion of Tract A of ALTA/ASCM Land Title Survey of Towne Creek Commons by Lucas-Forman, Inc. (Matthew J. Lucas, PLS, License #L-3246) dated 9-8-98, revised 9-29-98.

Appurtenant Easement:

TOGETHER WITH an easement for access over that Roadway Easement Area described in the Declaration of Covenants, Conditions and Restrictions/Towne Creek Commons recorded in Book 837, Page 59, Rowan County Registry.

143. FEE PARCEL DESCRIPTION: UNIT 3462

BEING all of Lot 4 as same is shown and delineated on a map entitled Final Plat of Bridge Pointe Plaza, said map being recorded in Plat Cabinet G, Slide 104-H, in the Office of the Register of Deeds of Craven County, reference to said map being hereby made for a more perfect description of said property.

TOGETHER WITH a non-exclusive reciprocal easement for the purposes of ingress, egress, access and driveways, said easement being 35 feet in width, the eastern line of said easement being more particularly descried as follows:

BEGINNING at a point in the eastern line of Lot No. 4 of the western right of way line of NCSR 1004 (Madame Moore's Lane) which said point of beginning lies South 17-17-30 West 166.20 feet from the northeastern corner of Lot No. 4; thence from this point of beginning so located North 17-17-30 East 166.20 feet to a point; thence continuing North 17-17-30 East 93.80 feet to the northern terminus of said easement.

ALSO TOGETHER WITH a non-exclusive easement for the purposes of draining storm water from the property hereinabove described and conveyed, said easement being 10 feet in width, as described in instrument recorded in Book 2618, Page 390, Craven County Registry, and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the northern line of Lot No. 4, which said point of beginning lies the following courses and distances from an iron pipe marking the northwestern corner of Lot No. 4 South 89-42-10 East 100.07 feet to an iron pipe and South 72-42-30 East 46.73 feet to the point of beginning; thence from this point of beginning so located continuing along the northern line of Lot No. 4 South 72-42-30 East 20.48 feet to a point; thence North 78-3-26 East 65.80 feet to a point; thence North 11-59-0 West 10 feet to a point; thence South 78-3-26 West 83.66 feet to the POINT OF BEGINNING.

144. FEE PARCEL DESCRIPTION: UNIT 3463

BEGINNING at an existing iron pin in the North right-of-way line of Matthews-Pineville Road (N.C. Highway 51) at the Southwest corner of the land owned by CNC Centers, a Florida General Partnership (now or formerly) (see Deed Book 4925, Page 837, Mecklenburg County Registry); running thence with the North right-of-way line of the Matthews-Pineville Road, North 87-15-29 West 181.40 feet to a set iron pin; running thence on a curve to the right the radius of said curve being 2,814.79 feet, a chord call and distance of North 86-24-26 West 83.60 feet to an existing iron pin; running thence North 24-06-30 West 68.97 feet to an existing iron pin in the East right-of-way line of Kettering Drive; running thence with said right of way line, North 11-16-00 East 189.00 feet to an existing iron pin, the Southwest corner of Robert K. Lee (see Deed Book 5764, Page 535, Mecklenburg County Registry); running thence with Lee's South line, South 87-19-30 East 267.83 feet to an existing iron pin in the West line of CNC Centers' property; running thence with the West line of CNC Centers, South 02-40-30 West 250.00 feet to the point and place of Beginning. Containing 1.6138 acres, more or less.

TOGETHER WITH a 15' sanitary sewer easement created by agreement recorded in Book 4732, Page 395, over property described as follows:

BEGINNING at a point in the northerly boundary of that certain 1.6227 acre tract of land conveyed by deed recorded in the Mecklenburg County Public Registry, from Park Cedar Associates, Ltd., to General Mills Restaurant Group, Inc., in Book 4731, Page 524, which point is located South 87-19-30 East 12.1 feet with said northerly boundary from the northwesterly corner of said 1.6227 acre tract; and runs thence from the Beginning North 21-00-28 East 226.95 feet to a point in the center of a manhole; thence North 15-32-40 East 409.43 feet to a point in the centerline of that certain right-of-way described in Book 4405, Page 992, Mecklenburg County Public Registry, which point in said centerline is located North 75-25-00 East 61.25 feet from the terminus of the first course described in said right-of-way described in Book 4405, Page 992, Mecklenburg County Public Registry.

145. FEE PARCEL DESCRIPTION: UNIT 3464

Being known and designated as Lot 4 as shown on the map entitled "Northwoods Subdivision, Section 3" recorded at Book of Maps 31, Page 43, Robeson County Registry.

Also being further described as follows: Lying in Lumberton Township, Robeson County, North Carolina, being all of Lot 4 of a subdivision entitled "Northwoods Subdivision, Section 3" recorded at Book of Maps 31, Page 43, Robeson County Registry, being bounded by the City of Lumberton (Deed Book 742, Page 635) to the north, Wintergreen Drive (60.00 foot right of way) to the east, Vyshamin of NC, Inc. (Deed Book 740, Page 001) to the South, and bounded to the west by Interstate 95 (right of way varies). This parcel being more particularly described to wit:

BEGINNING at an existing iron rod at the point of intersection of the western right of way of Wintergreen Drive with the northern right of way of Corporate Drive (60 foot right of way), said rod being North 54 degrees 34 minutes 43 seconds East 1095.48 feet from NCGS grid monument "Lakewood 2" (NAD 83 Coordinates Z=334740.3213 and Y=1998280.8359) and runs thence with the western margin of Wintergreen Drive South 14 degrees 24 minutes 30 seconds West 191.53 feet to a set Mag Nail in the concrete curb and gutter of the northern entrance to the lot belonging to Vyshamin of NC, Inc., thence with the most northern line of Vyshamin of NC, Inc. North 82 degrees 11 minutes 25 seconds West 536.77 feet to an existing iron rod at the controlled access fence for the eastern margin of

Interstate 95; thence with the controlled access fence the following courses and distances: North 02 degrees 54 minutes 03 seconds West 101.44 feet to a set iron rod beside a power pole: thence North 01 degrees 09 minutes 36 seconds West 100.06 feet to an existing iron rod; thence North 03 degrees 41 minutes 24 seconds East 78.98 feet to an existing iron rod; thence leaving the eastern margin of Interstate 95 and with the most southern line of the City of Lumberton's parcel South 73 degrees 55 minutes 20 seconds East 605.19 feet to the point of beginning and containing 3.06 acres more or less, by the coordinate method. The above described tract is subject to a water main easement belonging to the City of Lumberton along the western boundary. All described distances are horizontal ground distances.

Together with an easement for drainage as described in Reciprocal Easement Agreement recorded in Book 1176, Page 397, Robeson County Registry.

146. FEE PARCEL DESCRIPTION: UNIT 3621

A parcel of land being part of Lot twenty-five (25) in ARROWHEAD PLAT THREE in the City of Maumee, Lucas County, Ohio, as recorded in Volume 81 of Plats, Pages 14, 15 and 16, Lucas County Records, said parcel being bounded and described as follows:

Commencing at the Southwest corner of said Lot twenty-five (25);

Thence North 34 degrees 27' 23" West along the Southwest line of said Lot twenty-five (25), a distance of 445.84 feet, more or less, to a point on a line that is 320.00 feet, by rectangular measurement, Southeasterly of and parallel with the Northwest line of said Lot twenty-five (25);

Thence North 56 degrees 40' 38" East along said line that is 320.00 feet, by rectangular measurement, Southeasterly of and parallel with the Northwesterly line of Lot twenty-five (25), a distance of 230.55 feet to a point that is 230.50 feet, by rectangular measurement, Northeasterly of the Southwest line of said Lot twenty-five (25) and the POINT OF BEGINNING of the parcel hereinafter described;

Thence South 34 degrees 27' 23" East along a line that is 230.50 feet, by rectangular measurement, Northeasterly of and parallel with the Southwest line of said Lot twenty-five (25), a distance of 441.29 feet, more or less, to a point on the Southeast line of said Lot twenty-five (25), said Southeast line of Lot twenty-five (25) also being the Northwest right of way line of Dussel Drive;

Thence North 55 degrees 32' 37" East along the Southeast line of said Lot twenty-five (25), a distance of 125.00 feet to a point;

Thence North 10 degrees 32' 37" East and continuing along the southeast line of said Lot twenty-five (25), a distance of 84.85 feet to the most Southerly corner of a parcel of land conveyed to the City of Maumee, Lucas county, Ohio by Deed Number 84-374-E11, Lucas County Ohio Deed Records;

Thence North 34 degrees 27' 23" West along the Southwesterly line of said parcel conveyed by Deed number 84-374-E11 and its extension Northwesterly, a distance of 377.63 feet, more or less, to a point on a line that is 320.00 feet, by rectangular measurement, Southeasterly of and parallel with the Northwest line of said Lot twenty-five (25);

Thence south 56 degrees 40’ 38” West along said line that is 320.00 feet, by rectangular measurement, Southeasterly of and parallel with the Northwesterly line of said Lot twenty-five (25), a distance of 185.03 feet, more or less, to the POINT OF BEGINNING.

Being the same property as conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue of a Special Warranty Deed from Maumee Associates, an Ohio general partnership, dated September 4, 1996, recorded September 6, 1996, by Microfiche No. 96-440-D02, as affected by that certain Declaration Regarding Merger recorded on November 23, 2011 as Instrument No. 201111230049284, Lucas County, OH Deed Records

147. FEE PARCEL DESCRIPTION: UNIT 3633

Situated in the City of Parma, County of Cuyahoga and State of Ohio and known as being Parcel 1A in the Parmatown South Parcel 1 & 4 Map of Vacation, Consolidation and Lot Split of part of Original Parma Township Lot 18, Ely Tract, as recorded in Volume 268, Page 84 of Cuyahoga County Map Records, and bounded and described as follows:

Beginning at an iron monument at an angle point in the centerline of Ridge Road, 100 feet wide, at the Northeast corner of said Original Lot No. 18;

Thence South 89 degrees 48 minutes 30 seconds West, 50.00 feet to an iron pin set at an angle point in the westerly line of Ridge Road;

Thence South 0 degrees 22 minutes 42 seconds East along the westerly line of Ridge Road, 405.87 feet to the principal place of beginning of the parcel herein described;

Thence South 0 degrees 22 minutes 42 seconds East continuing along the westerly line of Ridge Road, 183.74 feet to a point;

Thence North 80 degrees 50 minutes 43 seconds West, 89.03 feet to a point;

Thence South 89 degrees 27 minutes 18 seconds West, 80.00 feet to a point;

Thence South 0 degrees 22 minutes 42 seconds East, 32.00 feet to an angle point in the northerly line of the remainder of a parcel of land conveyed to The Parma Christian Church by deed recorded in Volume 13188, Page 789 of Cuyahoga County Records, from which point an iron pin founds bears South 0.24 feet, East 1.04 feet;

Thence South 89 degrees 27 minutes 18 seconds West along the northerly line of said land conveyed to The Parma Christian Church, 200.00 feet to an iron pin set at its intersection with the easterly line of Parmatown Estates Subdivision No. 3 as shown by the recorded plat in Volume 219, Page 23 of Cuyahoga County Map Records;

Thence North 0 degrees 22 minutes 42 seconds West along the easterly line of said Parmatown Estates Subdivision No. 3, 79.99 feet to an iron pin set at the northeasterly corner thereof Thence North 32 degrees 05 minutes 27 seconds West, 92.14 feet;

Thence northeasterly along the arc of a curve deflecting to the left, 47.90 feet to a point of reverse curvature, said arc having a radius of 335.00 feet and a chord which bears North 53 degrees 48 minutes 45 seconds East, 47.86 feet;

Thence northeasterly along the arc of a curve deflecting to the right, 130.41 feet to a point of compound curvature, said arc having a radius of 220.00 feet and a chord which bears North 66 degrees 41 minutes 50 seconds East, 128.50 feet;

Thence northeasterly along the arc of a curve deflecting to the right, 103.73 feet to a point of tangency, said arc having a radius of 1000.00 feet and a chord which bears North 86 degrees 39 minutes 00 seconds East, 103.68 feet;

Thence North 89 degrees 37 minutes 18 seconds East, 115.52 feet to a point of curvature;

Thence southeasterly along the arc of a curve deflecting to the right, 62.83 feet to the principal place of beginning, said arc having a radius of 40.00 feet and a chord which bears South 45 degrees 22 minutes 42 seconds East, 56.57 feet and containing 1.9271 acres of land as described in May, 1994, according to a survey by Donald G. Bohning & Associates, Inc., dated December, 1992.

The courses used in this description are referenced to an assumed meridian and are used to indicate angles only.

Together with the easement rights over the property more particularly described as follows:

Easement Parcel 1:

Parcel 1B

Thence South 0 degrees 22 minutes 42 seconds East continuing along the westerly line of Ridge Road, 175.00 feet to an iron pin set at its intersection with the northerly line of the remainder of a parcel of land conveyed to The Parma Christian Church by deed recorded in Volume 13188, Page 789 of Cuyahoga County Records;

Thence South 89 degrees 27 minutes 18 seconds West along the northerly line of said land conveyed to The Parma Christian Church, 167.80 feet to an angle point therein, from which point an iron pin found bears South 0.12 feet, East 0.02 feet;

Thence North 0 degrees 22 minutes 42 seconds West continuing along the northerly line of said land conveyed to The Parma Christian church, and the northerly prolongation thereof, 190.00 feet to a point;

Thence North 89 degrees 27 minutes 18 seconds East, 80.00 feet to a point;

Thence South 80 degrees 50 minutes 43 seconds East, 89.03 feet to the principal place of beginning and containing 0.7168 acres of land as described in March, 1994 according to the survey by Donald G. Bohning & Associates, Inc., dated December, 1992.

The courses used in this description are referenced to an assumed meridian and are used to indicate angles only.

Such parcel is also known as being Parcel 1B in the Parmatown South—Parcel 1 & 4 Map of Vacation, Consolidation and Lot Split of part of Original Parma Township Lot 18, Ely Tract, as recorded in Volume 268, Page 84 of Cuyahoga County Map Records.

BEING the same property conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue of Warranty Deed from Granite Development Partners, L.P., a Delaware limited partnership, dated July 20, 1994, recorded July 22, 1994, in Volume 94-07080, Page 52, as affected by that that certain Declaration regarding Merger recorded November 23, 2011 in Instrument No. 201111230491, Cuyahoga County, Ohio Deed Records.

Easement Parcel 2

Easement Parcel No. TWO:

Non-Exclusive Easement for Ingress and Egress as created in Reciprocal Easement Agreement by and among Federated Department Stores, Inc., Pick-N-Pay Supermarkets, Inc., Albert B. Ratner, Trustee and Paul Lipman, Trustee, filed for record April 5, 1978 and recorded in Volume 14685, Page 341 of Cuyahoga County Records.

Note: The above Easement has been amended and restated in an Amended and Restated Cross-Easement Agreement by and among Dayton Hudson Corporation, Kohl's Department Stores, Inc., Western Reserve Restaurant Management, Inc., Outback Steakhouse of Florida, Inc., Sunrise Land Co., Parmatown South Association, Granite Development Partners, L.P. and Forest City Rental Properties, filed for record on May 8, 1995 and recorded in Volume 95-03420,Page 32 of Cuyahoga County Records and refiled on August 29, 1995 in Volume 95-07171, Page 6 of Cuyahoga County Records and further amended in a First Amendment to Amended and Restated Cross-Easement Agreement recorded on January 31, 1996 in Volume 96-00833, page 57 of Cuyahoga County Records.

Permanent Parcel Nos. 455-10-004, 005, 006, 007, 008 and 009

148. FEE PARCEL DESCRIPTION: UNIT 3635

Situated in the City of Westlake, County of Cuyahoga and State of Ohio and known as being Parcel "C" on the Map of Survey, Consolidation and Partition for William L. Lake and Patricia M. Lake of part of Original Dover Township Lot No. 78, as shown by the recorded plat in Volume 269 of Plats, Pages 46 and 47 of Cuyahoga County Records, and further bounded and described as follows:

Beginning at the intersection of the center line of Columbia Road (variable width) with the center line of Sperry Drive (variable width);

Thence South 73 deg. 23' 36" East, along said center line of Sperry Drive, a distance of 420.59 feet to a point of curvature therein;

Thence Southeasterly, continuing along said center line of Sperry Drive, along the arc of a curve deflecting to the left, a distance of 367.80 feet to the point of tangency therein, said arc having a radius of 716.20 feet and a chord which bears South 08 deg. 06' 19" East, a distance of 363.77 feet;

Thence North 77 deg. 10’ 58” East, continuing along said center line of Sperry Driver a distance of 475.92 feet to the Southerly prolongation of the Easterly line of Sublot No. 4 in the Lot Split for Lakewood Manufacturing Co. as shown by the recorded plat in Volume 257 of maps, Page 48 of Cuyahoga County Records;

Thence North 1 deg. 36’ 24” East, along said Southerly prolongation, a distance of 30.98 feet to the Southeasterly corner of said Sublot No. 4 and the Northerly line of said Sperry Drive;

Thence North 77 deg. 10’ 58” East, along said Northerly line of Sperry Drive, a distance of 268.77 feet to the principal place of beginning of the land herein described;

Course No. 1: Thence North 1 deg. 36’ 24” East, parallel with said Easterly line of Sublot No. 4, a distance of 424.36 feet to a point;

Course No. 2: Thence North 77 deg. 10’ 58” East, parallel with the Northerly line of Sperry Drive, as aforesaid, a distance of 212.44 feet to the Westerly line of a parcel of land conveyed to Kane Partners, L.P. by deed recorded in Volume 92-10416, Page 48 of Cuyahoga County Records;

Course No. 3: Thence South 1 deg. 43’ 38” West, along said Westerly line of land so conveyed to Kane Partners, L.P., a distance of 424.59 feet to said Northerly line of Sperry Drive;

Course No. 4: Thence South 77 deg. 10’ 58” West, along said Northerly Use of Sperry Drive, a distance of 211.52 feet to the principal place of beginning, and containing 2 acres of land, according to a survey made by Thomas J. Neff, Jr., Registered Surveyor No. 7065-Ohio in June of 1994.

Permanent Parcel No. 213-08-029

149. FEE PARCEL DESCRIPTION: UNIT 3636

Fee Parcel:

Situated in the Village of Ontario, County of Richland and State of Ohio, and known as being more particularly described as follows:

Being part of the Southwest quarter of Section 13, Township 21, Range 19, and being the Garland Hunt and Brenda Hunt parcel, as recorded in Volume 124 at Page 787, and part of the Garland Hunt and Brenda Joyce Hunt parcel, as recorded in Volume 37 at Page 637, and beginning at a 1-inch iron pin in a monument box found in the centerline of Lexington-Springmill Road (C.H. 133) as recorded in Plat Book 23 at Page 57 (centerline station 360+96.92), said point marking the Northwest corner of the said Southwest quarter of Section 13;

Thence with the said centerline of Lexington-Springmill Road, South 00 deg. 51’ 11” West, 557.96 feet to a point;

Thence leaving the said centerline of Lexington-Springmill Road, South 89 deg. 13’ 49” East, 40.00 feet to a 5/8-inch rebar found in the East right-of-way line of said Lexington-Springmill Road said point marking the Southwest corner of the Ontario Realty LLC parcel as recorded in Volume 374 at Page 478, said point being the True Point of beginning of the herein described parcel;

Thence leaving the said right-of-way of Lexington-Springmill Road and with the South line of the said Ontario Realty LLC parcel, South 89 deg. 13’ 49” East, 335.80 feet to a 1-inch o.d. iron pipe with id. cap set;

Thence South 00 deg. 51’ 11” West, 205.00 feet to a 1-inch o.d. iron pipe with id. cap set;

Thence through the said Garland Hunt and Brenda Joyce Hunt parcel as recorded in Volume 37 at Page 637 and parallel with the North line of the herein described parcel, North 89 deg. 13’ 49” West, 331.77 feet to 5/8-inch rebar found in the said East right-of-way line of Lexington-Springmill Road;

Thence with the said right-of-way line of Lexington-Springmill Road, North 01 deg. 03’ 21” West, 121.10 feet to a 1-inch o.d. iron pipe with id. cap set;

Thence continuing with the said right-of-way of Lexington-Springmill Road, North 00 deg. 51’ 11” East, 83.96 feet to the true point of beginning. Containing 1.575 acres of land.

Aforesaid references recorded among the land records of Richland County, Ohio.

Bearings oriented to the said centerline of Lexington-Springmill Road as recorded in Plat Book 23 at Page 57.

EASEMENT PARCELS

PARCEL 1:

TOGETHER WITH THOSE RIGHTS ESTABLISHED IN Joint Easement Agreement by and between Garland and Brenda Hunt, and Ontario Realty LLC, dated August 10, 1995, filed for record August 29, 1995 and recorded in Volume 384, Page 623 of Richland County Records.

PARCEL 2:

TOGETHER WITH THOSE RIGHTS ESTABLISHED IN Slope Easement to Outback Steakhouse of Florida, Inc. dated May 28, 1996 and recorded June 30, 1996 in Volume 436, page 754, of the Richland County Records.

PARCEL 3:

TOGETHER WITH THOSE RIGHTS ESTABLISHED IN Easement Agreement between POI Associates, Inc. and Outback Steakhouse of Florida, Inc. recorded March 15, 1999 in Volume 689, Page 507, of the Richland County Records.

150. FEE PARCEL DESCRIPTION: UNIT 3640

Situated in the City of Mentor, County of Lake and State of Ohio:

And known as being a part of Original Mentor Township, Lot No.5, Tract No. 8, and is further bounded and described as follows:

Beginning in the curved Westerly line of Market Street, 60 feet wide, at the Southeasterly corner of land conveyed to M.E. Osborne Properties Corp., as recorded in Volume 469, Page 929 of Lake County Deed Records;

Thence Westerly along the Southerly line of said M.E. Osborne Properties Corp., parcel, by a line bearing North 89 deg. 43' 47" West, a distance of 670.14 feet to a point;

Thence Northerly by a line bearing North 00 deg. 15' 53" West, a distance of 189.94 feet to a point;

Thence Easterly by a line bearing South 89 deg. 44' 07" East, a distance of 708.41 feet to point in the Westerly line of Market Street, 60 feet wide;

Thence Southerly along the Westerly line of said Market Street by a line bearing South 00 deg. 40' 41" West, a distance of 55.75 feet to a point of curvature;

Thence Southerly along the arc of a curve reflecting to the right 141.18 feet to the principal place of beginning, said curve having a radius of 263.69 feet and a chord which bears South 16 deg. 00' 59" West, 139.51 feet.

Being the same property as conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue of a Special Warranty Deed from Philip Pace (aka Phillip Pace) and Phyllis Pace, husband and wife, dated October 29, 1999, recorded January 4, 2000, by Instrument No. 200000383, as affected by that certain Declaration Regarding Merger recorded on November 23, 2011 as Instrument No. 2011R027360, Lucas County, OH Deed Records

151. FEE PARCEL DESCRIPTION: UNIT 3658

Situated in the Township of Butler, County of Montgomery and State of Ohio:

And known as being Lot Numbered Four (4) in York Commons, Section Three, as the same is recorded in Plat Book 167, Page 39 of the Plat Records of Montgomery County, Ohio.

LESS AND EXCEPT:

Situate in Section 34, Township 3, Range 6 East, in the Township of Butler, Montgomery County, Ohio, and being part of Lot Four of York Commons Subdivision. Section Three, as recorded in Plat Book 167, Page 39 as conveyed to Outback Steakhouse of Florida, Inc., by instrument as recorded in Microfiche Number 97-0301 C08 of the deed records of said County, and being more particularly bounded and described, per a survey performed by Lockwood, Jones and Beals, Inc. in 1998 with bearings based on State Plane Coordinates, South Zone (NAD 83), as follows:

Beginning for reference at an iron pin to be set in the existing West limited access right of way line of Interstate 75 (as acquired by Deed Book 966, Page 303 of the deed records of said County), at the Southeast corner of said lot and plat, and the Northeast corner of the York Commons Subdivision, Section Five, as recorded in Plat Book 172, Page 9 of the plat records of said County 30.596 meters left of Station 6+917.258 of the centerline of construction of Interstate 75, reference a 5/8-inch iron pipe

found with cap stamped “M.L.OXNER” bearing North 87 deg. 36’ 39” East a distance of 0.215 meters (0.70 feet) at 30.381 meters left of Station 6+917.268 of the centerline of construction of Interstate 75;

Parcel 16WL

Thence with the South line of the said lot and the North line of said Lot No. 7 North 89 deg. 51’ 55” West a distance of 15.410 meters (50.56 feet) to an iron pin to be set on the new West limited access right of way line of Interstate 75, 46.007 meters left of Station 6+917275 of the centerline of construction of interstate 75;

Thence with the said new West limited access right of way line for the following four courses:

1) North 6 deg. 31’ 29” East a distance of 2.023 meters (6.64 feet) to an iron pin to be set 45.779 meters left of Station 6+919.285 of the centerline of construction of Interstate 75;

2) Thence North 79 deg. 54’ 39” East a distance of 6.887 meters (22.60 feet) to an iron pin to be set 39.000 meters left of Station 6+920.500 of the centerline of construction of Interstate 75;

3) Thence North 00 deg. 39’ 17” East a distance of 39.502 meters (129.60 feet) to an iron pin to be set 38.600 meters left of Station 6+960.000 of the centerline of construction of interstate 75;

4) Thence North 33 deg. 53’ 48” East a distance of 3.472 meters (I 1.39 feet) to an iron pin to be set on the North line of said lot and the South line of Lot Three of the said York Commons Subdivision, Section Three, 36.668 meters left of Station 6+962.884 of the centerline of construction of Interstate 75;

Thence with the North line of said Lot and the South line of said Lot Three South 89 deg. 51’ 55” East a distance of 6.107 meters (20.04 feet) to an iron pin to be set at the Northeast corner of said lot, the Southeast corner of said Lot Three, and in the said existing West limited access right of way line 30.560 meters left of Station 6+962.878 of the centerline of construction of Interstate 75, reference a 5/8-inch iron pin with cap found bearing North 57 deg. 13’ 16” East a distance of 0.151 meters (0.50 feet);

Thence with the said West limited access right of way line and the East line of said lot South 0 deg. 07’ 09” West a distance of 45.620 meters (149.67 feet) to the true point of beginning containing 0.0390 hectares (0.096 acres), more or less, subject to all legal easements and restrictions of record.

The description for Parcel Number 16WL above was calculated and derived from a survey made under the supervision of John J. Beals, Registered Surveyor Number 5312.

Note: Iron pins and railroad spikes referred to as “to be set” shall be set by Lockwood, Jones and Beals, Inc. upon the completion of construction. Iron pins set in the above description are 3/4-inch by 30 inch reinforcing rod with an aluminum cap stamped “ODOT R/W LJB INC”.

The above described area is contained within the Montgomery County Auditor’s Permanent Parcel Number A01-213-6-2. Within said bounds is 0.096 of an acre, more or less, inclusive of the present road which occupies 0.000 of an acre, more or less.

BEING the same property conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue of Warranty Deed from Harson Investments, LTD., a Florida limited partnership, dated March 10,

1997, recorded May 5, 1997, by Volume 97-0301, Page C08, as affected by that that certain Declaration regarding Merger recorded November 28, 2011 in Instrument No. 11-071137, Montgomery County, Ohio Deed Records.

PPN: A01-21306-0002

152. FEE PARCEL DESCRIPTION: UNIT 3662

Situated in the City of Findlay, County of Hancock and State of Ohio:

Lot Number Fourteen (14), a replat of Lot Number Eight (8) of Interstate Subdivision 2nd Addition of the City of Findlay, County of Hancock, State of Ohio, as set forth on the Plat of the replat of Lot Number Eight (8), Interstate Subdivision 2nd Addition, recorded on August 28, 1998, in Plat Volume 20, Page 86, Hancock County, Ohio Recorder's Office.

Being the same property as conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue of a Special Warranty Deed from George M. Whitson, dated September 16, 1998, recorded September 17, 1998by volume 1643, Page 30, as affected by that certain Declaration Regarding Merger recorded on November 23, 2011 in Volume 2408, Page 2037, Lucas County, OH Deed Records

153. FEE PARCEL DESCRIPTION: UNIT 3663

Being all of Lot 11 of Kings Island Commercial Center Section B-Phase III of part of Section 18, Town 4, Range 2, Deerfield Township, Warren County, Ohio, as the same is recorded in Plat Volume 44, Pages 73 and 74 of the Warren County, Ohio Records.

Being the same property as conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue of a Special Warranty Deed from Great American Life Insurance Company, an Ohio corporation dated May 19, 1999, recorded May 21, 1999, by Volume 1761 Page 844 ,as affected by that certain Declaration Regarding Merger recorded on November 28, 2011 as Doc. No. 845599, Warren County, OH Deed Records

154. FEE PARCEL DESCRIPTION: UNIT 3713

A tract of land lying in the Northwest Quarter (NW/4), Section Eleven (11), Township Thirteen (13) North, Range Three (3) West of the Indian Meridian, Edmond, Oklahoma County, Oklahoma, being more particularly described as follows:

COMMENCING at the Northeast Corner of said Northwest Quarter (NW/4); Thence South 00°10'37" East along the East line of said Northwest Quarter (NW/4) a distance of 1148.27 feet to the Point of Beginning; Thence continuing South 00°10'37" East along the East line of said Northwest Quarter (NW/4) a distance of 185.00 feet; Thence South 89°49'23" West a distance of 517.22 feet to the East Right-of-Way of Highway No. 77; Thence North 30°32'45" East along said Right-of-Way a distance of 215.61 feet; Thence North 89°49'23" East a distance of 407.02 feet to the POINT OF BEGINNING.

TOGETHER WITH easement rights as set out in that certain Declaration of Mutual Access Easement dated December 30, 1994, by OB-Real Estate, Inc., filed of record January 4, 1995, in Book 6695, Page 629, over and across the following described property:

A tract of land lying in the Northwest Quarter Section 11, Township 13 North, Range 3 West of the Indian Meridian, Edmond, Oklahoma County, Oklahoma, being more particularly described as follows:

COMMENCING at the Northeast corner of said Northwest Quarter; Thence South 00°10’37” East along the East line of said Northwest Quarter a distance of 1333.27 feet; Thence South 89°49’23” West a distance of 517.22 feet to the Point of Beginning, also being a point in the East right-of-way of Highway No. 77; Thence North 89°49’23” East a distance of 114.88 feet; Thence South 00°10’37” East a distance of 33.86 feet; Thence South 89°49’23” West a distance of 135.00 feet to the East right-of-way of Highway
No. 77; Thence North 30°32’45” East along said right-of-way a distance of 39.39 feet to the POINT OF BEGINNING.

155. FEE PARCEL DESCRIPTION: UNIT 3715

Lot Six (6), Block One (1) and a portion of Lot Five (5), Lot Seven (7) and Lot Eight (8), in Block One (1), of the Replat of Lots 1 thru 8, Block 1 and Lots 1 thru 4, Block 2 of SPRING BROOK ADDITION SECTION 9, which is a part of the Northwest Quarter (NW/4) of Section Twenty-six (26), Township Nine (9) North, Range Three (3) West of the I.M., Norman, Cleveland County, Oklahoma, and said tract being more particularly described as follows:

COMMENCING at the Southeast Corner of said Northwest Quarter of Section 26, Township 9 North, Range 3 West, I.M.; Thence South 89°46’53” West, and along the South line of said Northwest Quarter, a distance of 150.00 feet to a point on the West right-of-way line of North Interstate Drive; Thence North 00°01’16” West, and along said West right-of-way line of North Interstate Drive, a distance of 1205.26 feet to the POINT OR PLACE OF BEGINNING.

Thence continuing North 00°01’16” West, and along said West right-of-way line of North Interstate Drive, a distance of 199.74 feet; Thence North 45°01’15” West a distance of 35.36 feet to a point on the South right-of-way line of Northwest Boulevard; Thence South 89°58’45” West, and along said South right-of-way line of Northwest Boulevard, a distance of 302.30 feet; Thence South 00°01’16” East a distance of 224.74 feet; Thence North 89°58’44” East a distance of 327.30 feet to the POINT OR PLACE OF BEGINNING.

156. FEE PARCEL DESCRIPTION: UNIT 3716

A tract of land located in the Northeast Quarter (NE/4) of Section Twenty-nine (29), Township Two (2) North, Range Twelve (12) West, I.M., Comanche County, Oklahoma, according to the U.S. Government survey thereof, described as follows:

COMMENCING at the Northeast Corner of said Northeast Quarter; THENCE N89°33’36”W on the North line of said Northeast Quarter a distance of 1481.27 feet for a POINT OF BEGINNING; THENCE S00°27’09”W a distance of 420 feet; THENCE N89°33’36”W and parallel with the North line of said Northeast Quarter a distance of 205 feet; THENCE N00°27’09”E a distance of 420 feet; THENCE S89°33’36”E and parallel with the North line of said Northeast Quarter a distance of 205 feet to the POINT OF BEGINNING.

157. FEE PARCEL DESCRIPTION: UNIT 3915

ALL THAT CERTAIN tract of land situate in the Susquehanna Township, Dauphin County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point at the intersection of the Southern right of way line of Union Deposit Road (S.R. 22008) and the Western right of way line of Powers Avenue; thence South five degrees twenty-eight minutes two seconds East (S 05° 28’ 02” E) a distance of two hundred thirty-seven and ninety-two hundredths feet (237.92’) to a point at the dividing line between lands now or formerly of the Upper Dauphin Industrial Development Authority and Lot No. 1 on the hereinafter mentioned Preliminary/Final Re-Subdivision Plan; thence along the dividing line between lands now or formerly of the Upper Dauphin Industrial Development Authority and Lot No. 1 South eighty-three degrees twenty-eight minutes twenty-six seconds West (S 83° 28’ 26” W) a distance of two hundred ninety-three and seventy one hundredths feet (293.71’) to a point at the dividing line between Lot No. 2 and Lot No. 1; thence along the dividing line between Lot No. 2 and Lot No. 1 North six degrees thirty-seven minutes thirty-one seconds West (N 06° 37’ 31” W) a distance of two hundred thirty-eight and nine hundredths feet (238.09’) to a point on the Southern right of way line of Union Deposit Road; thence along the Southern right of way line of Union Deposit Road North eighty-three degrees thirty minutes fifty-two seconds East (N 83° 30’ 52” E) a distance of two hundred ninety-eight and fifty-two hundredths feet (298.52’) to a point, the place of BEGINNING.

CONTAINING 70,653.31 square feet or 1.62 acres, more or less.

BEING Lot No. 1 in accordance with a Preliminary/Final Resubdivision Plan for Bernard I. Zeliger dated February 9, 1989, prepared by Whittock-Hartman Engineers and recorded in the Office of the Recorder of Deeds in and for Dauphin County, Pennsylvania, in Plan Book “U”, Volume 4, Page 6.

TOGETHER with an easement and right of way in common with the owners of Lot No. 2, now or formerly Bruce Goodman and Barbara Goodman, their heirs, executors, administrators, and assigns, and the owners of Lot 3 and 4, formerly Grantors, their heirs, successors and assigns, over the driveway access from Union Deposit Road, along the Eastern boundary of Lot No. 2 for ingress, egress and regress to Union Deposit Road, which right of way is and shall be connected to the 34-foot driveway access easement along the Southern boundary of Lot 1.

TOGETHER with the privilege of in common use of the improved storm water drainage easement, as is, partially shown in the Preliminary/Final Subdivision Plan for Bernard I. Zeliger recorded in Plan Book “U”, Volume 4, Page 6.

BEING the same premises which Bernard I. Zeliger and Sandra T. Zeliger, his wife, by Deed dated 4/5/1994 and recorded 4/11/1994 in Dauphin County in Record Book 2196 page 614 unto Outback Steakhouse of Florida, Inc., a Florida corporation, in fee; and also

BEING the same premises which Outback Steakhouse of Florida, Inc., a Florida corporation, by Deed dated 4/11/2007 and recorded 6/29/2007 in Dauphin County in Instrument No. 20070025897 conveyed unto Private Restaurant Properties, LLC, a Delaware limited liability company, in fee.

158. FEE PARCEL DESCRIPTION: UNIT 3917

ALL THAT CERTAIN lot or tract of ground being known as Lot No. 2 as shown on a Final Plan of North Pointe Center, as prepared by Rettew Associates, Inc., for High Associates, Ltd. on a drawing dated April 27, 1988, being drawing No. 87-204-03FF, said plan being recorded in the Recorder of Deeds Office in and for Lancaster County, Pennsylvania in Plan Book J-160, page 30, situate in the Township of Manheim, County of Lancaster and Commonwealth of Pennsylvania, being more fully bounded and described as follows, to wit:

BEGINNING at a point at the Southern right of way line of North Pointe Boulevard at the common property corner of Lots 2 and 3; thence, from said point of beginning the following sixteen (16) courses and distances: (1) along said right of way of North Pointe Boulevard by a curve to the left, having a radius of 175.00 feet and an arc length of 82.36 feet to a point; thence (2) along said right of way of North Pointe Boulevard South 82 degrees 19 minutes 20 seconds East, a distance of 26.05 feet to a point; thence (3) along said right of way of North Pointe Boulevard by a curve to the right; having a radius of 180.00 feet and an arc length of 85.34 feet to a point; thence, (4) along said right of way of North Pointe Boulevard South 55 degrees 09 minutes 30 seconds East, a distance of 119.33 feet to a point; thence (5) by a curve, curving to the right, having a radius of 17.00 feet and a length of 26.70 feet to a point on the Western right of way of the Oregon Pike; thence (6) along said right of way of the Oregon Pike, South 34 degrees 50 minutes 30 seconds West, a distance of 113.27 feet to a point; thence (7) along said right of way line of the Oregon Pike, North 55 degrees 09 minutes 30 seconds West, a distance of 24.00 feet to a point; thence (8) along said right of way of the Oregon Pike, South 34 degrees 50 minutes 30 seconds West, a distance of 132.25 feet to a point; thence (9) along said right of way of the Oregon Pike, North 55 degrees 18 minutes 46 seconds West, a distance of 2.58 feet to a point; thence (10) along said right of way of the Oregon Pike on a curve, curving to the right, with a radius of 428.34 feet and a length of 360.40 feet to a point on the Northern right of way of a ramp leading to Route 30 West; thence (11) along said right of way of the ramp leading to Route 30 West, South 83 degrees 03 minutes 38 seconds West, a distance of 298.26 feet to a point; thence (12) along said right of way of the ramp leading to Route 30 West, North 76 degrees 08 minutes 03 seconds West, a distance of 268.61 feet to a point; thence (13) along the Southern boundary of Beverly Estates, North 79 degrees 31 minutes 40 seconds East, a distance of 317.39 feet to an iron pin; thence (14) along the Eastern Boundary of Beverly Estates, North 07 degrees 40 minutes 40 seconds East, a distance of 264.82 feet to a point; thence (15) South 82 degrees 19 minutes 20 seconds East, a distance of 247.66 feet to a point, thence (16) North 34 degrees 38 minutes 38 seconds East, a distance of 251.36 feet to a point, said point being the place of beginning.

CONTAINING 242,586.37 square feet or 5.5690 acres.

Together with all common use and interest in Easements as set forth in Declaration of Covenants, Easements, Conditions and Restrictions of The North Pointe Center dated November 7, 1990 by Oregon Pike Associates and recorded in Book 3033, Page 393. Together with all common use and interest in Easements as set forth in Cross Easement Agreement dated June 28, 1999 between Outback Steakhouse of Florida, Inc. and 120 North Pointe Associates recorded in Book 6308, Page 294.

Being the same premises Oregon Pike Associates and High Associates, Ltd. by Deed dated 02-23-1998 and recorded 02-25-1998 in Lancaster County in Instrument Number conveyed unto Outback Steakhouse of Florida, Inc., a Florida Corporation, in fee.

Being the same premises which Outback Steakhouse of Florida, Inc., a Florida Corporation by Deed dated 4-11-2007 and recorded 7-5-2007 in Lancaster County in Instrument Number 5632567 conveyed unto Private Restaurant Properties, LLC, a Delaware limited liability company, in fee.

159. FEE PARCEL DESCRIPTION: UNIT 3951

ALL THAT CERTAIN parcel of ground being known as Parcel C-1 in the Arcadia Center Plan of Lots No. 3 as recorded in Plan Book Volume 192, pages 33 and 34, and situate in the Town of McCandless, County of Allegheny and Commonwealth of Pennsylvania, being bounded and described as follows:

BEGINNING on the westerly right of way of McKnight Road, 120-feet in width, at the northeasterly corner of Parcel A2 in the Arcadia Center Plan of Lots No. 2, as recorded in the Recorder's Office of Allegheny County, PA, in Plan Book Volume 186, pages 46 and 47; thence along the northerly line of said Parcel A2, in a westwardly direction South 63 degrees 19 minutes 00 seconds West, a distance of 24-feet to the centerline of a 45-foot private road; thence along the centerline of said 45-foot private road, the following courses and distances: North 26 degrees 41 minutes 00 seconds West 20.50 feet; thence by the arc of a circle deflecting to the left having a radius of 100-feet, an arc distance of 82.06 feet; thence North 73 degrees 42 minutes 00 seconds West, 171.15 feet; thence by a curve deflecting to the right having a radius of 130 feet, an arc distance of 109.82 feet to a point; thence North 25 degrees 18 minutes 00 seconds West, 87.93 feet; thence by a curve deflecting to the right having a radius of 150 feet, an arc distance of 104.23 feet to a point, thence North 14 degrees 30 minutes 45 seconds East, 3.64 feet, to the Southerly right of way line of West Arcadia Drive, a 50 foot public street; thence in an eastwardly direction along the southerly right of way line of West Arcadia Drive, by an arc of a circle deflecting to the left, having a radius of 205 feet, an arc distance of 147.40 feet to a point; thence continuing the Southerly right of way line of West Arcadia Drive North 63 degrees 19 minutes 03 seconds East, 20.73 feet to a point; thence by a curve deflecting to the right, having a radius of 25 feet, an arc distance of 39.27 feet to a point on the westerly right of way of McKnight Road, aforesaid; thence along the westerly right of way line of McKnight Road, in a southwardly direction, south 26 degrees 41 minutes 00 seconds East, a distance of 418.66 feet to the point at the place of BEGINNING.

CONTAINING an area of 1.61 acres, more or less.

TOGETHER WITH all common use and interest in Easements as set forth in Declaration of Development and Maintenance Obligations, Easements and Restrictive Covenants between Ralph A. Pannier, et ux., et al., dated April 7, 1994 and recorded in Deed Book Volume 9202, page 300.

TOGETHER WITH all common use and interest in Parking Easement and License Agreement between the Estate of Alfred E. Thomson, III and Outback Steakhouse of Florida, Inc. dated June 10, 1996 and recorded in Deed Book 9718, page 518.

Being the same premises which Outback Steakhouse of Florida, Inc., a Florida corporation by Deed dated as of June 14, 2007 and recorded July 2, 2007 in Allegheny County in Deed Book Volume 13289, Page 465 conveyed unto Private Restaurant Properties, LLC, a Delaware limited liability company, in fee. Florida, Inc. and 120 North Pointe Associates recorded in Book 6308, Page 294.

Being the same premises which Outback Steakhouse of Florida, Inc., a Florida Corporation by Deed dated 4-11-2007 and recorded 7-5-2007 in Lancaster County in Instrument Number 5632567 conveyed unto Private Restaurant Properties, LLC, a Delaware limited liability company, in fee.

160. FEE PARCEL DESCRIPTION: UNIT 3952

ALL that certain piece or parcel of land lying, being and situate in Allegheny Township, Blair County, Pennsylvania:

Beginning at a point on the westerly most legal right of way of S.R. 1001 (Old Route 0220, Plank Road), said point being 76.49 feet in a northeasterly direction from the intersection of the westerly most legal right of way line of S.R. 1001 and the southerly most property line of lands of the grantor; thence from said point running through the lands of the grantor the following six (6) courses and distances:
Along a curve deflecting to the right, having a radius of 50.00 feet, an arc length of 45.41 feet, a chord bearing of South 41 degrees 32 minutes 06 seconds West, and a chord distance of 43.87 feet to a point; thence North 72 degrees 48 minutes 48 seconds West, a distance of 195.96 feet to a point; thence

North 21 degrees 15 minutes 01 second East, a distance of 326.82 feet to a point; thence

North 59 degrees 22 minutes 49 seconds East, a distance of 51.85 feet to a point; thence

North 52 degrees 26 minutes 39 seconds East, a distance of 71.66 feet to a point; thence

South 74 degrees 29 minutes 00 seconds East, a distance of 103.48 feet to a point along the westerly most legal right of way line of S.R. 1001; thence from said point running along and with S.R. 1001

South 15 degrees 31 minutes 00 seconds West, a distance of 386.15 feet to the Point and Place of Beginning.

Together with the right unto the Grantee, its successors and assigns, to the use for access, ingress, egress, and regress to and from the said premises, as well as for general utility purposes, in common with “Grantor”, and its successors and assigns, and others lawfully entitled to the use of the same, of the rights of way referred to in deed dated November 20th, 1972, recorded December 1, 1972, in D.B.V. 943, p. 57, which rights were described therein as specifically including but not limited to the:

...right to the use of a proposed roadway fifty (50) feet wide along the South and Southwesterly sides of the property here conveyed; twenty-five (25) feet of which roadway is upon the property here conveyed and twenty-five (25) feet of which is on remaining property of Grantors. This road may be used by Grantors and Grantees, their heirs, successors and assigns in common as an access road, and for general utility purposes and to be located as shown on draft of premises prepared by P. Joseph Lehman, Inc., dated November 7, 1972, Project No. 939; neither party, however, to be obligated to maintain said roadway.

Further, together with the right unto the Grantee and its successors and assigns, to the use for access, ingress, egress, and regress to and from the said premises over a 25 foot common access easement as well as access through and over Sheraton Drive, a private right of way shown on the Minor Subdivision Plan for Joseph L. Haller approved by the Allegheny Township Supervisors on September 9, 1997, and recorded in Blair County Plat Book 18, at Page 17.

Being the same premises which Outback Steakhouse of Florida Inc., a Florida corporation by Quit Claim Deed dated 6/4/2007 and recorded 6/29/2007 in Blair County in Instrument # 200712759 conveyed unto Private Restaurant Properties, LLC, a Delaware limited liability company, in fee.

161. FEE PARCEL DESCRIPTION: UNIT 4117

All that certain piece, parcel or lot of land, lying and being in Anderson County, State of South Carolina, containing 1.92 acres, more or less, and being shown and designated as Lot Nos. 1 and 2 on a survey of Anderson Surveying Associates, Inc., by Don M. Kelly, RLS 9318, entitled "BOUNDARY SURVEY AT THE REQUEST OF OUTBACK STEAKHOUSE OF FLORIDA, INC." dated August 18, 1994 of recorded in the Anderson County Records in Plat Slide 534 at page 9-B and having the following metes and bounds, to wit:

BEGINNING at a 5/8" rebar, old on the right of way of Interstate Boulevard that is approximately 827' from the intersection of US hwy. 76 and SC Hwy. 28; thence along the right of way South 38-25-35 East 131.46' (chord)(R=366.00; L=132.18') to a 1/2" rebar, set; thence South 54-44-12 East 74.63 (chord)(R=366.00; L=74.76') to a 1/2" rebar, old; thence leaving the right of way South 17-34-34 West 282.40' to a 1/2" rebar, old on the right of way of US Hwy. 76 and SC Hwy. 28; thence along the right of way North 78-28-25 West 44.34 to a concrete monument, old; thence North 57-54-55 West 160.67' (chord)(R=235.00; L=163.97') to a 1/2" rebar, old; thence North 30-05-59 West 64.11' (chord)(R=235.00; L=64.32') to a concrete monument, old; thence North 22-28-48 West 143.49' to a concrete monument, old; thence leaving the right of way North 67-39-11 East 149.33' to a 3/4" open top pipe, old; thence North 43-00-12 East 104.27' to the point of beginning.

Being bounded on the North by Interstate Boulevard; on the East by Lot No. 3; on the South by US Hwy. 76 and SC Hwy. 28; on the West by Waffle House and Detention Area No. 1.

162. FEE PARCEL DESCRIPTION: UNIT 4118

All that certain piece, parcel or lot of land, lying and being near the City of Columbia, County of Richland, State of South Carolina, being located on the northern side of US Highway #1, consisting of approximately 1.58 acres, designated as Outparcel 2B, as shown on a plat prepared by Landtech, Inc. for Outback Steakhouse of Florida, Inc. dated December 2, 1994, last revised on December 7, 1994 and recorded in Plat Book 55 at page 5782, Richland County Records.

DERIVATION: Deed of Outback Steakhouse of Florida, Inc. to OSF Real Estate, Inc., dated June 14, 2007 and recorded June 26, 2007 in Record Book 1328 at page 3636, Richland County Records; Affidavit Change of Corporate Name filed on June 26, 2007 in Record Book 1328 at page 3662, aforementioned records.

163. FEE PARCEL DESCRIPTION: UNIT 4119

ALL THAT CERTAIN PARCEL OF LAND CONTAINING 71,853 SQUARE FEET OR 1.65 ACRES, MORE OR LESS, THE SAME BEING SHOWN AS OF TAX PARCEL 099-01-083 IN THE OFFICE OF ASSESSOR FOR FLORENCE COUNTY, SOUTH CAROLINA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT; BEGINNING AT A #4 REBAR ON THE EASTERN EDGE OF A 30 FOOT EASEMENT, SAID POINT BEING REACHED BY COMING FROM A COTTON SPINDLE AT THE INTERSECTION OF THE NORTH RIGHT OF WAY OF DUNBARTON DRIVE (S21-1184) AND THE WESTERN EDGE OF A 30 FOOT EASEMENT SAID POINT BEING LOCATED APPROXIMATELY 220 FEET WEST OF THE MAIN ENTRANCE TO MAGNOLIA MALL AND BEING THE POINT OF COMMENCEMENT LABELED P.O.C. ON SURVEY; THENCE, S07°-21'-57"E A DISTANCE OF 18.70 FEET; THENCE, N79°-05'-03"E A

DISTANCE OF 30.00 FEET; THENCE, N08°-45'-57"W A DISTANCE OF 39.20 FEET TO THE POINT OF BEGINNING LABELED P.O.B. ON SURVEY; THENCE, N08°-46'-38"W A DISTANCE OF 138.78 FEET TO A NAIL; THENCE, N09°-15'-53"W A DISTANCE OF 218.76 FEET TO A POINT IN A CURB; THENCE, N19°-34'-31"E A DISTANCE OF 42.78 FEET TO A 3/4" PIPE; THENCE, N67°-46'-40"E A DISTANCE OF 38.34 FEET TO A 3/4" PIPE; THENCE, S70°-16'-25"E A DISTANCE OF 28.27 FEET; THENCE, S25°-14'-26"E A DISTANCE OF 184.05 FEET TO A #4 REBAR; THENCE, S55°-51'-43"E A DISTANCE OF 162.01 FEET TO A 1/2" PIPE; THENCE, S17°-54'-02"E A DISTANCE OF 43.11 FEET TO A 1/2" PIPE; THENCE, S27°-20'-44"W A DISTANCE OF 115.42 FEET TO A 3/4" PIPE; THENCE, S 79°-04'-46"W A DISTANCE OF 169.73 FEET TO A #5 REBAR; THENCE N23°-00'-08"E A DISTANCE OF 36.01 FEET TO A NAIL; THENCE N63°-58'-44"W A DISTANCE OF 23.58 FEET TO A #4 REBAR; THENCE, S22°-59'-22"W A DISTANCE OF 27.98 FEET TO A #5 REBAR; THENCE, N25°-34'-25"W A DISTANCE OF 18.88 FEET TO THE POINT OF BEGINNING.

END OF DESCRIPTION.

164. FEE PARCEL DESCRIPTION: UNIT 4120

All that certain piece, parcel or tract of land lying and being situate in the City of Rock Hill, York County, South Carolina, bounded by the rights of way of Interstate 77, Highway 161 -Celanese By-Pass, Riverchase Boulevard, and River Point Court, and being more particularly described according to "Boundary and Topographic Survey for Outback Steakhouse of Florida, Inc.", prepared by Cardan International Ltd., dated January 5, 1996, revised January 15, 1996, and further revised January 30, 1996, recorded in Plat Book A-75 at Page 8, Office of the Clerk of Court for York County, South Carolina, the metes and bounds of which are as follows:

BEGINNING at an old concrete monument found in the northern right of way of Hwy 161, said point being at the northwestern right of way intersection of 1-77 and Hwy 161—Celanese By-Pass; thence, from said concrete monument found in the northern right of way of Hwy 161 N 88° 05' 54" W 160.03 feet to an old concrete monument; thence, continuing with said right of way N 88° 06' 03" W 32.41 feet to a pk nail set in said right of way, also being the northeastern right of way intersection of Riverchase Blvd. and Hwy 161; thence, with a curve to the right having a radius of 20.00 feet, an arc length of 29.57 feet and a chord bearing and distance of N 45° 44' 20" W 26.95 feet to an iron pin set in the eastern right of way of Riverchase Blvd.; thence, with said right of way N 03° 22' 37" W 111.13 feet to an iron pin set; thence continuing with said right of way with a curve to the left having a radius of 542.00 feet, an arc length of 84.24 feet, and a chord bearing and distance of N 07" 49' 47" W 84.16 feet to a point at the southeastern right-of way intersection of River Point Court and Riverchase Blvd.; thence continuing with the right of way of River Point Court along a curve to the right having a radius of 20.00 feet, an arc length of 30.48 feet and a chord bearing and distance of N 31° 22' 17" E 27.61 feet; thence continuing with a curve to the right having a radius of 40 00 feet, an arc length of 32.52 feet, a chord bearing and distance of S 81° 40' 56" E 31.63 feet; thence with a curve to the left having a radius of 55.00 feet, an arc length of 131.13 feet and a chord bearing and distance of N 53° 18' 19" E 102.21 feet to an iron pin set; thence leaving said right of way S 80° 30' 29" E 60.93 feet to an existing right of way monument in the western right of way of 1-77; thence with said right of way S 09° 52' 53" W 253.14 feet to an old concrete monument; thence continuing with said right of way S 51° 06' 26" W 149.97 feet to the POINT OF BEGINNING.

Being the same property conveyed to Outback Steakhouse of Florida, Inc. by Deed of Record February 15, 1996 in Book 1452, Page 50, Registers Office of York County, South Carolina.

LESS AND EXCEPTING THEREFROM all that certain property conveyed to the South Carolina Department of Transportation by Outback Steakhouse of Florida. Inc dated September 9 1999 and recorded January 20, 2000 in Book 2997 at page 170, York County Records

DERIVATION: Deed of Outback Steakhouse of Florida, Inc. to OSF Real Estate, LLC, dated June 14, 2007 and recorded June 26, 2007 in Book 9205 at page 281; Affidavit Change of Corporate Name Change recorded on June 26. 2007 in Book 9205 at page 291, York County

165. FEE PARCEL DESCRIPTION: UNIT 4121

All that certain condominium unit lying and being on Hilton Head Island, Beaufort County, South Carolina, being known as Unit A (The Restaurant Unit), Barnes & Noble Center Horizontal Property Regime (also know as 35 Hatton Place, Suite 300) and being more particularly shown and described by reference to the Master Deed of EPIPD-lndigo Run, L.P., establishing said Barnes & Noble Center Horizontal Property Regime, said Master Deed being dated April 6, 1999 and recorded April 23, 1999 in the Beaufort County Records in Deed Book 1162 at page 2066 and Plat Book 69 at page 159, and any further Amendments thereto. For a more-detailed description as to the courses and distances, metes and bounds of the above-mentioned Unit, reference is had to the aforementioned plat of record.

TOGETHER WITH all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and any further amendments to the Master Deed and By-Laws of the Barnes & Noble Center Horizontal Property Regime referred to hereinabove.

DERIVATION: Deed of Outback Steakhouse of Florida, Inc. to OSF Real Estate, LLC, dated June 14, 2007 and recorded June 27, 2007 in Deed Book 2589 at page 1338, Beaufort County Records: and, Change of Corporate Name Affidavit filed on June 27, 2007 in Deed Book 2589 at page 1338, aforesaid records.

TAX MAP NO.: R510-008-000-0458-0001

166. FEE PARCEL DESCRIPTION: UNIT 4122

All that certain piece, parcel or tract of land, situate, lying and being in Greenwood County, State of South Carolina, and designated as Tract “B”, containing 1.75 acres, as shown on plat of survey entitled “Plat Made At The Request of Outback Steakhouse of Florida, Inc.” dated June 22, 1998 and recorded in the Office of the Clerk of Court for Greenwood County, SC in Plat Book 107 at Page 93, reference to said plat is herein made for the metes and bounds description as shown thereon.

Being the same property conveyed to Outback Steakhouse of Florida, Inc. by Deed of Record August 17, 1998 in Book 532, Page 333, Register’s Office of Greenwood County, South Carolina.

167. FEE PARCEL DESCRIPTION: UNIT 4123

All and singular, that certain tract of land, situate in Tilghman Estates Section, North Myrtle Beach, Horry County, South Carolina, containing 3.21 Acres of land as shown on a plat prepared by Terry M.

Watson RLS Land Surveying, Inc., dated Dec. 8, 1987, and recorded in the Horry County records in Plat Book 99 at Page 38.

DERIVATION: Deed of Outback Steakhouse of Florida, Inc. to OSF Real Estate, LLC, dated April 11, 2007 and recorded June 26, 2007 in Deed Book 3255 at page 2558, Horry County Records; and Affidavit Change of Corporation Name recorded June 26, 2007 in Deed Book 3255 at page 2567, aforesaid records.

Surveyor's Description

All that certain tract of land, situate in Tilghman Estates Section, North Myrtle Beach, Horry County, South Carolina and being more particularly described as follows:

Beginning at a found iron pin on the Northern right-of-way line of U.S. Highway 17 North (100' right-of-way); thence from said Point of Beginning with the line of now or formerly Allred Investment Company, LLC the following two (2) courses to wit: (1) N35°56'32"W for 316.51 feet to found iron pin; (2) N35°56'48"W for 226.33 feet to a found iron pin (bent) on the Southern right-of-way line of S.C. Highway 20 (75' right-of-way); thence with said Southern right-of-way line N48°16'23"E for 228.18 feet to a found iron pin; thence with the line of now or formerly Loris Community Hospital District the following three (3) courses to wit: (1) S35°58"31"E for 249.22 feet to a found iron pin; (2) S35°57'37"E for 23.69 feet to a found iron pin; (3) N53°54'00"E for 20.04 feet to a found iron pin; thence with the line of now or formerly Shiv of NMB LLC S35°59'05"E for 356.84 feet to a found iron pin on the Northern right-of-way of U.S. Highway 17 North; thence with said Northern right-of-way line S68°31'09"W for 255.64 feet to the Point of Beginning, containing 3.21 acres, more or less.

168. FEE PARCEL DESCRIPTION: UNIT 4124

ALL THAT CERTAIN PARCEL OF LAND CONTAINING 83,790 SQUARE FEET OR 1.924 ACRES, MORE OR LESS, THE SAME BEING SHOWN AS TAX PARCEL 2030702005 IN THE OFFICE OF ASSESSOR FOR SUMTER COUNTY, SOUTH CAROLINA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT; BEGINNING AT A #4 REBAR ON THE WESTERN RIGHT OF WAY OF U.S. HIGHWAY NUMBERS 76 AND 378, SAID POINT BEING REACHED BY COMING FROM A #4 REBAR AT THE INTERSECTION OF THE WESTERN RIGHT OF WAY OF SAID U.S. 76 & 378 AND THE SOUTHERN RIGHT OF WAY OF WILSON HALL ROAD (S43-692); THENCE ALONG SAID WESTERN RIGHT OF WAY OF U.S. 76&378 IN A SOUTHEASTERLY DIRECTION S.53°34'00"E., A DISTANCE OF 580.19 FEET TO A #4 REBAR AT THE POINT OF BEGINNING, LABELED P.O.B. ON DRAWING; THENCE CONTINUING ALONG SAID WESTERN RIGHT OF WAY OF U.S. 76&378, S.53°45'33"E., A DISTANCE OF 25.19 FEET TO A #4 REBAR; THENCE S.53°51'59"E., A DISTANCE OF 149.79 FEET TO A TIE ROD; THENCE DEPARTING SAID WESTERN RIGHT OF WAY OF U.S. 76&378 S.36°35'50"W., A DISTANCE OF 300.02 FEET TO A #4 REBAR; THENCE S.36°35'46"W., A DISTANCE OF 179.18 FEET TO A TIE ROD; THENCE N.53°39'53"W., A DISTANCE OF 174.96 FEET TO A #4 REBAR; THENCE N.36°35'42"E., A DISTANCE OF 478.64 FEET TO THE POINT OF BEGINNING.

END OF DESCRIPTION.

169. FEE PARCEL DESCRIPTION: UNIT 4127

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the State of South Carolina, County of Cherokee, in the City of Gaffney, and being shown on a plat entitled Outback Steakhouse, Gaffney, SC, by B.P. Barber & Associates, Inc., dated November 6, 2002, and recorded in Plat Book C-80 at page 3 & 4, said plat having the following metes and bounds, to wit:

Commencing at a 5/8" rebar, being the southwestemmost comer of Parcel A of Carolina Factory Shops and proceeding in a direction of N 69° 57' 42" E for a distance of 727.58 feet to a drill hole in concrete, this being the point of beginning; thence turning and proceeding through the property of Cherokee County (Carolina Factory Shops) the following courses and distances: in a direction of N 10° 15' 05" W for a distance of 113.58 feet to a 5/8" rebar; thence in a direction of N 79° 44' 55" E for a distance of 92.33 feet to a steel spike; thence in a direction of S 10° 15' 05" E for a distance of 113.53 feet to a drill hole in concrete, and thence in a direction of S 79° 43' 09" W for a distance of 92 33 feet to a drill hole in concrete, this being the point of beginning. This parcel contains 0.241 acre (10,485 square feet).

Being the same property conveyed to Outback Steakhouse of Florida, Inc. by Deed of Record March 7, 2003 in Book 143, Page 326, Registers Office of Cherokee County, South Carolina.

170. FEE PARCEL DESCRIPTION: UNIT 4210

Lot B1 of Mott's Addition to the City of Sioux Falls, Minnehaha County, South Dakota, according to the recorded plat thereof.

171. FEE PARCEL DESCRIPTION: UNIT 4314

All that tract or parcel of land lying and being in Knox County, Tennessee, and being more particularly described as follows:

SITUATED in the Sixth Civil District of Knox County, Tennessee and within the 47th Ward of the City of Knoxville, Tennessee, and being designated as Parcel 3.00, CLT Tax Map 132 and being all of Lot 1R3R, of the Market Place Subdivision record in Plat Cabinet N, Slide 40D in the Register's Office for Knox County, Tennessee, and being more particularly described as follows:

BEGINNING at an existing iron rod located in the Northerly right of way line of North Peters Road being South 77 deg. 31 min. 46 sec. West, 227.71 feet from the centerline intersection of North Peters Road and Market Place Boulevard;

THENCE, continuing on the Northerly right of way of Northern Peters Road 235.17 feet along a curve to the right having a radius of 1,410.00 feet and a chord bearing and distance of South 72 deg. 33 min. 53 sec. West, 234.90 feet to an existing iron spike located in the centerline of Peregrine Lane;

THENCE, leaving said right of way along the centerline of Peregrine Lane, North 12 deg. 46 min. 15 sec. West, 323.52 feet along the common line with Lot 1R2 of the Market Place Subdivision to an existing iron rod;

THENCE, leaving said centerline North 77 deg. 05 min. 05 sec. East, 233.94 feet along the common line with Lot 1R4R of the Market Place Subdivision to an existing iron rod;

THENCE, continuing along said common line North 12 deg. 37 min. 00 sec. West, 400.16 feet to an existing iron rod;

THENCE, South 76 deg. 12 min. 48 sec. West, 14.00 feet to an existing iron rod;

THENCE, North 12 deg. 37 min. 00 sec. West, 35.00 feet to an existing iron rod;

THENCE, North 76 deg. 12 min. 48 sec. East, 15.00 feet to an existing iron rod;

THENCE, South 12 deg. 37 min. 00 sec. East, 740.18 along the common line of Lots 2R2 and 2R1 of the Market Place Subdivision to the point of beginning.

CONTAINING, 75,392 square feet or 1.731 acres as shown on the map prepared by Barge Waggoner, Sumner and Cannon, Inc., bearing drawing No. 8897-63, and signed by Gary C. Clark, RLS NO. 1329.

BEING the same property conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue Special Warranty Deed from DFT Partners, a Tennessee general partnership, dated February 28, 1996, recorded March 12, 1996, in Book 2205, Page 264, Knox County, Tennessee Records.

Together with the non-exclusive access rights, if any, and subject to the terms, conditions, provisions and limitations of the following:

PARCEL II

Joint Permanent Access Easement by Waterwheel Development dated July 9, 1993, and recorded July 20, 1993, in Deed Book 2112, Page 111.

PARCEL III

Perpetual Easement Agreement by and between Waterwheel Development Company and DFT Partners, dated September 20, 1993 and recorded September 21, 1993, in Deed Book 2118, Page 530, aforesaid records.

Being the same property conveyed to Private Restaurant Properties, LLC, a Delaware limited liability company by Quit Claim Deed from Outback Steakhouse of Florida Inc., a Florida corporation, dated April 11, 2007, recorded June 29, 2007, in Instrument No. 200706290107258, Knox County, Tennessee Records.

172. FEE PARCEL DESCRIPTION: UNIT 4318

Being a 1.6 acre tract of land lying in the 1st Civil District of Putnam County, Tennessee, lying between Bunkerhill Road and Interstate Drive, and being more particularly identified as Lot No. 1 of the Jimmy Wright Division, as depicted on the Plat of record in Note Book 19, page 64, and in Plat Cabinet B, Slide 166, in the Register’s Office for Putnam County, Tennessee.

Being the same property conveyed to Private Restaurant Properties, LLC by Quit Claim Deed of record in Book 404, Page 79, Register's office for Putnam County, Tennessee.

173. FEE PARCEL DESCRIPTION: UNIT 4319

All that tract or parcel of land lying and being in Montgomery County, Tennessee, and being more particularly described as follows:

TRACT ONE:

Being a tract of land situated in the Sixth Civil District in Montgomery County, Tennessee, said tract being a portion of the Gary Mathews Family Limited Partnership Property and a portion of Official Record Volume 528, page 1477, as recorded in the Register's Office of Montgomery County, Tennessee and being more fully described as follows:

BEGINNING at point in the west right of way of Wilma Rudolph Boulevard, (U.S. Highway 79), Said point also being in the south line of a private forty (40) foot casement, said point also being the northeast corner of said Tract II;

THENCE leaving said Wilma Rudolph Boulevard and with said south line of said casement and north line of said Tract II, North, 87 degrees 41 minutes 00 seconds West, 40.00 feet to a point;

THENCE continuing with said line, North 02 Degrees 19 Minutes 00 Seconds East, 5.00 feet to a point;

THENCE continuing with said line, North 87 degrees 41 minutes 00 seconds West, 386.79 feet to point, said point being the northwest corner of said Tract II and the northeast corner or Tract III;

THENCE leaving said easement and with the west line of said Tract II and the East line of Tract III, South 02 Degrees 19 Minutes 05 Seconds West, 162.79 feet to a point, said point being the new southwest corner of the said Tract II and the new southeast corner of said Tract III, said point also being the north line of a portion of Tract I;

THENCE on a now severance line and with said north line of portion of said Tract I and the south line of said Tract III, North 87 degrees 43 minutes 44 seconds west, 395.41 feet to a point, said point being the new southwest corner of said Tract III;

THENCE on a new severance line and with the new west line of said Tract II and the new east line of a portion of Tract I, North 19 degrees 01 minutes 00 seconds East, 191.26 feet to a point, said point being the northwest corner of said Tract III, said point also being in the centerline of said private casement and the south line of Tract I;

THENCE with said north line of Tract III and the south line of Tract I and the centerline of said casement, South 87 degrees 41 minutes 00 seconds East, 774.77 feet to a point, said point being in said west right of way of said Wilma Rudolph;

THENCE with said Wilma Rudolph, South 19 degrees 01 minutes 00 seconds west, 26.20 feet to the point of beginning.

Said tract containing 1.75 acres more or less.

Said tract being subject to all casements, right of ways, conveyances and restrictions of record.

Being the same property conveyed being conveyed to Outback Steakhouse of Florida, Inc., a Florida Corporation by Warranty Deed from Gary Mathews Family Limited partnership, dated March 21, 1997 and recorded March 21, 1997, in Volume 618, page 2250, Montgomery County, Tennessee Records.

TRACT TWO: A non-exclusive easement granted to Outback Steakhouse of Florida, Inc., pursuant to a Sewer Easement Agreement dated the 21st of March, 1997, of record in Official Record Book Volume 618, page 2258, Register's Office, Montgomery County, Tennessee.

TRACT THREE: Easement granted to Outback Steakhouse of Florida, Inc., pursuant to a Drainage Easement Agreement dated the 21st of March, 1997, of record in Official Record Book Volume 618, page 2253, Register's Office, Montgomery County, Tennessee.

174. FEE PARCEL DESCRIPTION: UNIT 4320

Fee Parcel

All that tract or parcel of land lying and being in the District of Rutherford County, Tennessee, and being more particularly described as follows:

LAND in Rutherford County, Tennessee, being Lot No, 4, on the Plan of 3rd Resubdivision of Lot 3, Market Place Center, as shown on plat of record in Plat Book 18, page 180, the Register's Office of Rutherford County, Tennessee, to which plat reference is hereby made for a more particular description.

BEING the same property conveyed to Private Restaurant Properties, LLC by Quitclaim Deed of Record in Book 761, page 1804, Register's Office for Rutherford County, Tennessee.

TOGETHER with an exclusive easement for access and pedestrian and vehicle traffic as described by Deed of Record in Book 596, Page 285.

TOGETHER with those non-exclusive easement rights granted to the insured pursuant to that certain Reciprocal Easement Agreement with Covenants of record in Book 596, page 292.

Located in the 13th Civil District of Rutherford County, Tennessee, Bound on the north by the remaining property of Lot 3, Market Place Centre; on the east by proposed Lot 4, Market Place Centre; on the south by a 38'x27' public access easement; and on the west by Walmart (Deed Book 539, Page 148).

Beginning at a point on the north right-of-way of the 38' x 27' public access easement, said point being in the east line of Walmart and being the southwest corner of this access easement; thence with the east line of Walmart N-07°31'40"-E 277.00 feet to a point, being the northwest corner of this easement; thence with the south line of the remaining property of Lot 3, Market Place Centre S-82°28'20"-E 27 feet to an iron pin set, being the northwest corner of proposed Lot 4, Market Place Centre and the northeast corner of this access easement; thence with the west line of proposed Lot 4, Market Place Centre S-07°31 '40"- W 277.03 feet to an iron pin set, being the southwest corner of proposed Lot 4,

Market Place Centre and the southeast corner of this access easement; thence with the north right-of-way of a 38’ x 27’ public access easement N-82°23’50”-W27 feet to the point at the beginning; containing 0.17 acre, more or less.

Easement Parcels

1. Together with an access easement providing for ingress/egress as shown on plat recorded at Plat Book 18, Page 180, aforesaid records.

2. Together with easements contained in that Cross Access Easement Agreement dated December 13, 1995, by and between Howard D. Wall and Sally S. Wall d/b/a W & O Investments, and Marketplace Centre Associates, L.L.C., a Tennessee limited liability company, recorded on December 15, 1995, in Book 563, Page 168, aforesaid records.

175. FEE PARCEL DESCRIPTION: UNIT 4324

All that tract or parcel of land lying and being in the Wilson County, Tennessee, and being more particularly described as follows:

TRACT 1 (MARTIN PROPERTY)

BEGINNING AT THE NORTHWEST CORNER OF THE W.W. VANHOOK LAND; THENCE IN A WESTERLY DIRECTION WITH THE SOUTH MARGIN OF THE FRANKLIN ROAD 150 FEET, MORE OR LESS, TO AN IRON STAKE DRIVEN IN THE GROUND; THENCE IN SOUTHERLY DIRECTION 515 FEET, MORE OR LESS, TO AN IRON STAKE DRIVEN TO THE GROUND; THENCE IN AN EASTERLY DIRECTION 150 FEET, MORE OR LESS, TO AN IRON PIN DRIVEN IN THE GROUND IN W.W.VANHOOK’S SOUTHEAST CORNER’ THENCE IN A NORTHERLY DIRECTION WITH THE W.W. VANHOOK’S WEST BOUNDARY AND A WIRE FENCE, 515 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

AND

TRACT 2 (CITY OF LEBANON PROPERTY)

BEGINNING ON AN IRON PIN IN THE SOUTH MARGIN OF FRANKLIN ROAD, SAID PIN BEING THE NORTHEAST CORNER OF THE REMAINING LANDS OF THE CITY OF LEBANON AND THE NORTHWEST CORNER OF THE TRACT HEREIN DESCRBIED, THENCE WITH SAID MARGIN OF SAID ROAD AS FOLLOWS: ALONG A CURVE, SAID CURVE HAVING A CENTERAL ANGLE OF 19 DEGS. 55 MINS. 02 SECS, A RADIUS OF 622.97 FEET, A CHORD OF SOUTH 78 DEGS. 42 MINS. 28 SECS, EAST 215.47 FEET, AN ARC DISTANCE OF 216.56 FEET TO A POINT, THENCE ALONG A CURVE, SAID CURVE HAVING A CENTRAL ANGLE OF 05 DEGS. 09 MINS. 33 SECS., A RADIUS OF 622.97 FEET, A CHORD OF NORTH 88 DEGS. 45 MINS. 15 SECS. EAST 56.08 FEET, AN ARC DISTANCE OF 56.10 FEET TO AN IRON PIN, THENCE SOUTH 03 DEGS. 49 MINS. 31 SECS. EAST 8.50 FEET TO AN IRON PIN IN THE NORTH BOUNDARY LINE OF THE EDDIE REED PROPERTY, THENCE LEAVING SOUTH MARGIN OF FRANKLIN ROAD AND RUNNING WITH SAID REED PROPERTY SOUTH 57 DEGS. 58 MINS. 38 SECS. WEST 54.72 FEET TO AN IRON PIN, SAID PIN BEING THE NORTHWEST CORNER OF THE REED PROEPRTY AND THE NORTHEAST CORNER OF THE

PERRY MARTIN PROPERTY, THENCE WITH THE NORTH BOUNDARY LINE OF THE SAID MARTIN PROPERTY SOUTH 59 DEGS. 47 MINS. 43 SECS. WEST 178.05 FEET TO AN IRON PIN, THENCE WITH THE WEST BOUNDARY LINE OF THE PERRY MARTIN PROPERTY SOUTH 21 DEGS. 55 MINS. 50 SECS. EAST 235.36 FEET TO A CONCRETE MONUMENT IN THE NORTH MARGIN OF INTERSTATE I-40, SAID PIN BEING THE SOUTHWEST CORNER OF THE MARTIN PROPERTY, THENCE WITH INTERSTATE I-40 OFF RAMP NORTH 52 DEGS. 07 MINS. 37 SECS. WEST 261.15 FEET TO A CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHEAST CORNER OF REMAINING LANDS OF THE CITY OF LEBANON AND THE SOUTHWEST CORNER OF THE TRACT HEREIN DESCRIBED, THENCE NORTH 12 DEGS. 36 MINS. 50 SECS. EAST 231.64 FEET TO THE POINT OF BEGINNING.

Being the same property conveyed to Private Restaurant Properties, LLC, a limited liability company by Quit Claim Deed from Outback Steakhouse of Florida, Inc., a Florida corporation, dated April 11, 2007, recorded July 06, 2007, in Book 1258, Page 207, Wilson County, Tennessee Records.

176. FEE PARCEL DESCRIPTION: UNIT 4350

All that tract or parcel of land situated in Third Civil District of Bradley County, Tennessee, more particularly described as Outparcel C. Final Subdivision Plat for Home Depot U.S.A., Inc. according to the plat thereof recorded on September 17, 2003, in Plat Book 16, Page 52, in the Register's Office of Bradley County, Tennessee.

TOGETHER WITH rights and benefits for access as set forth in Declaration of Restrictions and Grant of Easements by Home Depot U.S.A., Inc. a Delaware corporation, recorded September 22, 2003, in Book 1370, Page 1, aforesaid records.

Being the same properties conveyed to Private Restaurant Properties, LLC, a Delaware limited liability company by Quit Claim Deed from Outback Steakhouse of Florida, Inc., a Florida corporation, dated April 11, 2007, recorded July 06, 2007, in Book 1762, Page 648, Bradley County, Tennessee Records.

Map/Parcel ID: 034 05204 000

177. FEE PARCEL DESCRIPTION: UNIT 4401

Being that certain 1.3774 acres of land out of Reserve "C" of Wilchester West, a subdivision in Harris County according to a map or plat thereof recorded in Volume 132, Page 40 of the Map Records of Harris County, Texas, said 1.3774 acres being more particularly described as following:

COMMENCING at a 5/8 inch iron rod found for the most northerly northwest corner of said Reserve "C" and being the most northerly point of a cutback corner at the southeast corner of the intersection of Interstate Highway 10 (a.k.a. Katy Freeway), 275 feet wide, and Patchester Drive, 60 feet wide;

THENCE, S 89° 57' 21" E, along the north line of said Reserve "C" and the south right-of-way line of said Interstate Highway 10, at 123.02 feet pass a 5/8 inch iron rod set for the common north corner of a 39,948 square foot tract and a 50,000 square foot tract, in all a distance of 248.02 feet to a 5/8 inch iron rod set for the northeast corner of said 50,000 square foot tract and the POINT OF BEGINNING of the herein described tract;

THENCE S 89° 57’ 21” E, continuing along said north line and said south right-of-way line, a distance of 149.99 feet to a 5/8 inch iron rod set in said north line and said south right-of-way line for corner;

THENCE, S 00° 03’ 32” W, parallel with the west line of said Reserve “C”, a distance of 400.02 feet to a 5/8 inch iron rod set in the south line of said Reserve “C” and the north right-of-way line of Britoak Lane, 60 feet wide;

THENCE, N 89° 57’ 07” W, along said south line and said north right-of-way line, a distance of 149.99 feet to a 5/8 inch iron rod set in said south line and said north right-of-way line for the southeast corner of said 50,000 square foot tract;

THENCE, N 00° 03’ 32” E, along the east line of said 50,000 square foot tract and parallel with the west line of said Reserve “C”, a distance of 400.01 feet to the POINT OF BEGINNING and containing 60,000 square feet or 1,3774 acre of land.

178. FEE PARCEL DESCRIPTION: UNIT 4403

All that certain lot, tract or parcel of land lying and situated in Travis County, Texas and Being Lot 2, Block A, THE OUTBACK SUBDIVISION, according to the map or plat thereof recorded in Volume 93, Pages 27 and 28, of the Plat Records of Travis County, Texas, said Lot containing 1.883 acres of land and is more particularly described by metes and bounds as follows:

BEGINNING at a nail found on the West margin of U.S. Highway #183 (A.K.A. Research Boulevard), said nail is the common East corner of Lots 2 and 3 of the above said subdivision, and is the Southeast corner of this tract and is the PLACE OF BEGINNING hereof;

THENCE along the dividing line of Lots 2 and 3, S 79° 24’ 27” W, 322.36 ft. to an iron rod found at the common West corner of said Lots, said rod is in the East margin of Jollyville Road for the Southwest corner hereof;

THENCE along the West line of said Lot 2, same being the East margin of Jollyville Road, the following two calls:

1.) N 13° 15’ 41” W, 60.09 ft. to an iron rod found at a point of curvature hereof

2.) Along the above said curve, to the left, the radius of which is 1005.52 ft. the arc distance is 175.27 ft. the chord of which bears N 18° 13’ 16” W, 175.05 ft., to a nail set at the common West corner of Lots 1 and 2, of the above said Subdivision for the Northwest corner hereof

THENCE along the dividing line of said Lots 1 and 2, the following four calls:

1.) N 79° 27’ 04” E, 65.29 ft. to a nail set

2.) N 10° 32’ 56” W, 20.00 ft. to a nail set

3.) N 79° 26’ 58” E, 258.29 ft., to an “X” engraved into concrete

4.) S 27° 06’ 06” E, 87.48 ft. to an iron rod found at the common East corner of said Lots 1 and 2, said rod is in the West margin of Research Boulevard, for an angle point hereof

THENCE along the East line of said Lot 2 and the West margin of Research Boulevard, S 10° 34’ 24” E, 169.66 ft. to the PLACE OF BEGINNING and containing 1.883 acres or 82,023 square ft. of land, more or less.

179. FEE PARCEL DESCRIPTION: UNIT 4404

TRACT I:

Reserve “A” of Creekside At Town Center, a subdivision in Fort Bend County, Texas according to the map or plat thereof recorded under Slide No. 1281/B of the Plat Records of Fort Bend County, Texas.

TRACT II

Easement rights appurtenant to Tract I created in Reciprocal Easement Agreement by and between Sugarland Properties Incorporated, a Texas corporation and Team Bank, a federally insured banking institution, dated February 5, 1990, recorded under Fort Bend County Clerk’s File No. 9052538.

TRACT III:

Easement rights appurtenant to Tract 1 created in Reciprocal Easement Agreement by and between Sugarland Properties Incorporated, a Texas corporation and Frank Liu and Lisa Liu, dated December 16, 1993, recorded under Fort Bend County Clerk’s File No. 9383887.

180. FEE PARCEL DESCRIPTION: UNIT 4405

Tract 1:

A 1.617 acre tract of land situated in the corporate limits of the City of San Antonio, Bexar County, Texas, being a portion of Lot 15, New City Block 14857, I-10 NORTH OUTBACK STEAKHOUSE SUBDIVISION, as shown by plat recorded in Volume 9531, Page 52, Bexar County Deed and Plat Records, and being all that same land conveyed unto Outback/Carrabba, Inc. by special warranty deed executed July 20, 1994 and recorded in Volume 6177, Page 1467, Bexar County Real Property Records, in all said 1.617 acre tract being more particularly described as follows:

BEGINNING at a 1/2” iron rod found on the east right of way line of Interstate Highway 10, at the southwest corner of said Lot 15 for the southwest corner of this tract and being on a curve concave to the east having a radius of 5,729.65 feet;

THENCE, Northwesterly along the east right of way line of Interstate Highway 10 and with the arc of said curve, having a chord bearing and distance of North 20° 43’ 05” West 140.91 feet, through a central angle of 01° 24’ 33”, an arc distance of 140.92 feet to a point from whence a 1/2” iron rod found bears North 81° 28’ 29” West, 0.41 feet, at the southwest corner of a 1.572 acre tract conveyed unto Outback Steakhouse of Florida, Inc. by special warranty deed executed July 20, 1994 and recorded in Volume 6177, Page 1480, said Real Property Records, for the northwest corner of this tract;

THENCE, across said Lot 15, N 70° 08’ 05” East, 440.15 feet (cited on plat as 440.42’) to a 12” iron rod found on the common west line of a 34.299 acre tract described in Volume 10335, Page 2040, said Real

Property Records, and the east line of said Lot 15, at the southeast corner of said 1.572 acre tract for the north corner of this tract;

THENCE, along said common line South 19° 56’ 51” East, 179.92 feet (cited in deed as South 19° 51’ 55” East, 179.81 feet) to a 1/2” iron rod found at the southeast corner of said Lot 15, same being an interior corner of said 34.299 acre tract;

THENCE, along the common south line of said Lot 15 and a north line of said 34.299 acre tract, South 75° 13’ 20” West (bearing basis from Volume 9531, Page 52), 440.05 feet to the POINT OF BEGINNING.

CONTAINING in all 1.618 acres or 70,474 square feet of land, more or less.

Tract 2:

Easement Estate, for a reciprocal, mutual, non-exclusive right of access for ingress and egress, granted by Special Warranty Deed recorded in Volume 6141, Page 1080 and in Volume 6177, Page 1467, Real Property Records, Bexar County, Texas.

181. FEE PARCEL DESCRIPTION: UNIT 4406

TRACT 1

BEING 1.5083 ACRES (65,614 SQUARE FEET) OUT OF AND A PART OF RESERVE “B” OF BOROUGH PARK SUBDIVISION SITUATED IN THE CHARLES EISTERWALL SURVEY, A-191, MONTGOMERY COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN CABINET C, SHEET 116-B OF THE MAP RECORDS OF MONTGOMERY COUNTY, TEXAS, SAID PARCEL OF LAND MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A NORTHEAST CORNER OF A CALLED 1.6290 ACRE TRACT AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF VALLEYWOOD ROAD (60 FOOT RIGHT-OF-WAY) AND THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY N 45, BEING THE SOUTHERLY NORTHEAST CORNER OF A SAVE AND EXCEPT 0.1227 OF ONE ACRE (5344 SQUARE FEET) PARCEL OF LAND CONVEYED TO THE STATE OF TEXAS FOR CONTROLLED ACCESS HIGHWAY FACILITY, DATED OCTOBER 13, 1995 FILLED UNDER COUNTY CLERK’S FILE NO. 9563157 OF THE OFFICIAL RECORDS OF MONTGOMERY COUNTY, TEXAS;

THENCE NORTH 56 DEGREES 36 MINUTES 00 SECONDS WEST WITH THE NORTH LINE OF SAID 0.1227 ACRE STATE OF TEXAS TRACT A DISTANCE OF 14.15 FEET TO A POINT IN THE SOUTH LINE OF SAID VALLEYWOOD ROAD;

THENCE IN A WESTERLY DIRECTION WITH THE NORTH LINE OF SAID 0.1227 ACRE STATE OF TEXAS TRACT ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 359.05 FEET, A CENTRAL ANGLE OF 07 DEG. 20 MIN. 45 SEC. AN ARC LENGTH OF 46.03 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 82 DEG. 05 MIN. 02 SEC. WEST, 46.03 FEET TO A 5/8 INCH CHAPPED IRON ROD SET FOR THE NORTHWEST CORNER OF SAID 0.1227 ACRE STATE OF TEXAS TRACT, AND THE NORTHEAST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 53 DEGREES 42 MINUTES 42 SECONDS EAST ALONG THE WEST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 45 (VARIABLE WIDTH), THE WEST LINE OF SAID 0.1227 ACRE STATE OF TEXAS TRACT A DISTANCE OF 29.67 FEET TO A 5/8 INCH IRON ROD SET FOR CORNER;

THENCE SOUTH 11 DEGREES 35 MINUTES 54 SECONDS EAT CONTINUING ALONG THE WEST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 45, THE WEST LINE OF SAID 0.1227 ACRE STATE OF TEXAS TRACT A DISTANCE OF 124.97 FEET TO A 5/8 INCH IRON ROD SET FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 78 DEGREES 22 MINUTES 55 SECONDS WEST A DISTANCE OF 415.92 FEET TO AN “X” SET IN CONCRETE FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT ON THE EASTERLY RIGHT-OF-WAY LINE OF BOROUGH PARK DRIVE (60 FOOT RIGHT-OF-WAY);

THENCE NORTH 06 DEGREES 38 MINUTES 56 SECONDS WEST ALONG THE EASTERLY LINE OF SAID BOROUGH PARK DRIVE (60 FOOT RIGHT-OF-WAY) A DISTANCE OF 158.98 FEET TO A 5/8 INCH IRON ROD FOUND FOR A POINT OF CURVATURE TO THE RIGHT;

THENCE IN A NORTHERLY DIRECTION FOLLOWING SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 94 DEGREES 28 MINUTES 47 SECONDS, A RADIUS OF 25.00 FEET, A CHORD BEARING OF NORTH 40 DEGREES 35 MINUTES 28 SECONDS EAST, A CHORD DISTANCE OF 38.71 FEET, AN ARC LENGTH OF 41.22 FEET TO A 5/8 INCH IRON ROD FOUND FOR A POINT OF REVERSE CURVATURE TO THE LEFT ON THE SOUTHERLY LINE OF SAID VALLEYWOOD ROAD (60 FOOT RIGHT-OF-WAY);

THENCE IN AN EASTERLY DIRECTION FOLLOWING SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 09 DEGREES 25 MINUTES 11 SECONDS, A RADIUS OF 1830.00 FEET, A CHORD BEARING OF NORTH 83 DEGREES 07 MINUTES 16 SECONDS EAST, A CHORD DISTANCE OF 300.52 FEET, AN ARC LENGTH OF 300.88 FEET ALONG THE SOUTHERLY LINE OF SAID VALLEYWOOD ROAD (60 FOOT RIGHT-OF-WAY) TO A 5/8 INCH CHAPPED IRON ROD SET FOR CORNER;

THENCE NORTH 78 DEGREES 24 MINUTES 40 SECONDS EAST, CONTINUING ALONG THE SOUTHERLY LINE OF SAID VALLEYWOOD ROAD (60 FOOT RIGHT-OF-WAY) 10.00 FEET TO A 5/8 INCH CHAPPED IRON ROD SET FOR A POINT OF CURVATURE TO THE RIGHT;

THENCE IN AN EASTERLY DIRECTION FOLLOWING SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 12 DEGREES 41 MINUTES 42 SECONDS, A RADIUS OF 50.00 FEET, A CHORD BEARING OF NORTH 84 DEGREES 45 MINUTES 31 SECONDS EAST, A CHORD DISTANCE OF 11.08 FEET, AN ARC LENGTH OF 11.08 FEET ALONG THE SOUTHERLY LINE OF SAID VALLEYWOOD (60 FOOT RIGHT-OF-WAY) TO A 5/8 INCH CHAPPED IRON ROD SET FOR A POINT OF REVERSE CURVATURE TO THE LEFT;

THENCE CONTINUING IN AN EASTERLY DIRECTION FOLLOWING SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 05 DEGREES 20 MINUTES 57 SECONDS, A RADIUS OF 359.05 FEET, A CHORD BEARING OF NORTH 88 DEGREES 25 MINUTES 53 SECONDS EAST, A CHORD DISTANCE OF 33.51 FEET, AN ARC LENGTH OF 33.52 FEET ALONG THE SOUTHERLY LINE OF SAID VALLEYWOOD ROAD (60 FOOT RIGHT-OF-WAY) TO THE POINT OF BEGINNING AND CONTAINING 1.5083 ACRES (65,614 SQUARE FEET) OF LAND.

TRACT 2

EASEMENT RIGHTS CREATED BY PERPETUAL EASEMENT AND RESTRICTION DECLARATION BY OAKLEIGH INVESTMENTS, LTD AND OMERO DELPAPA DATED AUGUST 2, 1994, RECORDED AUGUST 5, 1994, RECORDED UNDER COUNTY CLERK'S FILE NO. 9444582, REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS.

TRACT I:

182. FEE PARCEL DESCRIPTION: UNIT 4407

All of Reserve "F", containing 1.855 acres more or less, Baybrook Park—Section One (1), a subdivision in Robert Wilson Survey, Abstract 88, according to the map or plat thereof recorded in Film Code 365053 Map Records of Harris County, Texas, and being the same property as being described in Special Warranty Deed R262273.

TRACT II:

Non-Exclusive Reciprocal Access Easement Agreement executed by and between BC Webster Land, L.P. and Outback/Carrabba, Inc., as described by instrument dated February 2, 1995, and filed for record under Harris County Clerk's File Number R262274.

183. FEE PARCEL DESCRIPTION: UNIT 4416

1.4115 ACRES (61,484 SQUARE FEET) OF LAND OUT OF AND A PART OF RESTRICTED RESERVE "A" OF KATY FREEWAY OUTBACK STEAKHOUSE, A SUBDIVISION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED UNDER FILM CODE NO. 357027 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, SAID 1.4115 OF AN ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND ON THE EXISTING EAST RIGHT-OF-WAY LINE OF DOMINION DRIVE (100 FEET WIDE), AS SHOWN ON LAT RECORDED IN VOLUME 219, PAGE 74 OF THE HARRIS COUNTY MAP RECORDS NAD BEING THE SOUTHWEST CORNER OF SAID RESTRICTED RESERVE "A" AND THE HEREIN DESCRIBED TRACT;

THENCE NORTH 00 DEGREES 26 MINUTES 18 SECONDS EAST, ALONG THE EAST RIGHT-OF-WAY LINE OF SAID DOMINION DRIVE, A DISTANCE OF 327.85 FEET TO A 5/8" IRON ROD WITH TXDOT ALUMINUM CAP FOUND ON THE PROPOSED SOUTH RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 10 (IH 10), VARIABLE WIDTH) AND BEING THE SOUTH CORNER OF A 0.0199 OF AN ACRE TRACT OF LAND AWARDED TO THE STATE OF TEXAS IN JUDGMENT RECORDED UNDER HARRIS COUNTY CLERK'S FILE NO. X213228, FOR AN ANGLE POINT IN THE WEST LINE OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 18 DEGREES 04 MINUTES 51 SECONDS EAST ALONG THE EAST LINE OF SAID DOMINION DRIVE, THE WEST LINE OF SAID 0.0199 ACRE TRACT A DISTANCE OF 45.95 FEET TO A 5/8 INCH CAPPED IRON ROD SET FOR AN ANGLE POINT IN THE EAST LINE OF SAID DOMINION DRIVE, AND THE WEST LIEN OF SAID 0.0199 ACRE TRACT;

THENCE NORTH 28 DEG. 33 MIN. 55 SEC. EAST, CONTINUING ALONG THE EAST LINE OF SAID DOMINION DRIVE, THE WEST LINE OF SAID 0.0199 ACRE TRACT A DISTANCE OF 32.16 FEET TO THE NORTHEAST CORNER OF SAID 0.0199 ACRE TRACT IN THE SOUTH RIGHT-OF-WAY LINE OF SAID IH 10, (SAID RIGHT- OF-WAY DETERMINED BY OTHERS AND PROVIDED BY TXDOT);

THENCE SOUTH 89 DEGREES 33 MINUTES 42 SECONDS EAST, ALONG THE EXISTING SOUTHERLY RIGHT- OF-WAY-LINE OF SAID IH 10, A DISTANCE OF 126.91 FEET TO A 5/8 INCH CAPPED IRON ROD CAPPED SET FOR THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT AND SAID RESTRICTED RESERVE "A";

THENCE SOUTH 00 DEGREES 26 MINUTES 18 SECONDS WEST ALONG THE EAST LINE OF RESTRICTED RESERVE "A" A DISTANCE OF 400.00 FEET TO A 5/8 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID RESTRICTED RESERVE "A" AND THE HEREIN DESCRIBED TRACT;

THENCE NORTH 89 DEG. 33 MIN. 42 SEC. WEST ALONG THE SOUTH LINE OF SAID RESTRICTED RESERVE "A" AND THE HEREIN DESCRIBED TRACT A DISTANCE OF 156.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.4115 OF ONE ACR (61,484 SQUARE FEET) OF LAND.

184. FEE PARCEL DESCRIPTION: UNIT 4417

Tract 1: A. Being all of Lot 344, New City Block 15674, OUTBACK STEAKHOUSE U. S. 281 NORTH, as shown by plat recorded in Volume 9527, Page 103, Bexar County Deed and Plat Records.

Tract 2: Easement Estate, created and granted by Article V, Section 5.1 and Section 5.2 that one certain Declaration And Reciprocal Easement Agreement-Quail Meadows, recorded in Volume 3672, Page 931, Real Property Records, Bexar County, Texas.

185. FEE PARCEL DESCRIPTION: UNIT 4418

TRACT 1

All that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas, out of the Crawford Burnett League, Abstract No. 7, and being Lot Three (3) of the Replat of the Kapchinski Hill, 19.1861 acres tract, as recorded in Volume 1600, Page 221, of the Brazos County Deed Records, and more particularly described as follows:

COMMENCING at a 5/8 inch iron rod found at the east corner of the said 19.1861 acres tract, also being on the southwest right-of-way line of Texas Avenue, for a point of reference;

THENCE North 46 degrees 22 minutes 53 seconds West, a distance of 125.25 feet, along the said southwest right-of-way line of Texas Avenue, to the point of beginning, said point being marked by a “X” etched in concrete at the east corner of this tract;

THENCE 36.53 feet along the arc of a curve to the right, having a radius of 35.00 feet, a central angle of 57 degrees 46 minutes 09 seconds, a chord bearing of South 57 minutes 19 seconds West, a chord length of 35.00 feet to a nail in pavement for a point of tangency of this curve;

THENCE South 43 degrees 37 minutes 07 seconds West, a distance of 110.00 feet to a point of curvature, a “X” etched in face of curb;

THENCE 15.71 feet, along the arc of a curve to the right, having a radius of 10.00 feet, a central angle of 90 degrees 00 minutes 00 seconds, a chord bearing a of South 88 degrees 37 minutes 07 seconds West, and a chord length of 14.14 feet to a “X” etched in the face of curb at the point of tangency of this curve;

THENCE North 46 degrees 22 minutes 53 seconds West, a distance of 134.00 feet to a nail in pavement set for the west corner of this tract;

THENCE North 43 degrees 37 minutes 07 seconds East, a distance of 151.00 feet to a 5/8 inch iron rod set at the north corner of this tract, on the southwest right-of-way line of Texas Avenue;

THENCE South 46 degrees 22 minutes 53 seconds East, a distance of 127.75 feet along said right-of-way line, to the Point of Beginning, and containing 0.4954 acres (21,581 square feet) of land.

TRACT 2:

A non-exclusive easement for the passage of pedestrians and the passage and parking of vehicles over and across the Common Area Parking, Walkway and Driveway areas of Replat of Kapchinski Hill, College Station, Texas, recorded on plat Volume 1600, Page 221 of the Official Records of Brazos County, Texas, as described in Article 2.1 of the Operation and Easement Agreement recorded in Volume 1309, Page 190 of the Official Records of Brazos County, Texas; and a non-ingress and egress of vehicles to and from Texas Avenue, to and from the tracts bordering, adjoining or being a part of said easement(s), as described in Article 2.2 of the Operation and Easement Agreement recorded in Volume 1309, Page 190 of the Official Records of Brazos County, Texas, and common drive way easements being more particularly described as follows:

Common Driveway Easement

Described as all that parcel of land being situated within the “Target Tract”, known as Lot Two (2) of the Replat of Kapchinski Hill plat Volume 1600, Page 221 of the Official Records of Brazos County, Texas, College Station, Brazos County, Texas, with easement boundaries further described as follows:

BEGINNING at a point within the Texas Avenue right-of-way line with such point being the most easterly property corner of the “Pad Tract”,

THENCE South 49 degrees 48 minutes 34 seconds East, a distance of 75.50 feet along and on the Texas Avenue right-of-way line to an easement corner;

THENCE South 67 degrees 51 minutes 03 seconds West, a distance of 35.00 feet to an easement corner;

THENCE South 40 degrees 11 minutes 26 seconds West, a distance of 49.50 feet to an easement corner;

THENCE South 04 degrees 48 minutes 34 seconds East, a distance of 21.21 feet to an easement corner;

THENCE South 49 degrees 48 minutes 34 seconds East, a distance of 42.93 feet to intersection with the “Target Tract” property line for an easement corner;

THENCE South 45 degrees 01 minutes 04 seconds West, a distance of 26.80 feet along and on the property line to an easement corner;

THENCE North 49 degrees 48 minutes 34 seconds West, a distance of 59.18 feet to an easement corner;

THENCE South 85 degrees 11 minutes 26 seconds West, a distance of 9.90 feet to an easement corner;

THENCE South 40 degrees 11 minutes 26 seconds West, a distance of 47.00 feet to an easement corner;

THENCE North 49 degrees 48 minutes 34 seconds West, a distance of 176.50 feet to an easement corner;

THENCE North 40 degrees 11 minutes 26 seconds East, a distance of 25.20 feet to the most westerly property corner of the “Pad Tract” and an easement corner;

THENCE South 49 degrees 48 minutes 34 seconds East, a distance of 134.00 feet along and on the “Pad Tract” property line to a property corner and an easement corner;

THENCE North 85 degrees 11 minutes 26 seconds East, a distance of 14.14 feet along and on the “Pad Tract” property line chord to a property corner and an easement corner;

THENCE North 40 degrees 11 minutes 26 seconds East, a distance of 110.00 feet along and on the “Pad Tract” property line to property corner and an easement corner;

THENCE North 12 degrees 31 minutes 49 seconds East, a distance of 35.00 feet along and on the “Pad Tract” property line chord to a property corner within The Texas Avenue right-of-way line with such point being the most easterly property corner of the “Pad Tract” and the Point of Beginning

Common Drive Easement

Described as all that parcel of land being situated along and either side of the common property line between the “Developer Tract” and the “Target Tract”, both of which are described as Lots One (1) and Two (2) in the Replat of Kapchinski Hill in College Station, plat Volume 1600, Page 221, of the Official Records of Brazos County, Texas, College Station, Brazos County, Texas, with easement boundaries further described as follows:

BEGINNING at a point within the southwest right-of-way line of Texas Avenue with such point being the intersection point of the common property line between the “Developer Tract” and the “Target Tract” of Kapchinski Hill;

THENCE South 49 degrees 48 minutes 34 seconds East, a distance of 47.50 feet along and on the right-of-way line to an easement corner;

THENCE South 85 degrees 48 minutes 34 seconds West, a distance of 35.36 feet to an intersection with the city building setback line, twenty-five (25) feet from the Texas Avenue right-of-way line, for an easement corner;

THENCE South 40 degrees 11 minutes 26 seconds West, a distance of 305.00 feet to an easement corner;

THENCE South 04 degrees 48 minutes 34 seconds East, a distance of 23.02 feet to an easement corner;

THENCE South 79 degrees 48 minutes 34 seconds East, a distance of 59.15 feet to an easement corner;

THENCE South 40 degrees 11 minutes 26 seconds West, a distance of 43.30 feet to a property corner;

THENCE South 40 degrees 11 minutes 26 seconds West, a distance of 307.13 feet along and a joint property line to a joint property corner;

THENCE North 39 degrees 28 minutes 57 seconds West, a distance of 26.41 feet along and on the west property line of the “Developer Tract” to an easement corner;

THENCE North 40 degrees 11 minutes 26 seconds East, a distance of 287.57 feet to an easement corner;

THENCE North 04 degrees 48 minutes 34 seconds West, a distance of 21.21 feet to an easement corner located a distance of 20.00 feet from a 90.00 foot joint property line segment;

THENCE North 49 degrees 48 minutes 34 seconds West, a distance of 90.00 feet to an easement corner;

THENCE North 40 degrees 11 minutes 26 seconds East, a distance of 30.00 feet to an easement corner;

THENCE North 85 degrees 48 minutes 34 seconds East, a distance of 28.28 feet to an easement corner located 20.00 feet from a joint property line;

THENCE North 40 degrees 11 minutes 26 seconds East, a distance of 305.00 feet to an easement corner;

THENCE North 04 degrees 48 minutes 34 seconds West, a distance of 35.36 feet to an intersection with the Texas Avenue right-of-way line for an easement corner;

THENCE South 49 degrees 48 minutes 34 seconds East, a distance of 45.00 feet to the Point of Beginning.

SAVE AND EXCEPT:

Being 0.022 hectare (0.053) acre of land, in the C. Burnett League, Abstract No. 7, Brazos County, Texas, being part of and out of that certain 0.4954 acre tract of land, conveyed from Culpepper Realty Company to Outback Steakhouse of Florida, Inc., by deed dated June 17, 1993, and recorded in the Official Records of Brazos County, in Volume 1828, Page 164, and under Clerk's File No. 524126, being all of Lot 3, Replat of Kapchinski Hill Subdivision, as shown on map thereof recorded in Volume 1600, Page 221, Official Records of Brazos County, Texas, said 0.022 hectare of land being more particularly described as follows:

COMMENCING at a P.K. nail set for the most westerly corner of said Lot 3 and an interior corner of Lot 2 of said subdivision, thence as follows:

North 43 degrees 37 minutes 07 seconds East, with a common line of said Lot 3 and Lot 2, of said Replat of Kapchinski Hill Subdivision, a distance of 41.241 meters (135.31 feet) to a 16mm (5/8 inch) iron rod with aluminum TXDOT disk set in the proposed southwesterly right of way line of BS 6-R (width varies), and being the POINT OF BEGINNING of the herein described parcel having surface coordinates of X=1085415.681 and Y=3112021.122 (all bearings and coordinates are based on the Texas State Plane Coordinate System, Central Zone, NAD 1927, coordinates are converted to metric and provided by TXDOT. All distances and coordinates shown are surface, and may be converted to grid by multiplying by a combined adjustment factor of 0.99988, having a station of 21+166.696, and an offset of 19.750 meters (64.80 feet) right of the proposed baseline of BS 6-R.

1. THENCE, North 43 degrees 37 minutes 07 seconds East, with a common line of said Lot 2 and Lot 3, a distance of 4.784 meters (15.69 feet) to the existing southwesterly right of way line of BS 6-R, bases on a width of 130.480 meters (100 feet), a prescriptive road);

2. THENCE, South 46 degrees 22 minutes 53 seconds East, with the existing southwesterly right of way line of BS 6-R, a distance of 38.938 meters (127.75 feet) to a point of curvature;

3. THENCE, in a southerly direction, with a curve to the right, having a central angle of 56 degrees 17 minutes 29 seconds", a radius of 10.668 meters (35.00 feet), and an arc length of 10.481 meters (34.39 feet), a chord bearing of South 18 degrees 14 minutes 06 seconds East, a distance of 10.065 meters (33.02 feet), to a P.K. nail set in the proposed southwesterly right of way line of BS 6-R, having a station of 21=214.509, and an offset of 19.750 meters (64.80 feet) right of the proposed baseline of BS 6-R;

4. THENCE, North 46 degrees 25 minutes 27 seconds West, with the said existing southwesterly right of way line of BS-6-R, a distance of 47.813 meters (156.86 feet) to the Point of Beginning and Containing 0.022 Hectare (0.053 acre) of land, more or less.

186. FEE PARCEL DESCRIPTION: UNIT 4422

ALL THAT CERTAIN TWO TRACTS OF LAND, THE FIRST TRACT BEING LOT 1 BLOCK A, THE OUTBACK SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 93, PAGES 27 AND 28, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, THE SECOND TRACT BEING A PORTION OF TRACT 2, PANNELL AND GAFFIELD SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY,

TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 12, PAGE 84, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, SAID LOT 1 AND A PORTION OF TRACT 2 BEING COMBINED FOR THE PURPOSES OF THIS DESCRIPTION AND THE PERIMETER OF THE TWO TRACTS COMBINED IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pipe found at the West common corner of Tracts 1 and 2 of the above said Pannell and Gaffield Subdivision, said pipe is in the North line of Lot 2, Block A, of the above said the Outback Subdivision, said pipe is an ell corner of the herein described tract and is the PLACE OF BEGINNING hereof;

THENCE over and across the above said Tract 2, N 52° 52’ 41” W, 99.91 ft. to an iron rod set in the Northwest line of Tract 2, same being the Southeast line of the Amended Plat of Lots A, B and C, Duval Oaks Subdivision, a Subdivision in Travis County, Texas, according to the Map or Plat thereof recorded in Volume 89, Page 189, Plat Records of Travis County, Texas, said rod is the Northwest corner hereof;

THENCE along the dividing line of the said Pannell and Gaffield Subdivision, and the Amended Plat of Lots A, B and C, Duval Oaks Subdivision, (herein after referred to as Duval Oaks) N 37° 07’ 21” E, 321.30 ft. to an iron pipe found at the Southeast corner of Lot A of said Duval Oaks, said pipe is in the South line of Lot 1, Block A, of the Jack Izard Subdivision, a Subdivision in Travis County, Texas, according to the Map or Plat thereof recorded in Book 93 Pages 3 and 4, of the Plat Records of Travis County, Texas, said pipe is in the Northeast corner hereof;

THENCE along the South line of said Lot 1, Block A, Jack Izard Subdivision, the following two calls:

1.) S 62° 43’ 23” E, 101.31 ft. to an iron rod found;

2.) N 53° 46’ 09” E, 16.16 ft. to an iron rod found at the Northeast corner of the above said Lot 1 Block A, the Outback Subdivision, said rod is in the West margin of Research Boulevard, and is the most Easterly Northeast corner hereof;

THENCE along the East line of said Lot 1, same being the West margin of Research Boulevard S 10° 34’ 24” E, 399.80 ft. to an iron rod found at the common East corner of Lots 1 and 2, Block A, The Outback Subdivision for the Southeast corner hereof;

THENCE along the dividing line of said Lots 1 and 2, Block A, The Outback Subdivision, the following four calls:

1.) N 27° 06’ 06” W, 87.48 ft. to an “X” engraved into concrete;

2.) S 79° 26’ 58” W, 258.29 ft. to a nail set;

3.) S 10° 32’ 56” E, 20.00 ft. to a nail set;

4.) S 79° 27’ 04” W, 65.29 ft. to a nail set at the common West corner of said Lots 1 and 2, said nail is in the East margin of Jollyville Road, and is the Southwest corner hereof;

THENCE along the West line of said Lot 1 same being the East margin of Jollyville Road, along a curve to the left, which has a radius of 1005.52 ft., an arc distance of 20.92 ft. the chord of which bears N 24° 41’ 56” W, 20.91 ft. to an iron rod set at the common West corner of said Lot 1 and said Tract 1 of the Pannell and Gaffield Subdivision, said rod is an ell corner hereof;

THENCE along the dividing line of the above said Lot 1 and Tract 1, N 37° 10’ 08” E, 119.75 ft. to the PLACE OF BEGINNING and containing 2.118 acres (or 92,260 square feet) of land, more or less.

187. FEE PARCEL DESCRIPTION: UNIT 4423

Tract 1: A 1.572 acre tract of land in the City of San Antonio, Bexar County, Texas, being a portion of Lot 15, New City Block 14857, I-10 NORTH OUTBACK STEAKHOUSE SUBDIVISION, as shown by plat recorded in Volume 9531, Page 52, Deed and Plat Records, Bexar County, Texas, being more particularly described as follows:

TRACT 1:

A 1.572 acre tract of land situated in the corporate limits of the City of San Antonio, Bexar County, Texas, being a portion of Lot 15, New City Block 14857, I-10 NORTH OUTBACK STEAKHOUSE SUBDIVISION, as shown by plat recorded in Volume 9531, Page 52, Bexar County Deed and Plat records, and being all that same land conveyed unto Outback Steakhouse of Florida, Inc. by special warranty deed executed July 20, 1994 and recorded in Volume 6177, Page 1480, Bexar County Real Property Records, in all said 1.572 acre tract being more particularly described as follows:

BEGINNING at a 1/2” iron rod found on the east right of way line of Interstate Highway 10, at the northwest corner of said Lot 15 for the northwest corner of this tract, same being at the southwest corner of a 4.107 acre tract, conveyed unto Weingarten Realty Investors by special warranty deed recorded in Volume 10335, Page 2063, Bexar County Real Property Records.

THENCE, North 75° 13’ 20” East, (bearing basis from Volume 9531, Page 52) 439.92 feet (cited on plat as 440.00 feet) to a mag nail set in he side of a curb at the northeast corner of said Lot 15 for the northeast corner of this tract same being on the northwest line of the remainder of a 34.299 acre tract described in Volume 10335, page 2040, said Real Property Records.

THENCE, along the west line of said 34.299 acre tract and with the east line of said Lot 15, South 19° 45’ 24” East, 136.13 feet (cited on plat as South 19° 51’ 55” East, 136.19 feet) to a 1/2 ” iron rod found at the southeast corner of this tract, same being the northeast corner of a 1.617 acre tract conveyed unto Outback/Carrabba, Inc. by special warranty deed, executed July 20, 1994 and recorded in Volume 6177, Page 1467, said Real Property Records.

THENCE, across said Lot 15, South 70° 08’ 05” West, 440.15 feet (cited on said plat as 440.42 feet) to a point from which a 1/2” iron rod found bears North 81° 28’ 29” West, 0.41 feet, on said east right of way line of Interstate Highway 10, at the southwest corner of this tract, same being the northwest corner of said 1.617 acre tract and being on a curve whose radius point bears North 69° 59’ 11” East, 5.729.65 feet.

THENCE, Northerly, along said east right of way line and with the arc of said curve, having a chord bearing and distance of North 19° 08’ 16” West, 175.16 feet, through a central angle of 01° 45’ 06”, an arc distance of 175.16 feet (cited on said plat as 175.23 feet) to the POINT OF BEGINNING.

CONTAINING in all 1.572 acres or 68,453 square feet of land, more or less.

TRACT 2:

EASEMENT ESTATE as created in Special Warranty Deed dated July 19, 1994, executed by Fiesta Trails Limited Partnership to Outback Steakhouse of Florida, Inc., recorded in Volume 6141, Page 1069, refiled in Volume 6177, Page 1480, Bexar County Real Property Records.

Tract 2: Easement Estate, for a reciprocal, mutual, non-exclusive right of access for ingress and egress, granted by Special Warranty Deed recorded in Volume 6141, Page 1069 and Volume 6177, Page 1480, Real Property Records, Bexar County, Texas.

Note: The Company is prohibited from insuring the area or quantity of the Land. Any statement in the legal description contained in Schedule A as to area or quantity of land is not a representation that such area or quantity is correct but is for informal identification purposes and does not override Item 2 of Schedule B hereof.

188. FEE PARCEL DESCRIPTION: UNIT 4424

BEING a 1.6363 acres (71,278 square feet) tract or parcel of land situated in the David Brown Survey, Abstract No. 5, Jefferson County, Texas and being out of and part of that certain 3.70 acre tract conveyed by Deed from The Malja Corporation to Victor J. Patrizi, dated December 17, 1974 and recorded in Volume 1865, Page 50 of the Deed Records of Jefferson County, Texas, said 1.6363 acre tract also being the same property as conveyed by Allstatr Inns Operating, L.P., a Delaware Limited Partnership, to John Calvin Modica, dated October 12, 1992, and recorded in Film Code No. 104-48-0794 of the Official Public Records of Jefferson County, Texas, said 1.6363 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found for the southeasterly right-of-way line of the relocated Hillebrandt Bayou (a 200 foot right-of-way), and the most westerly corner of said 3.70 acre tract;

THENCE North 41 degrees 37 minutes 00 seconds East (called North 41 degrees 37 minutes 14 seconds East) along and with the southeasterly right-of-way line of the relocated Hillebrandt Bayou and the northwesterly line of said 3.70 acre tract for a distance of 263.07 feet (called 263.02 feet) to a set nail in asphalt for corner;

THENCE South 48 degrees 22 minutes 23 seconds East (called South 48 degrees 21 minutes 05 seconds East) for a distance of 286.77 feet (called 286.78 feet) to a 5/8 inch iron rod found for corner in the northwesterly right-of-way line of Interstate Highway 10 and the southeasterly line of said 3.70 acre tract;

THENCE South 48 degrees 33 minutes 00 seconds West (called South 48 degrees 31 minutes 43 seconds West) along and with the northwesterly right-of-way line of Interstate Highway 10 and the southeasterly line of said 3.70 acre tract for a distance of 265.36 feet (called 265.31 feet) to a Texas Department of Transportation concrete marker found for corner, same being the most southerly corner of said 3.70 acre tract;

THENCE North 48 degrees 17 minutes 32 seconds West (called North 48 degrees 15 minutes 54 seconds West) along and with the southwesterly line of said 3.70 acre tract for a distance of 254.74 feet (called 254.87 feet) to the Point of Beginning, and Containing 1.6363 acres (71,278 square feet) of land, more or less.

189. FEE PARCEL DESCRIPTION: UNIT 4426

A 1.435 acre tract situated in the corporate limits of the City of San Antonio, Bexar County, Texas and being all of Lot 2, Block 1, New City Block 14347, SAN ANTONIO / 410, as shown by plat recorded in Volume 9533, Page 102, Bexar County Deed and Plat Records.

190. FEE PARCEL DESCRIPTION: UNIT 4429

Tract 1:

Lot 1B, REPLAT OF LOT 1 OF TANGER FACTORY OUTLET, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 8, Page 105-106, Plat Records of Hays County, Texas.

Tract 2:

Easement rights as created in Declaration and Agreement dated March 30, 1998, executed by Tanger Properties Limited Partnership to Outback Steakhouse of Florida, Inc., recorded in Volume 1398, Page 323, Official Public Records of Hays County, Texas.

191. FEE PARCEL DESCRIPTION: UNIT 4454

TRACT I: FEE SIMPLE

BEING Lot 2G, Block B, TOWN CROSSING ADDITION, an addition to the City of Mesquite, DALLAS County, Texas, according to the plat thereof recorded under CC# 201000058743, Real Property Records, Dallas County, Texas, SAVE AND EXCEPT all that portion of Lot “2G” conveyed by deed dated January 6, 2007, filed April 27, 2007, executed by Outback Steakhouse of Florida, Inc. to the State of Texas, as recorded under CC# 20070151197, Real Property Records, Dallas County, Texas.

TRACT II: EASEMENT ESTATE

Easements and appurtenant rights created in Collateral Agreement executed by and between Majestic Joint Venture IX and Flagship, Inc., dated as of November 28, 1983, filed for record on February 3, 1984 and recorded in Volume 84024, Page 0288, Deed Records, Dallas County, Texas.

TRACT III: EASEMENT ESTATE

Easements and appurtenant rights created in Collateral Agreement executed by and between Majestic Joint Venture IX and Steak & Ale of Texas, Inc., dated as of July 12, 1983, filed for record on September 21, 1983 and recorded in Volume 83186, Page 5641, Deed Records, Dallas County, Texas.

192. FEE PARCEL DESCRIPTION: UNIT 4455

Tract 1

Lot 1, Block 1, The Crossroads of D.F.W., an Addition to the City of Grapevine, Tarrant County, Texas, according to plat recorded in Cabinet A, Slide 1142, Deed Records of Tarrant County, Texas.

Tract 2

Non exclusive easement for pedestrian and vehicular access as crested in Mutual Access Easement by and between James F. Mason Trustee and Outback Steakhouse of Florida Intl. recorded in Volume 10782, Page 459, Deed Records, Tarrant County, Texas.

193. FEE PARCEL DESCRIPTION: UNIT 4456

TRACT 1:

A tract of land being a part of Lot 1, Block C/8408, of HIGH POINT CENTER III, an addition to the City of Dallas, Dallas County, Texas, according to the map or plat filed for record in Volume 93061, Page 126, of the Plat Records of Dallas County, Texas. SAVE AND EXCEPT a 0.0771 acre tract of land acquired by the State of Texas for Interstate Highway No. 635 as described in RELEASE AND DISCHARGE OF LIS PENDENS as recorded in County Clerk's File No. 20070092033 being more particularly described as follows:

BEGINNING at the most westerly corner of said Lot 1, said point being a set mag nail with RPLS 5735TX tag;

THENCE North 40°35'00" East, along the northwesterly line of said Lot 1, a distance of 339.55 feet to a found TXDOT brass cap, said point being on the southwesterly line of the area conveyed to the State of Texas in RELEASE AND DISCHARGE OF LIS PENDENS recorded in County Clerk's File No. 20070092033;

THENCE along the said south line the following two calls:

1) South 60°49'22" East a distance of 1.43 feet to a set 1/2" iron pin with RPLS 5735TX cap;

2) South 57°15'15" East a distance of 162.15 feet to a found TXDOT brass cap being on the east line of said Lot 1;

THENCE South 40°35'00" West, along the southeasterly line of said Lot 1, a distance of 359.45 feet to a set 1/2" iron pin with RPLS 5735TX cap, said point being the most southerly corner of said Lot 1;

THENCE North 50°18'00" West, along the southwesterly line of said Lot 1 and the northeasterly right of way line of Vantage Point Drive, a distance of 162.06 feet to the POINT OF BEGINNING.

Said described tract of land contains 56,639 square feet or 1.3003 acres more or less.

TRACT 2: (Easement Estate)

Easement Rights as created in ACCESS EASEMENT AGREEMENT filed for record in Volume 92229, Page 3230, of the County Clerk's Official Records of Dallas County, Texas.

194. FEE PARCEL DESCRIPTION: UNIT 4457

TRACT 1 (FEE SIMPLE)

LOT 3R, BLOCK 1 OF RESTAURANTS OF SPRING CREEK ADDITION, an addition to the City of Plano, Collin County, Texas, according to the plat thereof recorded in Cabinet H, Page 584, Land Records, Collin County, Texas.

TRACT 2 (EASEMENT ESTATE)

THAT area crosshatched on "Exhibit C" of that certain Declaration of Non-Exclusive Easement for Ingress and Egress executed by Land Owners, L.P., dated May 28, 1992, filed for record June 2, 1992 and recorded under Clerk's File No. 92-0036320, Land Records, Collin County, Texas; SAVE AND EXCEPT that portion located within the boundaries of Tract 1 above.

TRACT 3 (EASEMENT ESTATE)

Sign Easement created in Declaration of Sign Easement, Construction and Joint Maintenance Plan executed by and between Land Owners, L.P. and future owners, dated May 29, 1992, filed for record on June 2, 1992 and recorded under Clerk's File No. 92-0036319, Land Records, Collin County, Texas.

TRACT 4 (EASEMENT ESTATE)

Sight Easement granted by Land Owners, LA'. to Outback Steakhouse of Florida, lnc., dated January 21, 1993, filed for record on February 16, 1003 and recorded under Clerk's File No. 93-0011312, Land Records, Collin County, Texas.

195. FEE PARCEL DESCRIPTION: UNIT 4458

TRACT 1:

Lot 1 of ADDISON ROAD—QUORUM ADDITION, an addition to the Town of Addison, Dallas County, Texas, according to the plat thereof recorded in Volume 93041, Page 2824, Map Records, Dallas County, Texas.

TRACT 2:

Easement Interest over an adjacent 1,177 square foot tract of land created pursuant to that certain Easement dated March 5, 1993, recorded in Volume 93046, Page 1223, Deed Records of Dallas County, Texas, and

TRACT 3:

Mutual Access Easement over the adjacent 1.2007 acres as created pursuant to that certain Mutual Access Easement by and between International Guaranty Corporation and Outback Steakhouse of Florida, Inc., dated March 5, 1993, recorded in Volume 93055, Page 1864, Deed Records of Dallas, County, Texas.

196. FEE PARCEL DESCRIPTION: UNIT 4459

TRACT 1:

BEING a tract of land situated in A. STEPHENS SURVEY, Abstract No. 1426 and J. W. LANE SURVEY, Abstract No. 950 and being all of Lot 2, Block A of the Parks Retail Center, an addition to the City of Arlington as recorded in Cabinet A, Slide 1410 of the Plat Records of Tarrant County, Texas (MRTCT) and being more particularly described as follows:

BEGINNING at a point found at the intersection of INTERSTATE HIGHWAY NO. 20 (ACCESS ROAD) (Variable width Right-of-Way) and a PRIVATE ACCESS ROAD;

THENCE departing the northerly line of said INTERSTATE HIGHWAY NO. 20 and along the easterly line of said PRIVATE ACCESS ROAD as follows:

North 00 deg 03 min 44 sec West a distance of 71.50 feet to a 1/2 inch iron rod with red plastic capped stamped “W.A.I.” set for corner;

North 01 deg 10 min 03 sec West a distance of 56.87 feet to a 1/2 inch iron rod with red plastic capped stamped “W.A.I.” set for corner;

North a distance of 305.00 feet to a 1/2 inch iron rod with red plastic capped stamped “W.A.I.” set for the northwesterly corner of said Lot 2;

THENCE departing the easterly line of said PRIVATE ACCESS ROAD East a distance of 245.55 feet to a “X” found for the northeasterly corner of said Lot 2; said point being the northwesterly corner of Lot 3, Block A of the Parks Retail Center, an addition to the City of Arlington as recorded in Cabinet A, Slide 1410 of the Plat Records of Tarrant County, Texas (MRTCT);

THENCE along the westerly line of said Lot 3 as follows:

South 18 deg 20 min 14 sec West, a distance of 136.84 feet to a 1/2 inch iron rod with red plastic capped stamped “W.A.I.” set for corner;

South a distance of 57.05 feet to a 1/2 inch iron rod with red plastic capped stamped “W.A.I.” set for corner;

South 12 deg 33 min 00 sec East, a distance of 196.80 feet to a 1/2 inch iron rod with red plastic capped stamped “W.A.I.” set for corner, said point being in the northerly line of said INTERSTATE HIGHWAY 20;

THENCE along the northerly Right-of-Way line of said INTERSTATE HIGHWAY NO. 20 South 77 deg 27 min 00 sec West, a distance of 250.00 feet to the POINT OF BEGINNING.

Containing within these metes and bounds 2.068 acres or 90,086 square feet of land more or less.

TRACT 2:

Non-exclusive easements as created in Easement Agreement dated 18th Day June 1985 by and between The Craigievar Corporation Kelton-Dimension #1, C.I. Confirming and Franchising Limited, Highpoint Professional Building #1 Associates, Kelton-Mathus Development Corporation and The City of Arlington filed for record July 15, 1985 and recorded in Volume 8244, Page 704, Page 736, Page 768, and Page 800, Deed Records of Tarrant County, Texas.

TRACT 3:

Non-exclusive easement for ingress and egress as created by Reciprocal Agreement dated September 2, 1993, recorded in Volume 11221, Page 887, Deed Records, Tarrant County, Texas, in and to the land contained within that certain 32 feet access, drainage and utility easement area as shown on the plat of Parks Retail Center, an Addition to the City of Arlington, Texas, according to the plat recorded in Cabinet A, Slide 1410, Plat Records, Tarrant County, Texas.

TRACT 4:

BEING a temporary non-exclusive easement for parking as created by Reciprocal Agreement dated September 2, 1993, recorded in Volume 11221, Page 887, Deed Records, Tarrant County Texas.

TRACT 5:

Non-exclusive easement estate dated December 3, 1986 by and between Homart Development Co. and Sears, Roebuck and Co. recorded in Volume 8866, Page 1411, Deed Records, Tarrant County, Texas.

197. FEE PARCEL DESCRIPTION: UNIT 4461

TRACT 1:

BEING a tract of land situated in the JUAN ARMENDARIS SURVEY, Abstract No. 28, and LUC BURGEOIS Survey Denton County, Texas and being all of Lot 5A, of Block A of the VISTA RIDGE VILLAGE ADDITION LOTS 4, 5A, 5B and 5C, Block A Phases Two and Four, an addition to the City of Lewisville as recorded in Cabinet I, Slide 396 of the Plat Records of Denton County, Texas (PRDCT) and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for the most northerly corner of Lot 5B, of said Block A; said point being in the southerly Right-of-Way line of INTERSTATE HIGHWAY NO. 35E FRONTAGE ROAD (variable width Right-of-Way);

THENCE departing the southerly Right-of-Way line of said INTERSTATE HIGHWAY NO. 35E and along the northwesterly line of said Lot 5B as follows:

South 42 deg 52 min 08 sec West a distance of 37.88 feet to a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for corner;

North 47 deg 09 min 19 sec West a distance of 4.39 feet to a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for corner;

South 42 deg 52 min 32 sec West a distance of 193.25 feet to a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for the westerly corner of said Lot 5B; said point being the beginning of a curve to the left having a radius of 377.50 feet, a chord bearing North 54 deg 52 min 40 sec West and a chord distance of 32.17 feet;

THENCE departing the westerly line of said Lot 5B and along the northerly Right-of-Way line of OAKBEND DRIVE (variable width Right-of-Way line) as follows:

Continuing along said curve to the left through a central angle of 4° 53’ 03” for an arc length of 32.18 feet to a X found in concrete for the beginning of a curve to the right having a radius of 249.50 feet, a chord bearing North 53 deg 18 min 47 sec West and a chord distance of 34.86 feet;

THENCE along said curve to the right through a central angle of 8° 00’ 43” for an arc length of 34.89 feet to 5/8 inch iron rod found for the beginning of a curve to the left having a radius of 250.50 feet, a chord bearing North 54 deg 39 min 18 sec West and a chord distance of 46.70 feet;

THENCE along said curve to the left through a central angle of 10° 41’ 49” for an arc length of 46.77 feet to 5/8 inch iron rod found for corner;

THENCE North 60 deg 00 min 11 sec West a distance of 38.78 feet to a 5/8 inch iron rod found for the beginning of a curve to the right having a radius of 69.50 feet, a chord bearing North 39 deg 57 min 48 sec West and a chord distance of 47.63 feet;

THENCE along said curve to the left through a central angle of 40° 04’ 42” for an arc length of 48.62 feet to a 5/8 inch iron rod found for corner;

THENCE North 19 deg 55 min 27 sec West a distance of 24.47 feet to the beginning of a curve to the right having a radius of 24.50 feet, a chord bearing North 05 deg 59 min 45 sec west and a chord distance of 11.80 feet;

THENCE along said curve to the right through a central angle of 27° 52’ 09” for an arc length of 11.92 feet to a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for the beginning of a curve to the left having a radius of 600.00 feet, a chord bearing North 57 deg 32 min 03 sec East and a chord distance of 195.11 feet; said point being at the intersection of the northeasterly Right-of-Way line of OAKBEND DRIVE (variable width Right-of-Way) and southwesterly Right-of-Way line OAKBEND DRIVE (60’ Right-of-Way);

THENCE along the southwesterly Right-of-Way line of OAKBEND DRIVE (60’ Right-of-Way line) as follows;

THENCE along said curve to the left through a central angle of 18° 42’ 55” for an arc length of 195.98 feet to a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for corner;

North 48 deg 10 min 34 sec East a distance of 33.07 feet to a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for the beginning of a corner clip;

THENCE departing the southwesterly line of said OAKBEND DRIVE and along said corner clip South 89 deg 27 min 58 sec East a distance of 11.08 feet to a 1/2 inch iron rod with a red plastic cap stamped W.A.I. set for corner in the southeasterly line of said INTERSTATE HIGHWAY NO. 35E;

THENCE along the line of said INTERSTATE HIGHWAY NO. 35E South 47 deg 06 min 31 sec East a distance of 172.31 feet to the POINT OF BEGINNING;

Containing within these metes and bounds 1.102 acres or 48,017 square feet, of land more or less.

TRACT 2: (EASEMENT)

NON-EXCLUSIVE easement as created in Operation and Easement Agreement dated May 12, 1993, by and between Dayton Hudson Corporation and Dal-Mac Vista Ridge, Inc., filed May 12, 1993 under cc# 93-R0029534 of the Real Property Records of Denton county, Texas, and First Amendment to Operation and Easement Agreement dated November 4, 1993, by and among Dayton Hudson Corporation, Dal-Mac Vista Ridge, Inc. and Circuit City Stores, Inc., filed November 8, 1993 recorded under cc# 93-R0079956 of the Real Property Records of Denton County, Texas

TRACT 3: (EASEMENT)

NON-EXCLUSIVE easement as created in Declaration of Easements and Restrictions dated December 22, 1993, by Dal-Mac Vista Ridge, Inc, filed December 30, 1993, recorded under cc# 93-R0094351, of the Real Property Records, Denton County, Texas.

198. FEE PARCEL DESCRIPTION: UNIT 4462

TRACT ONE:

Being ALL OF LOT THREE (3), BLOCK TWENTY EIGHT (28), FINAL PLAT PLANTATION HILLS, SECTION 15, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof, recorded in Cabinet F, Page 57, Plat Records, Midland County, Texas.

TRACT TWO:

Reciprocal Easement dated April 4, 1994, executed by and between Office Depot, Inc., a Delaware corporation to Outback Steakhouse of Florida, Inc., a Florida Corporation recorded in Volume 1214, Page 418, Official Records, Midland County, Texas.

199. FEE PARCEL DESCRIPTION: UNIT 4463

A 49,244 SQUARE FOOT TRACT OF LAND BEING A PORTION OF LOT 20-A, BLOCK 76, BELMAR ADDITION UNIT NO. 41, AN ADDITION TO THE CITY OF AMARILLO, POTTER COUNTY, TEXAS, AS FILED OF RECORD DECEMBER 17, 1979, IN VOLUME 1200, PAGE 945 OF THE POTTER COUNTY PLAT RECORDS. SAID TRACT OF LAND BEING OUT OF SECTION 27, BLOCK 9, BS&F SURVEY, AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 20-A, SAME BEING THE MOST NORTHERLY NORTHWEST CORNER OF LOT 21-A, BLOCK 76, BELMAR ADDITION UNIT NO. 41, ALSO BEING A POINT ON THE DIVISION LINE BETWEEN LOT 20A AND 21A OF THE AFORESAID PLAT WHERE SAID DIVISION LINE IS INTERSECTED BY THE SOUTHEASTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 40.

THENCE S. 10° 58’ 34” E., 300.57 FEET ALONG THE EAST LINE OF SAID LOT 20-A. TO A 1/2” IRON ROD FOUND;

THENCE S. 82° 17’ 36” W., 123.50 FEET ALONG THE NORTH LINE OF A 40.0 FOOT PRIVATE INGRESS/EGRESS EASEMENT TO A 1/2” IRON ROD FOUND IN THE EAST RIGHT-OF-WAY LINE OF WALDORF DRIVE;

THENCE NORTHWESTERLY ALONG SAID EAST RIGHT-OF-WAY LINE OF WALDORF DRIVE ON A CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 16° 03’ 05” AND A RADIUS OF 490.02 FEET, AN ARC DISTANCE OF 137.28 FEET TO A POINT OF REVERSE CURVE;

THENCE CONTINUING ALONG THE EAST RIGHT-OF-WAY LINE OF WALDORF DRIVE ON A CURVE TO THE RIGHT, SAID CURVE HAVINC A CENTRAL ANGLE OF 27° 45’ 16” AND A RADIUS OF 364.36 FEEL AN ARC DISTANCE OF 176.50 FEET;

THENCE N. 06° 43’ 00” W., 4.16 FEET TO A 1/2” IRON ROD FOUND AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF WALDORF DRIVE AND IN THE SOUTH RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 40;

THENCE NORTHEASTERLY ALONG SAID SOUTH RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 40 ALONG A CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 1° 50’ 39” AND A RADIUS OF 5879.58 FEET, AN ARC DISTANCE OF 189.26 FEET TO THE POINT AND PLACE BEGINNING AN CONTAINING 49,244 SQUARE FEET OF LAND, MORE OR LESS.

200. FEE PARCEL DESCRIPTION: UNIT 4464

Tract I:

Tract “G”, West Chase, an Addition to the City of Lubbock, Lubbock County, Texas, according to the Map, Plat and/or Dedication Deed thereof recorded in Volume 4564, Page 231 of the Real Property Records of Lubbock County, Texas.

Tract II:

A portion of Tract “H”, West Chase, an Addition to the City of Lubbock, Lubbock County, Texas, according to the Map, Plat and/or Dedication Deed thereof recorded in Volume 4810, Page 330, of the Real Property Records of Lubbock County, Texas, said portion of Tract “H” being described as follows:

BEGINNING at a point in the South line of a 1.380 acre tract surveyed by Hugo Reed and Associates, Inc. March 15, 1994 from which a 1/2” rod set with cap for the Southwest corner of said 1.380 acre tract bears West 106.00 feet, said beginning point bears N 00° 02’ 46” E, 3097.43 feet and S 89° 58’ 50” E, 1449.02 feet from the Southwest corner of Section 11, Block E-2, Lubbock County, Texas;

THENCE East, along the South line of said 1.380 acre tract, a distance of 109.00 feet to a 1/2” rod set with cap for the Southeast corner of said 1.380 acre tract;

THENCE North, along the East line of said 1.380 acre tract, a distance of 58.71 feet;

THENCE East a distance of 42.00 feet;

THENCE South a distance of 100.71 feet;

THENCE West a distance of 109.00 feet;

THENCE South a distance of 76.00 feet;

THENCE West a distance of 42.00 feet;

THENCE North a distance of 118.00 feet to the Point of Beginning.

201. FEE PARCEL DESCRIPTION: UNIT 4466

TRACT 1

LOT 1, BLOCK A, OUTBACK STEAKHOUSE NO. 1 ADDITION, an addition to the City of Denton, Denton County, Texas, according to the plat recorded in Cabinet L, Page 153, Plat Records, Denton County, Texas.

TRACT 2 (EASEMENT ESTATE)

Easements together with appurtenant rights created in Mutual Access Easement Agreement, executed by Quinn Harris Investment Company, Inc. to Outback Steakhouse of Florida, Inc., a Florida corporation, dated June 14, 1995, filed for record on June 14, 1995 and recorded in under Clerk’s File No. 95-R0034762, Real Property Records, Denton County, Texas, and being described as follows:

BEING a tract of land situated in the Alexander Hill Survey, Abstract No. 623, in the City of Denton, Denton County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2” iron rod found for corner in the Southerly line of Interstate Highway No. 35E at the intersection of the Easterly line of Sam Bass Boulevard (at the Easterly end of a corner radius clip);

THENCE South 76° 36’ 00” East along the said Southerly line of Interstate Highway No. 35E for a distance of 197.28 feet to a 1/2” iron rod set for corner at the POINT OF BEGINNING; same point being the Northeast corner of Lot 1, Block A of Outback Steakhouse No. 1 Addition;

THENCE South 76° 36’ 00” East continuing along the said Southerly line of Interstate Highway No. 35E for a distance of 35.00 feet to a point for corner;

THENCE South 13° 24’ 00” West departing the said Southerly line of Interstate Highway No. 35E for a distance of 84.50 feet to a point for corner;

THENCE North 76° 36’ 00” West for a distance of 35.00 feet to a point for corner in the East line of said Lot 1;

THENCE North 13° 24’ 00” East along the said East line of Lot 1 for a distance of 84.50 feet to the POINT OF BEGINNING.

202. FEE PARCEL DESCRIPTION: UNIT 4467

TRACT ONE:

Lot 1, Block 1, REPLAT of Lot 1, Block 1 Ciudad Fuerte Unit 2, situated in the P.P. Rains Survey, A-258, City of Longview, Gregg County, Texas, as shown on plat recorded in Volume 2861, Page 265, Public Official Records, Gregg County, Texas.

TRACT TWO:

Easements as granted in Modification to Cross-Access Agreement and Additional Easement Agreement dated July 14, 1995, between Wal-Mart Stores, Inc., John N. Thomas, Trustee and Outback Steakhouse of Florida, Inc. filed in Volume 2844, Page 64, Public Official Records, Gregg County, Texas, granting easements over the following two tracts of land:

EASEMENT TRACT A:

Being 0.721 acre, more or less, of land in the P.P. RAINS SURVEY, A-258, Gregg County, Texas said 0.721 acre being a part of LOT 3 and LOT 4, BLOCK 1, CIUDAD FUERTE UNIT 2, a subdivision of Longview, Gregg County, Texas, recorded in Volume 2592, Page 627, Deed Records, Gregg County, Texas, said 0.721 acre being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod for the most southern Southwest corner of above mentioned lot 3 of Ciudad Fuerte Unit 2, subdivision, same being the South East corner of Lot 2 of said subdivision, said point also being on the North right-of-way (ROW) line of State Highway Loop No. 281;

THENCE along said Loop 281 North ROW line, same being the South boundary line of said Lot 3, S 66 deg. 38’ 40” E, 10.50 feet to the most southerly southwest corner of the herein described 0.721 acre tract;

THENCE N 23 deg. 21’ 20” E, 194.50 feet to the beginning of a curve to the left;

THENCE 31.42 feet along said curve, said curve having a delta of 90 deg. 00’ 00”, radius of 20.00 feet, and chord N 21 deg. 38’ 40” W, 28.28 feet;

THENCE N 66 deg. 38’ 40” W, 202.95 feet to a point for corner;

THENCE N 05 deg. 18’ 33” E, 47.33 feet to a point for corner;

THENCE N 00 deg. 25’ 33” W, 306.47 feet to the beginning of a curve to the left;

THENCE 23.97 feet along said curve, said curve having a delta of 105 deg. 35’ 30”, radius of 13.00 feet, a chord N 51 deg. 31’ 13” W, 20.72 feet;

THENCE S 75 deg. 41’ 02” W, 127.89 feet to the beginning of a curve to the right;

THENCE 8.26 feet along said curve, said curve having a delta of 15 deg. 46’ 27”, radius of 30.00 feet, a chord S 83 deg. 34’ 16” W, 8.23 feet to the beginning of a curve to the left;

THENCE 19.54 feet along said curve, said curve having a delta of 37 deg. 19’ 20”, radius of 30.00 feet, a chord S 72 deg. 47’ 49” W, 19.20 feet to a point in the West boundary line of said Lot 3 of Ciudad Fuerte Unit 2, said point also being on the east ROW line of Fourth Street;

THENCE along said east ROW line of Fourth Street, same being the west boundary line of said Lot 3, N 00 deg. 00’ W, 18.92 feet to the north west corner of Lot 3, same being the south west corner of said Lot 4, and continuing for a total of 49.00 feet to a point for the beginning of a curve to the left;

THENCE 26.08 feet along said curve, said curve having a delta of 49 deg. 48’ 52”, radius of 30.00 feet, and chord S 79 deg. 24’ 32” E, 25.27 feet;

THENCE N 75 deg. 41’ 02” E, 75.50 feet to a point in the west boundary line of said Lot 3 and continuing for a total distance of 178.91 feet to a point for corner;

THENCE S 00 deg. 25’ 33” E, 384.80 feet to the beginning of a curve to the left;

THENCE 34.67 feet along said curve, said curve having a delta of 66 deg. 13’ 07”, radius of 30.00 feet, and chord S 33 deg. 32’ 06” E, 32.77 feet;

THENCE S 66 deg. 38’ 40” E, 200.71 feet to a point for corner;

THENCE S 23 deg. 21’ 20” W, 240.50 feet to a point in the south boundary line of said Lot 3, same being the north ROW line of said State Highway Loop No. 281;

THENCE with said ROW line and said south boundary line of said Lot 3 N 66 deg. 38’ 40” W, 26.00 feet to the PLACE OF BEGINNING and containing 0.721 acre of land, more or less.

EASEMENT TRACT B:

BEING a portion LOT 2, in BLOCK 1 of CIUDAD FUERTE UNIT 2, an Addition to the City of Longview, Gregg County, Texas, according to the Amended Plat dated July 6, 1994, and recorded in Volume 2705, Page 454, of the Public Official Records of Gregg County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point for corner at the Northwest corner of the above mentioned Lot 2, same point being the Northeast corner of Lot 1, Block 1 of CIUDAD FUERTE UNIT 2;

THENCE South 66 degrees 38 minutes 40 seconds East along the Northeasterly line of said Lot 2 for a distance of 18.00 feet to a point for corner;

THENCE South 23 degrees 24 minutes 13 seconds West for a distance of 157.88 feet to a point for corner;

THENCE North 66 degrees 38 minutes 40 seconds West for a distance of 17.87 feet to a point for corner in the common lot line of said Lots 1 and 2;

THENCE North 23 degrees 21 minutes 20 seconds East along said common line of Lots 1 and 2 for a distance of 157.88 feet to the POINT OF BEGINNING, CONTAINING 2,831 square feet of land, more or less.

203. FEE PARCEL DESCRIPTION: UNIT 4468

TRACT 1:

Lot Two (2), Block One (1) FRANKLIN VILLAGE ADDITION, to the City of Waco, McLennan County, Texas, (being a resubdivision of a portion of Tract No. 76 West Waco Industrial District, Part One of record in Volume 517, Page 75 and a portion of Tract A, West Waco Industrial District, Part Two of record in Volume 786, Page 588 of the McLennan County, Texas, Deed Records) according to the Final Plat of said Addition recorded in Volume 33, Page 812 of the Official Public Records of McLennan County, Texas.

TRACT 2:

Reciprocal Easements rights as created in Reciprocal Easement and Operation Agreement recorded in Volume 18, Page 46 of the Official Public Records of McLennan County, Texas.

204. FEE PARCEL DESCRIPTION: UNIT 4469

Lot Two (2), in Block One (1), of Anthony Addition, Being a Replat of Lot 1, Block 2, Fox Creek Commercial, Phase One, in the City of Killeen, Bell County, Texas, according to the plat of record in Cabinet C, Slide 153-D, Plat Records of Bell County, Texas.

205. FEE PARCEL DESCRIPTION: UNIT 4470

PARCEL 1:

A portion of Lot 1, Block 337, VISTA DEL SOL UNIT SIXTY NINE REPLAT E, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 71, Pages 70 and 70A, Real Property Records, El Paso County, Texas, said portion being more particularly described as follows:

Being a 1.144 acre tract of land being a portion of Lot 1, Block 337, Vista Del Sol, Unit Sixty-Nine, Replat "E", City of El Paso, El Paso County, Texas recorded in Volume 3478, Page 75, Real Property Records, El Paso County, Texas, and being more particularly described as follows:

Beginning at a point found at the easterly property corner of herein described tract from which a city monument at the intersection of Rojas Drive and Trudy Elaine Drive bears north 46° 31' 49" for a distance of 1,335.89 feet;

THENCE South 48° 24' 59" West for a distance of 238.14 feet to a point;

THENCE North 41° 35' 091" West for a distance of 209.33 feet to an "X" found in concrete;

THENCE North 48° 24' 59" East for a distance of 238.14 feet to a 1/2-inch iron rod found;

THENCE South 41° 35' 01" East for a distance of 209.33 feet to the POINT OF BEGINNING; said property contains 49,850 square feet or 1.144 acres, more or less.

PARCEL 2:

Easement rights as created by unrecorded Agreement between the EL PASO ELECTRIC COMPANY and FRED HERVEY dated 5/21/70, further assigned to successors in title, last being conveyed by DE LA VEGA CORPORATION to OUTBACK STEAKHOUSE OF FLORIDA, INC, in Volume 3478, Page 81, Real Property Records, El Paso County, Texas.

PARCEL 3:

Easement rights as created by Reciprocal Easement Agreement dated 10-15-86, by and between A.D.D. HOLDINGS, L.P., a Texas limited partnership, as Developer and CINEMARK USA, INC., a Texas corporation, in Volume 3122, Page 12, Real Property Records, El Paso County, Texas.

PARCEL 4:

Easement rights as created by Easement Agreement by and between A.D.D. HOLDINGS, L.P., a Texas limited partnership, and OUTBACK STEAKHOUSE of FLORIDA, INC., a Florida corporation, in Volume 3478, Page 86, Real Property Records, El Paso County, Texas.

206. FEE PARCEL DESCRIPTION: UNIT 4473

Tract 1:

Lot 5, Block 1, Section 2B, Rowyer Subdivision to the City of San Angelo, Tom Green County, Texas, according to the map or plat of said subdivision of record in Plat Cabinet “E” at Slide #150 of the records of Tom Green County, Texas.

Tract 2:

Easement rights as set out in Reciprocal Parking and Operating Agreement between Best-Star Development Partners, L.P., a limited partnership, and Outback Steakhouse of Florida, Inc., a Florida corporation as described and recorded in Volume 687, Page 362 and in Volume 691, Page 110, of the Official Public Records of Real Property of Tom Green County.

207. FEE PARCEL DESCRIPTION: UNIT 4474

Tract One:

Lot 402, a Replat of part of Lot 102, a Replat of Lots 1 and 2, Block D, Section 1, CURRY PARK ADDITION to the City of Abilene, Taylor County, Texas, according to the map or plat thereof recorded in Cabinet 3, Slide 27, Plat Records of Taylor County, Texas.

Tract Two:

BEING a portion of Lot 102, Block D, of a Replat of Lots 1 and 2,Block D, Section 1, CURRY PARK ADDITION, an addition to the City of Abilene, Taylor County, Texas, according to the plat recorded in Cabinet 1, Slide 247, Plat Records of Taylor County, Texas;

BEGINNING at a point for corner at the Southwest corner of Lot 402, Block D of Lot 402, a Replat of a portion of Lot 102, a replat of Lots 1 and 2, Block D, Section 1, CURRY PARK ADDITION, an addition to the City of Abilene, Taylor County, Texas, according to the plat recorded in Cabinet 3, Slide 27, Plat Records of Taylor County, Texas;

THENCE South 89 degrees 40 minutes 35 seconds West for a distance of 91.00 feet to a 1/2 inch iron rod set for corner in the East line of Lot 201, Block D, of a Replat of Lot 101 and a portion of Lot 102, a replat of Lots 1 and 2, Block D, Section 1, CURRY PARK ADDITION, an addition to the City of Abilene, Taylor County, Texas according to the plat recorded in Cabinet 3, Slide 162 of the Plat Records of Taylor County, Texas;

THENCE North 00 degrees 19 minutes 25 seconds West along the said East line of said Lot 201, Block D for a distance of 205.00 feet to a “X” cut found for corner, same point being an interior corner of said Lot 201;

THENCE North 89 degrees 40 minutes 35 seconds East along the South line of said Lot 201, for a distance of 91.00 feet to a point for corner, same point being the Northwest corner of said Lot 402;

THENCE South 00 degrees 19 minutes 25 seconds East along the West line of said Lot 402 for a distance of 205.00 feet to the POINT OF BEGINNING, containing 18,655 square feet or 0.4283 acres of land, more or less.

208. FEE PARCEL DESCRIPTION: UNIT 4475

Being Lot 1A, of Replat of Tract One of DeSoto Plaza, an addition to the City of DeSoto, Dallas County, Texas, according to the Map thereof recorded in Volume 94135, Page 1402, Map Records, Dallas County, Texas.

209. FEE PARCEL DESCRIPTION: UNIT 4476

TRACT 1: FEE SIMPLE

Lot 2, Block 1, of REPLAT OF LOT 1, BLOCK 1, BRAND/190 ADDITION, an addition to the City of Garland, DALLAS County, Texas, according to the map or plat filed in Volume 2001025, Page 6, of the Plat Records of Dallas County, Texas.

TRACT 2: EASEMENT ESTATE

Easements and all appurtenant rights thereto as created in Declaration of Easements, Covenants and Restrictions as recorded in Volume 2001025, Page 459, and amended in Volume 2003207, Page 232, Real Property Records, Dallas County, Texas.

TRACT 3: EASEMENT ESTATE

Easements and all appurtenant rights as created in Use Restrictions and Access Easement Declaration as recorded in Volume 2003207, Page 245, Real Property Records, Dallas County, Texas.

210. FEE PARCEL DESCRIPTION: UNIT 4478

Lot 3, Block 1, PACE-ALSBURY VILLAGE, an Addition to the City of Fort Worth, Tarrant County, Texas, according to plat recorded in Cabinet A, Slide 6859, Deed Records of Tarrant County, Texas.

211. FEE PARCEL DESCRIPTION: UNIT 4510

Parcel 8, HIGH POINT SHOPPING CENTER, according to the Official Plat thereof, recorded February 3, 1994 as Entry No. 5730624 in Book 94-2 at Page 32 in the office of the County Recorder of Salt Lake County.

Together with the non-exclusive easements as described in the following documents:

a. Covenants, Conditions, Restrictions and/or Easements and the terms, conditions and limitations contained therein in instrument:

Dated:	June 25, 1991
Recorded:	July 3, 1991
Entry No:	5093223
Book/Page:	6334/65

Said Declaration was re-recorded on September 20, 1991, as Entry No. 5128886, in Book 6358, at Page 14 of Official Records.

b. Amendment to said Covenants:

Dated: September 10, 1992
Recorded: September 22, 1992
Entry No.: 5336121
Book/Page: 6522/1285

c. Amendment to said Covenants:

Dated: October 2, 1992
Recorded: October 16, 1992
Entry No.: 5352943
Book/Page: 6537/898

d. Amendment to said Covenants:

Dated: September 10, 1992
Recorded: May 17, 1993
Entry No.: 5504282
Book/Page: 666312588

e. Declaration of Restrictions and Grant of Easements and the terms, conditions and limitations contained therein in instrument:

Recorded: September 22, 1992
Entry No.: 5336122
Book/Page: 652211305

212. FEE PARCEL DESCRIPTION: UNIT 4511

Lot 203, WOODLAND PARK COMMERCIAL SUBDIVISION PHASE II, in Layton City, Davis County, Utah, according to the Official Plat thereof recorded October 12, 1995 as Entry No. 1204917 in Book 1925 at Page 1084 of Official Records.

Together with a non-exclusive 26 foot Access Easement described as follows:

A part of the Northwest Quarter of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey; BEGINNING at a point on the East line of Interstate 15 frontage road (1200 West Street), the Northwest corner of Lot 203 said point being 2,180.74 feet West and 1,125.13 feet North of the center of said Section 17 (basis of bearing: South 00°09’50” West from the center of Section 17, along the Quarter Section line to the South Quarter Corner); North 34°49’22” West 26.00 feet along the East line of said Street; thence North 55°10’38” East 223.66 feet; thence South 34°49’22” East 26.00 feet to the North corner of Lot 203; thence South 55°10’38” West 223.66 feet to the POINT OF BEGINNING.

213. FEE PARCEL DESCRIPTION: UNIT 4716

All that certain lot, piece or parcel of land, lying and being in Henrico County, Virginia, containing 2.09 acres as more particularly shown on a plat of survey prepared by Charles C. Townes & Associates, P.C., entitled "PLAT OF 2.09 ACRES OF LAND SITUATED ON BROAD STREET ROAD – U.S. ROUTE #250, THREE CHOPT DISTRICT, HENRICO COUNTY, VIRGINIA FOR OUTBACK STEAKHOUSE, INC." dated July 6, l993, last revised September 14, l993, a copy of which is attached to a deed recorded in Deed Book 2459, page 1988 among the Land Records of Henrico County, Virginia.

TOGETHER WITH perpetual, non –exclusive easements, for (i) access, (ii) parking and (iii) drainage on and across the adjoining property to the east (described as the "Retained Property"), all as more fully described as Parcel B, containing 0.367 acres in that certain Deed, Restrictive Covenants, Easements, Parking, Signage and Maintenance Agreement dated September 15, l993, between Southwest Investment Corporation and Outback Steakhouse of Florida, Inc., and recorded in the Clerk's Office, Circuit Court, Henrico County, Virginia, in Deed Book 2459, page 1988.

TOGETHER WITH a permanent, non-exclusive sixteen (16) foot easement for drainage of surface and underground storm water and for the construction, maintenance, repair, replacement, use and operation of below-ground drainage facilities now or hereafter located within such sixteen (16) feet as more particularly described in that certain Deed of Bargain and Sale dated April 27, 1993, between Southeast Investment Corporation and Schall and Hutchings, Inc., recorded in the Clerk's Office, Circuit Court, Henrico County, Virginia, in Deed Book 2425, page 2156 and more particularly shown as the "16' Drainage Easement" on property designated as Parcel B on Exhibit B attached to the aforesaid deed recorded in Deed Book 2425, page 2156.

(Note: Review of Survey is required to determine if this is a beneficial easement).

AND TOGETHER WITH perpetual, non-exclusive right, easement and privilege sixteen (16) feet in width for underground storm water service over and across a strip of land as more particularly shown and described in that certain Deed of Easement, Maintenance and Subordination Agreement from Pyramid Company, et al., dated September 13, l993, and recorded in the aforesaid Clerk's Office in Deed Book 2459, page 2001, connecting to permanent non-exclusive Easement of right of way to construct, operate and maintain drainage facilities dedicated to the County of Henrico, Virginia, by Deed from the Southland Corporation dated December 4, l970, and duly recorded in the aforesaid clerk's office in Deed Book 1440, page 550.

(Note: Review of Survey is required to determine if this is a beneficial easement).

SUBJECT TO a perpetual non-exclusive right, easement and privilege reserved for the benefit of the Retained Property for parking and passage and use of driveways and passageways now or hereafter constructed on the land for vehicular and pedestrian ingress and egress between Broad Street and the Retained Property over that portion of the insured land described in Exhibit C to the Deed recorded in Deed Book 2459, page 1988.

(Note: Review of Survey is required to determine if this is a beneficial easement).

SUBJECT TO a reserved perpetual non-exclusive right, easement and privilege for the benefit of the Retained Property over, under and across the area designated as "Sanitary Sewer Easement within the Variable Width Parking Area" described in Exhibit C to the Deed recorded in Deed Book 2459, page 1988.

(Note: Review of Survey is required to determine if this is a beneficial easement).

BEING the same property conveyed to Private Restaurant Properties, LLC, a Delaware limited liability company, by virtue of Deed Dated June 14, 2007, and recorded April 2, 2008, in Deed Book 4494 at page 329.

NOTE FOR INFORMATIONAL PURPOSES ONLY:
Tax Map No. 764-751-1479

214. FEE PARCEL DESCRIPTION: UNIT 4724

All those certain tracts or parcels of land lying and being in the City of Harrisonburg, Virginia, more particularly described as Lots 1 and 2, each containing 1.000 acre, on the Final Plat Neff Properties, Section15, made by Copper & Smith, P.C., dated December 6, 1985, recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in Deed Book 772, Page 462. The property herein is further described according to that certain plat entitled "Plat of Combined Lots 1 and 2, Neff Properties, Section 15", dated June 25, 1998, made by David Lee Ingram, L.S., of record in Deed Book 1607, page 765.

BEING the same property conveyed to Private Restaurant Properties, LLC by deed dated June 14th, 2007 and recorded as Instrument No. 200800009892 or Deed Book 3295 at page 266 on April 3, 2008, in the Clerk's office of the Circuit Court of Rockingham County, Virginia.

Tax Map No.: 79-E-7

215. FEE PARCEL DESCRIPTION: UNIT 4728

All that certain lot, piece or parcel of land, lying, situate and being in the Matoaca District, Chesterfield County, Virginia, containing 2.128 acres or 92,677.5 square feet, more or less, as shown on a plat entitled "ALTA/ACSM Land Title Survey 2.128 Acres of Land Lying Along the East Line of Chital Drive, Matoaca District, Chesterfield County, Virginia", prepared by Balzer and Associates, Inc., dated December 18, 2003, last revised January 23, 2004, to be recorded in the Clerk's Office, Circuit Court, County of Chesterfield, Virginia, and being further described by metes and bounds as follows:

BEGINNING at a nail set along the east line of Chital Drive, 176.73 feet from the south line of Hull Street extended;

Thence departing the east line of Chital Drive, North 58 Degrees 50 minutes 40 seconds East, 359.23 feet to a nail set;

Thence South 31 degrees 09 minutes 20 seconds East, 259.10 feet to a rod found;

Thence South 58 degrees 50 minutes 40 seconds West, 107.91 feet to a rod found;

Thence North 31 degrees 09 minutes 20 seconds West, 23.50 feet to a rod found;

Thence South 58 degrees 50 minutes 40 seconds West, 209.69 feet to a nail set;

Thence South 31 degrees 09 minutes 20 seconds East, 23.50 feet to a nail found;

Thence South 58 degrees 50 minutes 40 seconds West, 82.61 feet to a rod found along the east line of Chital Drive;

Thence continuing along the east line of Chital Drive along a curve to the left having a radius of 1931.54 feet, an arc length of 262.52 feet, and a chord of North 22 degrees 10 minutes 05 seconds West, 262.32 feet to a nail set being the PLACE and POINT OF BEGINNING containing 2.128 acres or 92,677.5 square feet.

TOGETHER WITH a permanent non-exclusive easement for ingress and egress, parking as well as other beneficial rights, as more particularly described in the Declaration of Easements and Maintenance Agreement by Deer Run Associates Limited Partnership, dated October 30, l990, recorded November 2, l990, in Deed Book 2121, page 549, and First Amendment recorded in Deed Book 2145, page 1755, in the Clerk's Office, Circuit Court, County of Chesterfield, Virginia.

ALSO TOGETHER WITH a permanent, exclusive easement to install and maintain a two-sided panel on the Deer Run Village Shopping Center pylon sign located at the southwest corner of U.S. Route 360 and Chital Drive to identify Grantee's business on the property hereby conveyed subject to the following conditions: (i) Grantee's rights shall be subject to Grantee's compliance with all requirements of Chesterfield County, Virginia for use of such sign in connection with the property hereby conveyed; (ii) Grantee's rights shall be subject to the rights of other tenants and owners with the Deer Run Shopping Village; (iii) Grantee's panel shall be the fourth from the top or bottom panel, the three other panels being allocated to and use by Food Lion, Import Autohaus and Dollar General as of the date of this deed; (iv) Grantee shall be responsible for all costs associated with the installation and maintenance of the sign panels and agrees to keep the panels in good condition with repair at all times and (v) Grantee shall be responsible for twenty-five percent (25%) of costs incurred by Grantor in operating, maintaining, repairing and/or replacing the pylon sign.

BEING the same property conveyed by Special Warranty Deed to Private Restaurant Properties, LLC, from Outback Steakhouse of Florida, Inc., dated as of June 14, 2007, and recorded April 2, 2008, in Deed Book 8261 at page 856.

NOTE FOR INFORMATIONAL PURPOSES ONLY:
Tax Map No. 726-672-8603-00000

216. FEE PARCEL DESCRIPTION: UNIT 4756

TAX ID No. 282-07-00-A
PARCELS 1 AND 2:

ALL those certain lots, pieces or parcels of land and the improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the City of Williamsburg, Virginia, known and designated as "PARCEL 1" and "PARCEL 2" as shown on that certain plat (the "Plat") entitled, "PLAT OF BOUNDARY LINE ADJUSTMENT AND LOT LINE VACATION. PARCELS 1-4, CONTAINING 1.744 +/- ACRES, TO BE CONVEYED TO AUSSIES OF WILLIAMSBURG HOLDINGS, LLC, PARCEL 5 DEDICATED TO THE CITY of WILLIAMSBURG", dated March 21, 1995, made by AES Consulting Engineers, which plat was recorded in the Office of the Clerk of the Circuit Court of the City of Williamsburg, Virginia, in M.B. 61, at Page 58.

Parcels 1 and 2 are more specifically shown on the "Plat" as follows:

Beginning at an iron pipe on the westerly right-of-way line of U.S. Route 60 where said right-of-way line intersects the southerly right-of-way line of Waltz Farm Drive (being labeled as "New Property Line" on the "Plat"); thence proceeding S. 19º 15' 0" E. along the westerly right-of-way line of U.S. Route 60 140.24 feet to an iron pipe thence S. 75º 58' 30" W. 269.29 feet to an iron pipe; thence N. 20º 8' 22" W. 142.35 to the southerly right-of-way line of Waltz Farm Drive; thence along said right-of-way line N. 77º 36' 39" E. 99.09 feet to an iron pipe; thence N. 75º 39' 43" E. 172.65 feet to the iron pipe which marks the point of beginning.

PARCEL 3:

That certain lot, piece or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the City of Williamsburg, Virginia, known and designated as "PARCEL 3" containing 0.458 acre, more or less, on a certain plat entitled "PLAT OF BOUNDARY LINE ADJUSTMENT AND LOT LINE VACATION, PARCELS 1-4, CONTAINING 1.744 +/- ACRES, TO BE CONVEYED TO AUSSIES OF WILLIAMSBURG HOLDINGS, L.L.C., PARCEL 5 DEDICATED TO THE CITY OF WILLIAMSBURG", dated March 21, 1995, made by AES Consulting Engineers, which plat was recorded in the Office of the Clerk of the Circuit Court of the City of Williamsburg, Virginia in M.B. 61, at Page 58.

PARCEL 4:

That certain lot, piece or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the City of Williamsburg, Virginia, known and designated as "PARCEL 4" containing 0.420 acre, more or less, on a certain plat entitled "PLAT OF BOUNDARY LINE ADJUSTMENT AND LOT LINE VACATION, PARCELS 1-4 CONTAINING 1.744 +/- ACRES, TO BE CONVEYED TO AUSSIES OF WILLIAMSBURG HOLDINGS, L.L.C., PARCEL 5 DEDICATED TO THE CITY OF WILLIAMSBURG", dated March 21, 1995, made by AES Consulting Engineer, which plat was recorded in the Office of the Clerk of the Circuit Court of the City of Williamsburg, Virginia, in M.B. 61, at Page 58.

Together with that certain perpetual non-exclusive right-of-way and easement for vehicular and pedestrian ingress, egress and regress contained in II(8) and III (10) of that certain Reciprocal Easement Agreement, dated April 20, 1995, and recorded in the Clerk's Office, in Deed Book 113, at Page 483, on April 23, 1995 and further together with that certain perpetual non-exclusive easement for pedestrian ingress and egress set out in that certain Reciprocal Easement Agreement dated April 24, 1995, recorded in the Clerk's Office in Deed Book 113, at Page 506, on April 25, 1995.

BEING the same real estate conveyed to Private Restaurant Properties, LLC, a Delaware limited liability company, by deed from Outback Steakhouse of Florida, Inc., a Florida corporation, dated June 14, 2007, recorded April 4, 2008, in the Clerk's Office, Circuit Court, City of Williamsburg, Virginia, as Instrument Number 080697.

217. FEE PARCEL DESCRIPTION: UNIT 4758

All that certain lot or parcel of land situate, lying and being in the Town of Christiansburg, Shawsville Magisterial District, Montgomery County, Virginia, and being Lot Number Thirty-Six (36) containing 1.6660 acres, as shown on a plat (the "Plat") entitled "FINAL SUBDIVISION PLAT ARBOR VIEW PLANTATION, PHASE XIII", prepared by Draper Aden Associates, dated 02, JAN 1996, revised 5 FEBRUARY 1996, designated as Plat No. T-4885-29S, a copy of which plat is of record in the Clerk's

Office of the Circuit Court of Montgomery County, Virginia (the "Clerk's Office"), in Plat Book 16 at Page 508.

Less and except that portion of subject property conveyed to the Commonwealth of Virginia for improvements to Route 460 by deed dated November 23, 1998 and recorded in the aforesaid Clerk's Office in Deed Book 1044 at page 117.

BEING the same real estate conveyed to Private Restaurant Properties, LLC, a Delaware limited liability company, by deed from Outback Steakhouse of Florida, Inc., a Florida corporation, dated June 14, 2007, recorded April 4, 2008 as Instrument Number 08003272 in the Clerk's Office, Circuit Court of Montgomery County, Virginia.

And further being known as Tax Map No. 436-636.

218. FEE PARCEL DESCRIPTION: UNIT 4762

All that certain lot or parcel of land lying and being in the City of Lynchburg, Virginia, on the northwesterly side of Albert Lankford Drive, known as 2131 Albert Lankford Drive, as shown and designated as Lot 1, containing 3.083 acres, more or less, upon a plat titled "Division of the Property of Center Point, L.L.C., City of Lynchburg, Virginia" dated May 6, 1997, revised July 7, 1997, made by Hurt & Proffitt, Inc., and being described with reference to said plat as follows:

Beginning at an iron pipe found in the southeasterly line of Lynchburg, Expressway, Rte. 29, corner to property shown on said plat as "Gateway XIV" and running thence with said line of Lynchburg Expressway in a northeasterly direction along a curve having a radius of 3199.05 feet, a length of 59.18 feet to iron pipe found and north 68 degs. 06' 40" east 219.69 feet to iron pipe set; thence with a new line south 31 degs. 33' 15" east 435.53 feet to iron pipe set in the northwesterly line of Albert Lankford Drive; thence with said line of Albert Lankford Drive south 44 degs. 57' 00" west 150.00 to iron pipe found and along a curve to the right having a radius of 386.00 feet, a length of 130.05 feet to an iron pipe found; thence north 31 degs. 33' 15" west 525.49 feet to the beginning; being part of the property conveyed to Center Point L.L.C. by North Campus Holding Company, Inc., by deed dated February 27, 1995 recorded in the Clerk's Office of the Circuit Court for the City of Lynchburg, Virginia in Deed Book 919 at page 94 and being part of Parcel No. 051-03-002 upon the City of Lynchburg Tax Map. Being the same property conveyed to Private Restaurant Properties LLC, a Delaware limited liability company by Deed from Outback Steakhouse of Florida, Inc., a Florida corporation dated June 14, 2007 and recorded April 4, 2008 as Instrument Number 080002869 in the Clerk's Office of the Circuit Court of Lynchburg City, Virginia.

Tax Map ID No. 051-03-003

219. FEE PARCEL DESCRIPTION: UNIT 4801

ALL that certain lot, piece or parcel of land situate in White Clay Creek Hundred, New Castle County and State of Delaware, being Lot No. 3, as shown on the Record Major Land Development Plan of METRO CENTER, prepared by Edward H. Richardson Associates, Inc., Engineers of Newark, Delaware, dated March 30, 1984, and of record in the Office of the Recorder of Deeds in and for New Castle County, Delaware, in Microfilm No. 7135, and more particularly bounded and described as follows, to-wit:

Beginning at a point at the northeasterly end of a corner cut joining the easterly side of Wilmington-Christiana Turnpike (Delaware Route 7) with the southerly side of Churchmans Road; thence from the

point of Beginning along the southerly side of Churchmans Road South seventy-seven degrees, twenty-five minutes, thirteen seconds East two hundred ninety-six feet to a point, a corner for Lots Nos. 2 and 3; thence along the division line for Lots Nos. 2 and 3, South twelve degrees, thirty-four minutes, thirty-two seconds West two hundred fifty-eight and forty-three one-hundredths feet to a point in the northerly side of a private right-of-way, known as Geoffrey Drive, as shown on said Plan; thence thereby by the arc of a circle curving to the left having a radius of one hundred thirty-seven and fifty-one hundredths feet, an arc distance one hundred seventeen and forty-three one-hundredths feet to a point, a corner for Lots Nos. 3 and 4; thence along the division line for Lots Nos. 3 and 4; South seventy-four degrees, thirty-nine minutes, twenty-five seconds East three hundred forty-seven and forty-five one-hundredths feet to a point in the southeasterly side of the Wilmington-Christiana Turnpike (Delaware Route7); thence thereby by the arc of a circle curving to the right having a radius of two thousand seven hundred eighty-four and seventy-nine one-hundredths feet, an arc distance of two hundred sixty and six one-hundredths feet to a point, said point being the southwesterly end of aforesaid corner cut; thence along said corner cut North sixty-three degrees, twenty minutes, five seconds East one hundred fourteen and forty-three one- hundredths feet to the point and place of Beginning. Be the contents thereof what they may.

TOGETHER with the perpetual nonexclusive easement and right of use appurtenant to and for the benefit of the herein insured premises to and from adjacent public roads in and over Geoffrey Drive shown on the above recorded Plan of Metro Center, and the Joint Parking Area for the purpose of pedestrian and vehicular ingress, egress, passage and delivery to and from the herein insured premises and parking on the Joint Parking Area, and the installation, operation, maintenance, repair, relocation and removal of sewers and sewer lines, water and gas mains, electric power lines, telephone lines and other underground utility lines and related facilities including manholes, meters,, pipelines valves, hydrants, sprinklers controls, conduits, sewage facilities, and facilities to provide for drainage into the Storm Water Detention Area all as set forth in the Reciprocal Easement and Operating Agreement, dated June 14, 1984, of record in the Recorder of Deeds in and for New Castle County, Delaware, in Deed Record M, Volume 127, Page 182; as modified by First Modification to Agreement as set forth in Document No. 200412030130466.

220. FEE PARCEL DESCRIPTION: UNIT 4810

Lot One (1) of Certified Survey Map No. 8664 recorded in the Dane County, Wisconsin Register of Deeds Office in Volume 47 of Certified Survey Maps, page 298, as Document No. 2878586, in the City of Madison, Dane County, Wisconsin.

221. FEE PARCEL DESCRIPTION: UNIT 4813

Part of Lot 3 of Certified Survey Map filed March 4, 1997 in Volume 7 of Certified Survey Maps, page 113 & 113A, as Document No. 1168757, being part of Lot 3 of Elmwood Business Center, City of Onalaska, LaCrosse County, Wisconsin, described as follows:

COMMENCING at the Northwest corner of said Lot 3 and THE POINT OF BEGINNING of this description: Thence South 87 degrees 52 minutes 11 seconds East, along the North line thereof, 214.30 feet to the Northeast corner thereof; thence South 02 degrees 07 minutes 49 seconds West, along the East line thereof, 354.18 feet to the Southeast corner thereof; thence North 89 degrees 16 minutes 00 seconds West, along the South line of said Lot 3, a distance of 219.36 feet to a line which is parallel with and 25.01 feet from the West line of said Lot 3; thence along said parallel line North 02 degrees 07

minutes 49 seconds East 258.00 feet; thence North 32 degrees 36 minutes 36 seconds West 43.87 feet to the arc of a 50 foot radius cul-de-sac curve on the right-of-way line of Hampton Court; thence 57.96 feet along the arc of said curve, the chord of which bears North 35 degrees 20 minutes 28.5 seconds East 54.77 feet to the end of said curve; thence continue along the East right-of-way line of said Hampton Court, North 02 degrees 07 minutes 49 seconds East 19.65 feet to the POINT OF BEGINNING.

222. FEE PARCEL DESCRIPTION: UNIT 4910

ALL THAT CERTAIN lot of parcel of real estate, with the improvements thereon and the appurtenance thereunto belonging, situate in Martinsburg District, Berkeley County, West Virginia, being more particularly bounded and described as follows:

BEGINNING at point on the eastern dedicated right of way line of Foxcroft Avenue, thence along with eastern right of way line of Foxcroft Avenue North with a curve to the right having a central angle of 08’ 33 36, a radius of 1858.86 feet, a length of 277.72 feet and a chord bearing and distance of:

1. N 06°45’37” E 277.46 to a point, thence along Lot D-2B as shown on a Final Plat of subdivision, Parcel “D”, Martinsburg Mall;

2. S 88°30’12” E 220.49’ to a point, thence along Remainder Parcel D as shown on the aforesaid plat;

3. S 01 °29’48” W 275.86’ to a point, thence along lands now or formerly of Supervalue, Inc.;

4. N 88°36’12” W 245.94’ to the place of beginning containing 1.5000 acres of land, more or less.

Said parcel being Lot D-2A as shown on the aforesaid Final Plat of Subdivision, Parcel “D”, Martinsburg Mall, which was approved by Martinsburg Planning Commission on September 14, 1995, recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Plat Cabinet 6, Slide 112.

TOGETHER WITH a non-exclusive right-of-way or easement of the purpose of vehicular and pedestrian access, ingress and egress and vehicle parking over, along and upon all driving lanes, common driveways and parking areas as may exist from time to time lying within Lot D-2B, Lot D-2C, Lot D-2D and Remainder Parcel D all as shown on the aforesaid Final Plat of Subdivision, Parcel “D”, Martinsburg Mall recorded in the aforesaid Clerk’s Office in Plat Cabinet No.6, at Slide 112.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitations of the following:

Reciprocal Easement Agreement between Supervalu Operations, Inc. and Leamac Development, L.C., dated 11128/95, and recorded in Deed Book 555, at page 528.

223. FEE PARCEL DESCRIPTION: UNIT 4961

PARCEL NO.1:

All that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate in the City of Beckley District, Raleigh County, West Virginia, being more particularly bounded and described as follows:

Beginning at a rebar (set) on the eastern R/W line of Pikeview Drive and a common corner to Tracts “D” and “E”; thence leaving said Pikeview and with the boundary of said tracts N. 29° 32’ E. 95.31 feet to a point a common corner to said tracts and on the boundary line of a 50’ street designated as Tract “A”; thence leaving Tract “E” and with said Street, S. 29° 28’ W. 235.00 feet to a point a common corner to Tracts “C” and “D”; thence leaving said streets and with said Tracts N. 60° 32’ W. 210.32 feet to a point on said Pikeview and a common corner to said tracts thence leaving Tract “C” and with said Pikeview N. 29° 32’ E. 139.69 feet to the POINT OF BEGINNING and containing 1.134 acres, more or less.

Tract “D” is shown upon a map entitled Outback Steakhouse Second Draft—Site Plan and Property Information Proposed Harper Road Location, Beckley, West Virginia, Scale: 1” = 2-’ Contour Interval: l’ Prepared by Engineering Services, Inc., Airport Road, Beckley, West Virginia, ESI DEG Number: 70UI0002, Date: May 23, 1997, herein referred to as the “Plat”

PARCEL NO.2:

There is also granted and conveyed an exclusive perpetual PARKING EASEMENT, more particularly described as follows:

Being that certain tract of land located in the City of Beckley, Town District, Raleigh County, West Virginia, situated along the Western side of Hylton Lane and shown on a map prepared by Engineering Services, Inc., and dated June 1, 1997, and made part of these descriptions. Being a party of the 6.197 acre property owned by CYBWV, LLC, a West Virginia Corporation, and known as “Tract E.” Bounded and described as follows:

Beginning at a point, said point being 24.59 feet S. 29° 28’ 00” W. from a point, said point being the north western most point of the right-of-way of Hylton Lane (Tract A) and the boundary of the 6.197 acre tract of land thence with said boundary line of the following call: S. 29° 17’ 00” W. 180 feet to a point, thence leaving N. 60° 32’ 00” W. 43.95 feet to a point, thence; N. 60° 32’ 13” W 152.93 feet to a point, thence; N. 29° 27’ 47” E. 17.56 feet to a point, thence; with a curve to the left with a chord bearing of N. 15° 32’ 13’W. and a chord length of 3.42 feet and a radius of 2.42 feet to a point, thence; N. 60° 32’ 13”W. 9.29 feet to a point, thence with a curve to the left with a chord bearing S. 74° 27’ 47’ W, and a chord length of 6.25 feet and a radius of 4.42 feet to a point, thence; S. 29° 25’ 56” E. 91.16 feet to a point, thence; S, 60° 32’ 13” E. 15.58 feet to a point, thence; with a curve to the left with a chord bearing N. 74° 27’ 47” E. and a chord length of 6.25 feet and a radius of 4.42 feet to a point, thence; N.29° 27’ 47” W. 18.58 feet to a point, thence; S. 58° 02’ 37” E. 58.82 feet to a point, thence S. 29° 27” 47” W. 18.58 feet to a point, thence; S. 58° 02’ 37” E. 183.39 feet to a point, thence; S. 60° 32’ 00” E. 34.19 feet to a point of beginning and containing 0.270 acres, more or less.

PARCEL NO.3:

There is further granted and conveyed a STORM WATER EASEMENT, which is more particularly described as follows:

Being that certain tract of land located in the City of Beckley, Town District, Raleigh County, West Virginia, situated along the Western side of Hylton Lane and shown on a map prepared by Engineering Services, Inc., and dated June 19, 1997, and made a part of these descriptions. Being a party of the 6.197 acre property owned by CYBWV, LLC, a West Virginia Corporation, and known as “Tract E.” Bounded and described as follows:

Beginning at a point being 23.09 feet N. 60° 32’ 00” W. from a point, said point being the common corner of Tract A, Tract D, and Tract E, thence with the boundary of the 6.197 acre tract of land and Tract D the following call; N. 60° 32’ 00” W. 10.00 feet to a point, thence leaving said boundary and with a new line through the said 6.197 acre tract of land, the following three calls: N. 29° 19’ 53” E. 22.20 feet to a point, thence N. 60° 20’ 06” W. 122.73 feet to a point, thence; N. 65° 43’ 39” W. 131.66 feet to a point, said point being on the boundary of Tract E and the Right of Way of Pikeview Drive, thence with said boundary the following two calls; with a curve to the left with a chord bearing of N. 27° 12’ 52” W. and a chord length of 15.77 feet and a radius of 270.00 feet to a point, said point being a common corner between Tract E and the Right of Way of Pikeview Drive, thence; N. 28° 54’ 00” W. 0.30 feet to a point, thence leaving said boundary and with a new line through the said 6.197 acre tract of land, the following three calls: S. 65° 43’ 39” E. 144.71 feet to a point, thence; S. 60° 20’ 06” E. 133.14 feet to a point, thence; S. 29° 19’ 53” W. 32.16 feet to the POINT OF BEGINNING containing 0.067 acres, more or less.

224. FEE PARCEL DESCRIPTION: UNIT 5010

Lot 1, “Lierd & Miracle Addition No.2” to the Town of Evansville, Natrona County, Wyoming. Being a replat of a portion of Lot 3, Block 2, Lierd & Miracle Addition to the Town of Evansville, Wyoming and a subdivision of a portion of the NW 1/4 SE 1/4, Section 1, T33N, R79W, 6th principal Meridian, Natrona County, Wyoming.

TOGETHER WITH easement rights contained in Pole Sign Easement Agreement recorded October 23, 1998 as Instrument No. 623411.

225. FEE PARCEL DESCRIPTION: UNIT 5113

Lot 14, as shown on plat entitled “Lot Line Adjustment Plat prepared for Santa Fe Business Park L.L.C., Lots 13 and 14 within Santa Fe Business Park” as shown on Plat filed in the Office of the County Clerk of Santa Fe County, New Mexico recorded on February 16, 2000, in Plat Book 435, page 048, as Document No. 1106,562.

Together with the non-exclusive Access and Easement Agreement, dated March 24, 2000, file March 28, 2000, in Book 1749, page 426, records of Santa Fe County, New Mexico.

226. FEE PARCEL DESCRIPTION: UNIT 5301

Lot 1, of Harkins Superstition Springs, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in book 424 of Maps, page 26.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitations of the following:

Declaration of Cross-Easement and Restrictive covenants recorded October 3, 1996 in Instrument No. 96-0706423.

227. FEE PARCEL DESCRIPTION: UNIT 5302

Parcel No. 1:

That portion of land situated in the Southwest quarter of Section 32, Township 4 North, Range 2 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 32;

THENCE South 89 degrees, 05 minutes, 01 seconds West, along the South line of said Southwest quarter of Section 32 and the centedine of Bell Road, as distance of 1238.65 feet;

THENCE North 00 degrees, 54 minutes, 59 seconds West, a distance of 65.00 feet to a point on the North line of Bell Road;

THENCE North 89 degrees, 05 minutes, 01 seconds East, along the North lien of Bell Road, being 65.00 feet North of and parallel to South line of said Section 32, a distance of 249.03 feet to the TRUE POINT OF BEGINNING;

THENCE North 00 degrees, 54 minutes, 59 seconds West, a distance of 297.00 feet;

THENCE North 89 degrees, 05 minutes, 01 seconds East, a distance of 166.80 feet;

THENCE south 61 degrees, 53 minutes, 33 seconds East, a distance of 30.53 feet;

THENCE South 00 degrees, 54 minutes, 59 seconds East, a distance of 282.19 feet to a point on the North line of Bell Road, which is parallel with and 65.00 feet North of said South line of Section 32;

THENCE South 89 degrees, 05 minutes, 01 second West, along said North line, a distance of 193.50 feet to the TRUE POINT OF BEGINNING.

Parcel No. 2:

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitations of the following;

Declaration of Restrictions and Grant of Easements recorded as Instrument No* 95-0589676 and amended by Instrument No. 97-0257170.

Parcel No, 3:

Easements, terms, conditions, and obligations as set forth in Grant of Easement for Ingress and Egress and Public Utilities, recorded September 27, 1995 in Instrument No. 95-0589678.

228. FEE PARCEL DESCRIPTION: UNIT 5303

Lot 2, CHANDLER GATEWAY WEST, according to Book 474 of Maps, Page 2, records of Maricopa County, Arizona.

Together with the non-exclusive rights, and subject to the terms, conditions, provisions and limitation of the following: All matters contained in Declaration of Covenants, Conditions, Restrictions and Easements recorded in Instrument No. 98-0622586A and Property Owner's Agreement recorded in Instrument No, 00-0096265

229. FEE PARCEL DESCRIPTION: UNIT 5501

Part of the Northeast Quarter and part of the Northwest Quarter of Section 16, Township 14 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

COMMENCING at the Southeast corner of the Northeast Quarter of Section 16; thence North 00 degrees 37 minutes 45 seconds East (assumed bearing) (570.79 feet deed) 637.35 feet measured along the East line of said Quarter Section; thence North 89 degrees 22 minutes 15 seconds West 25.00 feet to the Westerly right of way line of Interstate Highway Number 65 as conveyed to the State of Indiana recorded as Instrument No. 70-56508, in the Office of the Recorder of Marion County, Indiana; thence North 48 degrees 01 minute 15 seconds West 1827.00 feet along the said Westerly right of way line to the POINT OF BEGINNING, which point is the Northerly most corner of a parcel of land conveyed to Edward Rose of Indiana recorded as Instrument No. 89-23352, in the said Recorder's Office;

Thence South 34 degrees 54 minutes 56 seconds West along the Northern line of said described parcel of land 532.67 feet; thence North 71 degrees 48 minutes 15 seconds West along said Northerly line 348.92 feet; thence North 00 degrees 58 minutes 57 seconds East 623.26 feet to the Westerly right of way line of Interstate Highway Number 65 as conveyed to the State of Indiana recorded as Instrument No. 70-56507 in said Recorder's Office; thence South 85 degrees 57 minutes 28 seconds East along said right of way line 166.80 feet; thence South 58 degrees 18 minutes 26 seconds East along said Westerly line 539.78 feet to the POINT OF BEGINNING.

230. FEE PARCEL DESCRIPTION: UNIT 5502

A part of the Southwest Quarter of Section 12, Township 17 North, Range 4 East, Delaware Township, Hamilton County, Indiana, being more particularly described as follows:

COMMENCING at the Southwest corner of the Southwest Quarter of Section 12, Township 17 North, Range 4 East, Hamilton County, Indiana; thence North 00 degrees 07 minutes 30 seconds West on the West line of said Southwest Quarter 175.36 feet; thence North 89 degrees 52 minutes 30 seconds East 16.50 feet to a point on the Northerly limited access right of way line of East 96th Street; thence South 78 degrees 00 minutes 13 seconds East on said right of way line 331.20 feet to a point on the Westerly limited access right of way line of Interstate Route 69; thence the following four calls on said right of way line: 1) North 34 degrees 38 minutes 31 seconds East 473.09 feet; 2) North 58 degrees 43 minutes 24 seconds East 331.66 feet to the POINT OF BEGINNING of the herein described real estate, said point also being on the Easterly line of Instrument No. 95-8541 in the Office of the Recorder of Hamilton County, Indiana;

3) continuing North 58 degrees 43 minutes 24 seconds East 329.94 feet to a curve having a radius of 1372.39 feet, the radius point of which bears North 44 degrees 24 minutes 19 seconds West; 4) Northeasterly on said curve an arc distance of 40.97 feet to a point which bears South 46 degrees 06 minutes 57 seconds East from said radius point, said point also being a corner of the real estate described in Instrument No. 98-58860 in said Recorder's Office; thence North 51 degrees 38 minutes 20 seconds West on the Southwesterly line of said real estate 432.86 feet to a point on the 35 foot Southeasterly right of way line of Crosspoint Boulevard, said point being on a non-tangent curve having a radius of 607.96 feet, the radius point of which bears North 36 degrees 44 minutes 12 seconds West; thence Southwesterly on said curve an arc distance of 134.66 feet to a point which bears South 24 degrees 02 minutes 44 seconds East from said radius point, said point also being a corner of said real estate described in Instrument No. 95-8541; thence South 19 degrees 48 minutes 54 seconds East on the Easterly line of said real estate 426.29 feet to the POINT OF BEGINNING.

Also known as Cheeseburger in Paradise Subdivision Lot One as per plat thereof recorded December 21, 2004 in Plat Cabinet 3 Slide 545, Instrument No. 200400085635.

231. FEE PARCEL DESCRIPTION: UNIT 5505

TRACT I:

A part of the Southeast Quarter of Section 4, Township 11 North, Range 9 West, Honey Creek Township, Vigo County, within the corporate limits of the City of Terre Haute, Indiana, more particularly described as follows:

BEGINNING at a found iron pin, with aluminum cap, on the East right-of-way line of U.S. Route 41 which is S 0°-08' E a distance of 1039.81 feet from the intersection of the East right-of-way line of US Route 41 with the centerline of Johnson Avenue as extended Eastward; thence N 0°-08' W, along and with the East right-of-way line of U.S. Route 41, a distance of 75.00 feet to an iron pin, with aluminum cap, set this survey; thence East a distance of 190.00 feet to an iron pin, with aluminum cap, set this survey; thence S 0°-08' E. a distance of 75.00 feet to a found iron pin, with aluminum cap; thence continuing S 0°-08' E a distance of 286.90 feet to a found iron pin, with aluminum cap, on the North right-of-way line of McCalister Lane, a public road; thence S 89°-32.2' W, along and with the North right-of-way line of McCalister Lane, a distance of 111.28 feet to a found iron pin, with aluminum cap, on the East right-of-way line of US Route 41; thence N 58°-49' W, along and with the East right-of-way line of U.S Route 41, a distance of 92.15 feet to a found iron pin, with aluminum cap; thence N 0°-08' W, along and with the East right-of-way line of U.S. Route 41, a distance of 240.09 feet to the POINT OF BEGINNING.

TRACT II:

Also together with all rights and appurtenances appertaining in and to that certain easement between Showbiz Pizza Place, Inc. and Morris Landsbaum, dated November 23, 1983 and recorded November 28, 1983, in Deed Record 395, Page 329-1.

Also together with all rights and appurtenances appertaining in and to that certain easement between Towne South Plaza Associates, a New York Limited Partnership and Morris Landsbaum, dated February 14, 1984 and recorded April 5, 1984, in Deed Record 396, Page 461-1.

Also together with all rights and appurtenances appertaining in and to that certain easement between Towne South Plaza Associates, a New York Limited Partnership and Morris Landsbaum, dated February 14, 1984 and recorded April 5, 1984, in Deed Record 396, Page 462-1.

232. FEE PARCEL DESCRIPTION: UNIT 5506

Lot 14 and Lot 15 in Eagle Crest Subdivision, Section 2, as per plat thereof, recorded in Plat Book O, page 152, in the Office of the Recorder of Vanderburgh County, Indiana, EXCEPTING, however the following part of Lot 15:

BEGINNING at the South most corner of Lot 15; thence along the Southwesterly line of said Lot 15, North 49 degrees 35 minutes 54 seconds West a distance of 64.98 feet; thence North 47 degrees 58 minutes 06 seconds East a distance of 112.85 feet to a point; thence South 49 degrees 43 minutes 47 seconds East a distance of 65 feet to a point; thence South 47 degrees 58 minutes 06 seconds West a distance 113.00 feet to the POINT OF BEGINNING.

233. FEE PARCEL DESCRIPTION: UNIT 6006

Parcel 1 (Fee):

A parcel of land being portions of Lots 4 to 6, Block J, and Lots 27 to 29, Block K, and that certain 20-foot abandoned alley lying between said Blocks J and K as all are shown on the Plat of Coral Springs University Drive Subdivision, as recorded in Plat Book 60, Page 42, of the Public Records of Broward County, Florida, and being more particularly described as follows:

Commencing at the Southwest corner of Lot 10 of said Block J; thence North 01° 06’ 25” West, along the West line of Lots 6 to 10, a distance of 238.12 feet to the POINT OF BEGINNING; thence continue along the West line of said Lots 4 to 6, North 01° 06’ 25” West, 111.88 feet to the Northwest corner of said Lot 4; thence South 89° 38’ 29” East along the North line and Easterly extension of said Lot 4, 457.00 feet, to a point on the East line of said Lot 29; thence South 01° 06’ 25” East, along the East line of Lots 28 to 29, 149.94 feet; thence South 88° 53’ 35” West, 159.95 feet; thence North 01° 06’ 25” West, 49.75 feet; thence South 88° 53’ 35” West, 296.90 feet to the POINT OF BEGINNING.

Parcel 2 (Easement):

Together with the uses and benefits of the ingress, egress and parking easements described at paragraph 3.1 of that certain Declaration of Restrictions and Grant of Easement, recorded March 5, 1996, in Official Records Book 24568, Page 440, of the Public Records of Broward County, Florida.

Parcel 3 (Easement):

Together with those easements which benefit the Insured property as created by and set forth in Declaration of Easement recorded in Official Records Book 21061, Page 481, Public Records of Broward County, Florida.

Parcel 4 (Easement):

Together with those easements which benefit the insured property as created by and set forth in Reciprocal Easement Agreement recorded in Official Records Book 13911, Page 32, Public Records of Broward County, Florida.

234. FEE PARCEL DESCRIPTION: UNIT 6607

Parcel I:

A parcel of land lying in Section 35, Township 24 South, Range 36 East, Brevard County, Florida and being more fully described as follows:

Commence at the North 1/4 corner of said Section 35; thence North 89°19'10" East, along the North line of the Northeast 1/4 of said Section 35, a distance of 63.24 feet to an intersection with the Easterly Right-of-Way line of State Road No. 3 (a 100.00 foot Right-of-Way per S.R.D. Right-of-Way Map Section 70140-2505); thence South 00°32'50" East, along said Easterly Right-of-Way Line, a distance of 1197.68 feet to a point 190.30 feet Northerly, as measured along said Easterly Right-of-Way Line, of the Northwest corner of an additional Right-of-Way Parcel as described in Official Records Book 851, Page 216, of the Public Records of Brevard County, Florida, said point being the POINT OF BEGINNING of the lands herein described; thence departing said Easterly Right-of-Way Line, North 89°27'10" East, a distance of 25.92 feet to a Point-of-Curvature of a 95.00 foot radius concave to the Northwest; thence Northeasterly, along an arc of said curve, through a central angle of 50°27'10", an arc distance of 83.65 feet to a Point-of-Reverse curvature of a 25.00 foot radius curve concave to the Southeast; thence Northeasterly, along an arc of said curve, through a central angle of 35°34'07", an arc distance of 15.52 feet to a Point-of-Tangency; thence North 74°34'08" East, a distance of 302.98 feet to a Point-of-Curvature of a 25.00 foot radius curve concave to the Southwest; thence Southeasterly along an arc of said curve, through a central angle of 66°13'33", an arc distance of 28.90 feet to a Point-of-Tangency; thence South 39°12'19" East, a distance of 38.22 feet to a point on the Northerly Right-of-Way line of Palmetto Avenue, a 50.00 foot wide Right-of-Way per the "Replat of Hopewell Farms and Merritt Park No 2" per Plat Book 8, Page 28, of said Public Records; thence South 50°47'41" West, along said Northerly Right-of-Way line, a distance of 436.21 feet to the Northeast corner of said lands per Official Records Book 851, Page 216; thence South 89°27'10" West, along the North line of said lands, a distance of 114.03 feet to a point on said Easterly Right-of-Way line of State Road No 3; thence North 00°32'50" West, along said Easterly Right-of-Way line, a distance of 190.30 feet to the POINT OF BEGINNING.

Parcel II:

Non-exclusive easements for ingress, egress, and parking as described in Reciprocal Easement and Operation Agreement, dated January 7, 1993, recorded June 22, 1993 in Official Records Book 3299, Page 4653; as affected by:

First Amendment to Reciprocal Easement and Operation Agreement dated April 13, 1994, recorded April 20, 1994 in Official Records Book 3385, Page 1303, and re-recorded June 24, 1994, in Official Records Book 3402, Page 1765, Brevard County, Florida.

235. FEE PARCEL DESCRIPTION: UNIT 6013

That part of the North 312.80 feet of the South 862.80 feet of the Southeast 1/4 of the Northeast 1/4 of Section 12, Township 29 South, Range 23 East, Polk County, Florida, lying West of State Road No. 37 (South Florida Avenue) and being further described as follows:

Commence at the Southwest corner of the Southeast 1/4 of the Northeast 1/4 of said Section 12, thence N.00°14'17"W., 718.30 feet, along the West line of the Southeast 1/4 of the Northeast 1/4 of said Section 12,; thence leaving said line, N.89°42'34"E., 37.65 feet to the POINT OF BEGINNING; thence N.00°14'l7"W., 144.50 feet; thence N 89°42'34"E., 510.53 feet to the West Right-of-Way line of State Road No. 37 (South Florida Avenue); thence, along said Right-of-Way line, S.28°24'00"W., 185.32 feet; thence, leaving said line, N.61°36'00"W., 37.63 feet; thence S.89°42'34"W., 388.68 feet to the POINT OF BEGINNING.

TOGETHER WITH Non-exclusive appurtenant easements as created by that certain Reciprocal Easement Agreement between Carrabba's Italian Grill, Inc., a Florida corporation and Casual Restaurant Concepts, Inc., a Florida corporation recorded in Official Records Book 3828, page 593.

236. FEE PARCEL DESCRIPTION: UNIT 6015

A parcel of land lying in the Southwest 1/4 of Section 28, Township 29 South, Range 20 East, Hillsborough County, Florida, explicitly described as follows:

Commence at the Southeast corner of said Section 28; thence on the East boundary thereof North 00°55'08" West, a distance of 135.00 feet; thence departing said East boundary and on the North right-of-way line of Lumsden Road the following three (3) courses: (1) South 89°07'43" West, a distance of 2635.08 feet; thence (2) South 88°36' 48" West, a distance of 1341.56 feet; thence (3) South 88°39'15" West, a distance of 44.72 feet; thence departing said right-of-way line North 01°20'45" West, a distance of 377.08 feet to the Point of Beginning; thence South 88°39'15" West, a distance of 50.00 feet; thence North 45°55'08" West, a distance of 373.70 feet to the Easterly right-of-way line of Providence Road; thence on said right-of-way line the following three (3) courses: (1) North 44°04'52" East, a distance of 242.57 feet; (2) thence North 45°55'52" West, a distance of 18.48 feet; (3) thence North 44°04'08" East, a distance of 70.02 feet; thence departing said right- of-way line, South 45°55'52" East, a distance of 215.02 feet; thence South 44°04'08" West a distance of 67.91 feet; thence South 01°20'45" East, a distance of 297.98 feet to the Point of Beginning.

Together with those easements and rights of way set forth in the Declaration of Restrictions and Easements set forth in that certain instrument, recorded in Official Records Book 8293, Page 501, amended by instrument recorded in Official Records Book 8437, Page 1514, Official Records Book 8542, Page 1868, Official Records Book 8711, Page 545 and Official Records Book 9484, Page 1804, of the public records of Hillsborough County, Florida.

Together with non-exclusive appurtenant easement as created by that certain Sign Easement recorded in Official Records Book 9651, Page 567, amended by instrument recorded in Official Records Book 9938, Page 797, of the public records of Hillsborough County, Florida.

237. FEE PARCEL DESCRIPTION: UNIT 6020

Lot 1, CARRABBA'S ITALIAN GRILL SUBDIVISION, according to the plat thereof, as recorded in Plat Book 119, page 39, of the Public Records of Pinellas County, Florida.

238. FEE PARCEL DESCRIPTION: UNIT 6021

PARCEL I:

A tract of land lying in Section 16, Township 1 North, Range 1 East, Leon County, Florida, more particularly described as follows:

Commence at a concrete monument #1254 marking the Northeast corner of the Northwest Quarter of said Section 16 and run North 89 degrees 49 minutes 06 seconds West 1025.47 feet, thence South 00 degrees 10 minutes 54 seconds West 667.88 feet to a wrench marking the Northwest corner of property described in Official Records Book 1191, Page 1785, also marking the Northeast corner of property described in Official Records Book 1569, Page 601, both of the Public Records of Leon County, Florida, thence North 89 degrees 35 minutes 41 seconds West along the North boundary of said property described in Official Records Book 1569, Page 601, a distance of 594.99 feet to a concrete monument #1254 marking the Northeast corner of property described in Official Records Book 1145, Page 2266, of the Public Records of Leon County, Florida; thence South 02 degrees 15 minutes 20 seconds East along the Easterly boundary of said property 119.00 feet to a concrete monument marking the most Northerly corner of property described in Official Records Book 1208, Page 2100, of the Public Records of Leon County, Florida; thence South 38 degrees 59 minutes 58 seconds East 104.39 feet to a concrete monument LB #732 marking the most Northerly corner of property described in Official Records Book 1208, Page 2103, of the Public Records of Leon County, Florida for the POINT OF BEGINNING. From said POINT OF BEGINNING run South 51 degrees 00 minutes 02 seconds West along the Northerly boundary of said property 194.81 feet to a concrete monument on the Easterly Right-of-Way boundary of Capital Circle N.E. (State Road No. 261), thence South 38 degrees 07 minutes 18 seconds East along said Right-of-Way boundary 69.61 feet to a Department of Transportation iron pin, thence South 38 degrees 59 minutes 58 seconds East along said Right-of-Way boundary 84.95 feet to an iron pin #LB 732, thence leaving said Right-of-Way boundary run North 51 degrees 00 minutes 02 seconds East 195.87 feet to a nail and cap #LB 732, thence North 38 degrees 59 minutes 58 seconds West 154.56 feet to the POINT OF BEGINNING.

PARCEL II:

Non-exclusive easements for parking, access and dumpster area contained in the Agreement for Access, Parking and Dumpster Easements Together with Restrictive Covenants by and between Dominic F. Esposito & Sons, Inc., a Florida corporation and Carrabba's Italian Grill, Inc., a Florida corporation recorded in Official Records Book 2368, Page 819.

239. FEE PARCEL DESCRIPTION: UNIT 6029

Lot 2, VERO MALL, PD, A PLANNED DEVELOPMENT, according to the plat recorded in Plat Book 16, Page 78, of the Public Records of Indian River County, Florida.

TOGETHER WITH easements in favor of Lot 2 as set forth in the Declaration of Restrictions, Covenants and Conditions and Grant of Easements recorded April 18, 2002, in Official Records Book 1482, Page 2696, and as affected by First Amendment recorded in Official Records Book 1519, Page 2746, and Second Amendment recorded in Official Records Book 2088, Page 1085, all in the Public Records of Indian River County, Florida.

240. FEE PARCEL DESCRIPTION: UNIT 6035

Parcel I (a/k/a Parcel "A"):

That portion of Grove No. 1 of the 2nd Replat of Blocks 9-16 inclusive, of Overstreet's Subdivision, Winter Haven, Florida, recorded in Plat Book 30, Page 5, Public Records of Polk County, Florida, being described as below:

Commence at the Southeast corner of Section 29, Township 28 South, Range 26 East, Polk County, Florida; thence North 00°16'00" West, along the East line of the Southeast 1/4 of the Southeast 1/4 of said Section 29, a distance of 30.00 feet; thence along the South and West lines of a parcel recorded in O.R. Book 4058, Page 889, Public Records of Polk County, Florida, the following six courses (1) North 89°59'41" West, along the South line of said Grove No. 1, a distance of 1221.33 feet to the point of curvature of a curve to the right having a radius of 47.00 feet, a central angle of 72°00'50" a chord bearing of North 54°00'40" West, and a chord distance of 55.26 feet; (2) Northwesterly along the arc of said curve 59.07 feet to a point of compound curvature of a curve to the right having a radius of 195.00 feet, a central angle of 17°38'10" a chord bearing of North 09°11'10" West, and a chord distance of 59.79 feet; (3) Northwesterly along the arc of said curve 60.02 feet; (4) North 00°22'05" West, 109.50 feet (5) South 89°37'55" West, 13.00 feet to the West line of aforesaid Grove No. 1; (6) North 00°22'05" West, along said West line of Grove No. 1, and the West line of a parcel recorded in O.R. Book 4191, Page 45, Public Records of Polk County, Florida, 868.28 feet to the North line of said parcel recorded in O.R. Book 4191, page 45; thence along said North line of a parcel recorded in O.R. Book 4191, Page 45; the following two courses (1) South 89°31'56" East, 4.00 feet to the Point of Beginning; (2) South 89°31'56" East, 191.00 feet; thence South 00°22'05" East, parallel with the aforesaid West line of a parcel recorded in O.R. Book 4191, Page 45, a distance of 229.25 feet; thence North 89°59'41" West, parallel with aforesaid South line of a parcel recorded in O.R. Book 4058, Page 889, a distance of 165.67 feet; thence North 54°46'37" West, 16.37 feet; thence North 00°22'05" West, parallel with aforesaid West line of a parcel recorded in O.R. Book 4191, Page 45, a distance of 15.39 feet; thence North 89°59'41" West, parallel with aforesaid South line of a parcel recorded in O.R. Book 4058, Page 889, a distance of 12.00 feet; thence North 00°22'05" West, parallel, with aforesaid West line of a parcel recorded in O.R. Book 4191, Page 45, a distance of 205.96 feet to the Point of Beginning.

Parcel II:

Non-Exclusive easements for the benefit of Parcel I a/k/a Parcel "A" as created by Declaration of Covenants, Conditions and Restrictions dated March 23, 2000, by and between Faison-Winter Haven LLC, a North Carolina limited liability company and Lowe's Home Centers, Inc., a North Carolina corporation, recorded March 24, 2000 in O.R. Book 4425, Page 1026, and Amendment to Declaration of Covenants, Conditions and Restrictions recorded in O.R. Book 4677, Page 2131, and Second Amendment to Declaration of Covenants, Conditions and Restrictions recorded in O.R. Book 5839, Page 832, Public Records of Polk County, Florida.

241. FEE PARCEL DESCRIPTION: UNIT 6048

PARCEL I: (Fee Simple)

A portion of the Southeast 1/4 of Section 10, Township 28 South, Range 17 East, including a portion of Tract F shown on the Condominium Plat of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida, and all of said land being more particularly described as follows:

From the Southeast corner of Section 10, Township 28 South, Range 17 East, Hillsborough County, Florida; run thence North 00°21'33" East, 535.61 feet along the East boundary of said Section 10; thence North 89°40'49" West, 88.00 feet to the West right-of-way line of Sheldon Road for a POINT OF BEGINNING; thence North 89°40'49" West, 2.00 feet to the Northeast corner of Lot 1, of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida; thence North 89°40'49" West, 274.96 feet along the North boundary of Lots 1 through 6 inclusive of said SHELDON WEST; thence South 84°52'59" West, 155.06 feet along the North boundary of Lots 6, 7 and 8 of SHELDON WEST; thence North 89°54'05" West, 110.68 feet along the North boundary of Lots 8, 9 and 10 of said SHELDON WEST; thence North 00°21'33" East, 506.79 feet along the West boundary of the East 630.00 feet of the Southeast 1/4 of said Section 10, (also being along the East boundary of CYPRESS PARK GARDEN HOMES, a Condominium filed in Condominium Plat Book 5, Page 33, Public Records of Hillsborough County, Florida) to the South boundary of an access easement as recorded in Official Records Book 9135, Page 931, Public Records of Hillsborough County, Florida; thence South 89°10'19" East, 542.01 feet along the South boundary of said easement to the West right-of-way line of Sheldon Road; thence South 00°21'33" West, 486.87 feet along said West right-of-way line to the Point of Beginning;

LESS AND EXCEPT the following parcel described as a portion of the Southeast 1/4 of Section 10, Township 28 South, Range 17 East, including a portion of Tract F shown on the Condominium Plat of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida, and all of said land being more particularly described as follows:

From the Southeast corner of Section 10, Township 28 South, Range 17 East, Hillsborough County, Florida; run thence North 00°21'33" East, 535.61 feet along the East boundary of said Section 10; thence North 89°40'49" West, 88.00 feet to the West right-of-way line of Sheldon Road for a POINT OF BEGINNING; thence North 89°40'49" West, 2.00 feet to the Northeast corner of Lot 1, of SHELDON WEST, a condominium filed in Condominium Plat Book 2, Page 25, Public Records of Hillsborough County, Florida; thence North 89°40'49" West, 219.00 feet along the North boundary of Lots 1 through 5 inclusive of said SHELDON WEST for a POINT OF BEGINNING; thence continue North 89°40'49" West, 55.96 feet along the North boundary of Lot 5 of said SHELDON WEST; thence South 84°52'59" West, 155.06 feet along the North boundary of Lots 6, 7 and 8 of SHELDON WEST; thence North 89°54'05" West, 110.68 feet along the North boundary of Lots 8, 9 and 10 of said SHELDON WEST; thence North 00°21'33" East, 506.79 feet along the West boundary of the East 630.00 feet of the Southeast 1/4 of said Section 10, (in part along the East boundary of CYPRESS PARK GARDEN HOMES, a Condominium filed in Condominium Plat Book 5, Page 33, Public Records of Hillsborough County, Florida) to the South boundary of an access easement as recorded in Official Records Book 9135, Page 931, Public Records of Hillsborough County, Florida; thence South 89°10'19" East, 294.00 feet along the South boundary of said easement; thence South 00°21'33" West, 42.54 feet to a point of curvature; thence Southerly 52.56 feet along the arc of a curve to the left having a radius of 100.00 feet,

a central angle of 30°07’02” and a chord bearing and distance of South 14°41’58” East, 51.96 feet to a point of reverse curvature; thence Southerly 52.56 feet along the arc of a curve to the right having a radius of 100.00 feet, a central angle of 30°07’02” and a chord bearing and distance of South 14°41’58” East, 51.96 feet to a point of tangency; thence South 00°21’33” West, 346.15 feet to the Point of Beginning;

PARCEL II: (Easement)

Non-exclusive easement for access contained in the Access Easement Agreement recorded in Official Records Book 9135, Page 931, as amended by the Amendment thereto recorded in Official Records Book 10548, Page 1946, re-recorded in Official Records Book 10594, Page 1849, Public Records of Hillsborough County, Florida.

PARCEL III: (Easement)

Non-exclusive easement for drainage contained in Drainage Easement recorded in Official Records Book 3898, Page 559; as assigned to Outback Steakhouse of Florida, Inc., a Florida corporation, by Assignment of Drainage Easement recorded in Official Records Book 11130, Page 612, Public Records of Hillsborough County, Florida.

PARCEL IV: (Easement)

Non-exclusive easement for drainage contained in the Drainage Easement recorded in Official Records Book 11130, Page 615, Public Records of Hillsborough County, Florida.

PARCEL V: (Easement)

Non-exclusive easement for drainage contained in the following instruments: (i) Parcel 6 Drainage Easement recorded in Official Records Book 9489, Page 1554; (ii) the Amendment thereto recorded in Official Records Book 9696, Page 1946; and (iii) the Second Amendment thereto recorded in Official Records Book 10995, Page 263, all in the Public Records of Hillsborough County, Florida.

PARCEL VI: (Easement)

Non-exclusive easement for drainage contained in the Drainage Easement recorded in Official Records Book 11130, Page 623, Public Records of Hillsborough County, Florida.

PARCEL VII: (Easement)

Easements which benefit the insured property as created by and set forth in Declaration of Covenants, Restrictions and Easements for “Outback Plaza at Citrus Park” recorded in Official Records Book 13513, Page 1374, Public Records of Hillsborough County, Florida.

242. FEE PARCEL DESCRIPTION: UNIT 6025

PARCEL 1:

Lot 1, TOWNSGATE WEST, according to map or plat thereof recorded in Plat Book 73, page 44, of the public records of Hillsborough County, Florida; LESS that portion as taken by the State of Florida Department of Transportation in Stipulated Final Judgment in Official Records Book 8159, page 512.

PARCEL 2:

TOGETHER WITH those certain non-exclusive easements for drainage and retention areas for the benefit of the above described parcel as created by and set forth in Exhibit D of that certain Easement Agreement executed by and between Whitestone Plant City Partners, a Florida general partnership, Inland Southern Development Corporation, a Florida corporation, and Inland Townsgate Limited Partnership, a Florida limited partnership recorded in Official Records Book 5295, page 1857, of the public records of Hillsborough County, Florida, LESS AND EXCEPT that part described in Order of Taking recorded in Official Records Book 7936, page 234, public records of Hillsborough County, Florida; ALSO LESS AND EXCEPT that part described in Stipulated Order of Taking recorded in Official Records Book 7917, page 491, public records of Hillsborough County, Florida, ALSO LESS AND EXCEPT that part described in Final Judgment recorded in Official Records Book 8159, page 512, public records of Hillsborough County, Florida.

PARCEL 3:

TOGETHER with those certain non-exclusive easements for drainage, ingress/egress and utilities for the benefit of Parcel 1 above as created by and set forth in that certain Declaration of Easements and Maintenance Agreement executed by and between Northlake Development, Inc., a Florida corporation and Northlake Drainage Association, Inc., a Florida not-for-profit corporation recorded in Official Records Book 7371, page 670, public records of Hillsborough County, Florida; LESS AND EXCEPT that part described in Stipulated Order of Taking recorded in Official Records Book 7917, page 491, public records of Hillsborough County, Florida and Stipulated Final Judgment recorded in Official Records Book 8159, page 512, public records of Hillsborough County, Florida.

243. FEE PARCEL DESCRIPTION: UNIT 6116

ALL THAT TRACT or parcel of land lying and being in Land Lot 23 of the 1st District, 5th Section, City of Douglasville, Douglas County, Georgia, according to a survey for Carrabba's Italian Grill and First American Title Insurance Company, prepared by Armstrong Land Surveying, Inc. by Robert T. Armstrong (GRL 1901) dated February 7, 2006, and being more particularly described according to said survey as follows:

Commencing at a one-half inch rebar found at the northeast corner of Land Lot 23; run thence southwesterly along the southeasterly right-of-way of the I-20 east bound On-Ramp (right-of-way varies) South 52 degrees 41 minutes 44 seconds West, a distance of 297.77 feet to a one-half inch rebar found; run thence along said right-of-way line South 52 degrees 44 minutes 24 seconds West, a distance of 61.61 feet; said point being the TRUE PLACE OR POINT OF BEGINNING. FROM THE TRUE PLACE OR POINT OF BEGINNING AS THUS ESTABLISHED, run thence along said right-of-way line North 52 degrees 44 minutes 24 seconds East, a distance of 48.81 feet to a five-eights inch rebar set;

leaving aforesaid right-of-way line, run thence South 87 degrees 08 minutes 54 seconds East, a distance of 69.65 feet to a five-eights inch rebar set; run thence South 03 degrees 06 minutes 43 seconds West, a distance of 10.57 feet to a five-eighths inch rebar set; run thence South 87 degrees 14 minutes 04 seconds East, a distance of 160.30 feet to a five-eighths inch rebar set; run thence South 00 degrees 57 minutes 39 seconds West, a distance of 132.02 feet to a concrete monument found; run thence South 00 degrees 11 minutes 18 seconds East, a distance of 146.85 feet to a one-half inch rebar set; run thence South 00 degrees 12 minutes 02 seconds East, a distance of 20.66 feet to a five-eighths inch rebar set; run thence South 88 degrees 55 minutes 05 seconds West, a distance of 194.85 feet to a five-eighths inch rebar set; run thence North 01 degree 05 minutes 24 seconds West, a distance of 205.91 feet to a five-eighths inch rebar set; run thence North 37 degrees 02 minutes 36 seconds West, a distance of 112.15 feet to a five-eighths inch rebar set; said point being the TRUE PLACE OR POINT OF BEGINNING. Said tract or parcel containing 65,341 square feet or 1.5 acres, more or less.

TOGETHER WITH the rights, privileges and easements granted under that certain Declaration of Restrictive Covenants, Conditions and Easements by Douglasville Day Centre (consented to by McDonald's USA, LLC), dated August 31, 2005, filed of record September 2, 2005, recorded in Deed Book 2217, Page 858, Douglas County, Georgia records; as amended by Amendment to the Declaration of Restrictive Covenants, Conditions and Easements for Douglasville Day Centre, dated May 23, 2006, filed of record May 25, 2006, recorded in Deed Book 2365, Page 21, aforesaid county records; as further amended by that certain Second Amendment to Declaration of restrictive Covenants, Conditions and easements for Douglasville Day Centre by Douglasville Day Centre, LLC, as consented to by McDonald's USA, LLC, Carrabba's Italian Grill, Inc. and Texas Roadhouse Holdings, LLC, dated May X, 2007, filed of record May 14, 2007, as recorded in Deed Book 2560, Page 835, aforesaid county records.

TOGETHER WITH the rights, privileges and easements granted under that certain Right of way Easement in favor of Greystone Power Corporation from Douglasville Day Centre, LLC, dated Dec. 14, 2005, filed of record Jan. 24, 2006, as recorded in Deed Book 2298, page 440, aforesaid county records.

TOGETHER WITH the rights, privileges and easements granted under that certain Access easement from Douglasville day Centre LLC and Day Retail, LLC, dated May 4, 2007, filed of record May 7, 2007, as recorded in Deed Book 2556, page 889, aforesaid county records.

244. FEE PARCEL DESCRIPTION: UNIT 6302

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF STERLING HEIGHTS, MACOMB COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

Part of the East 131.00 feet of Lot 44, Lakeside Subdivision No. 6, according to the recorded plat thereof, as recorded in Liber 73 of Plats, pages 15 and 16, Macomb County Records, described as that part of Lot 44:

Commencing at the Northwest corner of Lot 44; thence along the North lot line North 87°50'31" East, 49.00 feet to the Point of Beginning; thence continuing along said North lot line North 87°50'31" East, 75.00 feet; thence South 02°09'29" East, 439.50 feet to a point on the South lot line of said Lot 44; thence along said lot line South 87°50'31" West, 75.00 feet; thence North 02°09'29" West, 439.50 feet to the Point of Beginning.

Parcel 2:

All of Lot 43 and that part of Lot 44 described as follows:

Beginning at the Northwest corner of Lot 44; thence along the North lot line North 87 degrees 50 minutes 31 seconds East, 49.00 feet; thence South 02 degrees 09 minutes 29 seconds East, 439.50 feet to the Southerly line of said Lot 44; thence South 87 degrees 50 minutes 31 seconds West, 4.00 feet; thence 45.02 feet along a curve to the left, said curve having a radius of 763.34 feet and central angle of 03 degrees 22 minutes 50 seconds and a chord bearing and distance of South 86 degrees 09 minutes 06 seconds West, 45.01 feet to the Southwest corner of said Lot 44; thence North 02 degrees 09 minutes 29 seconds West, 440.83 feet to the Point of Beginning, included in the plat of Lakeside Subdivision No. 6, according to the plat thereof, as recorded in Liber 73, pages 15 and 16 of Plats, Macomb County Records.

TOGETHER WITH the non-exclusive rights, and subject to the terms, conditions, provisions and limitations contained in the Operating Agreement recorded in Liber 2507, page 550, as affected by Affidavit recorded in Liber 2614, page 845, and as amended by First Amendment to Operating Agreement recorded in Liber 2627, page 952 and Second Amendment to Operating Agreement recorded in Liber 2793, page 209 and Supplemental Agreement recorded in Liber 2861, page 346.

Parcel ID: 10-01-102-008

Street Address: 13905 Lakeside Circle, Sterling Heights

245. FEE PARCEL DESCRIPTION: UNIT 6402

Lot 8R, Block A of 2nd Replat of Lot 8R and revised conveyance of Lots 9 & 10, Block A, Parkway Hills Addition, an addition to the City of Plano, Collin County, Texas, according to the plat thereof recorded in Volume N, Page 909, Map Records, Collin County, Texas.

246. FEE PARCEL DESCRIPTION: UNIT 6502

Part of the Northeast Quarter and part of the Northwest Quarter of Section 16, Township 14 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

COMMENCING at the Southeast corner of the Northeast Quarter of Section 16; thence North 00 degrees 37 minutes 45 seconds East (assumed bearing) (570.79 feet deed) 637.35 feet measured along the East line of said Quarter Section; thence North 89 degrees 22 minutes 15 seconds West 25.00 feet to the Westerly right of way line of Interstate Highway Number 65 as conveyed to the State of Indiana recorded as Instrument No. 70-56508, in the Office of the Recorder of Marion County, Indiana; thence North 48 degrees 01 minute 15 seconds West 1827.00 feet along the said Westerly right of way line to the POINT OF BEGINNING, which point is the Northerly most corner of a parcel of land conveyed to Edward Rose of Indiana recorded as Instrument No. 89-23352, in the said Recorder’s Office;

Thence South 34 degrees 54 minutes 56 seconds West along the Northern line of said described parcel of land 532.67 feet; thence North 71 degrees 48 minutes 15 seconds West along said Northerly line 348.92 feet; thence North 00 degrees 58 minutes 57 seconds East 623.26 feet to the Westerly right of way line of Interstate Highway Number 65 as conveyed to the State of Indiana recorded as Instrument No. 70-56507 in said Recorder's Office; thence South 85 degrees 57 minutes 28 seconds East along said right of way line 166.80 feet; thence South 58 degrees 18 minutes 26 seconds East along said Westerly line 539.78 feet to the POINT OF BEGINNING.

247. FEE PARCEL DESCRIPTION: UNIT 6903

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF LAFAYETTE, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

FEE PARCEL

That certain tract of land containing 1.280 acres, located in Section 62, Township 10 South, Range 4 East, City of Lafayette, Lafayette Parish, Louisiana being more fully described as follows:

Commencing at the intersection of the northerly right of way of Kaliste Saloom Road and the westerly right of way of Camellia Boulevard (POC); thence proceed along the northerly right of way of Kaliste Saloom Road a bearing of South 40°39'03" West a distance of 153.94 feet to a point; thence continue along the northerly right of way of Kaliste Saloom Road along a curve to the right having a radius of 34,337.50 feet, an arc length of 122.30 feet, a delta angle of 00°12'15", a chord bearing of South 51°38'57" West and a chord distance of 122.30 feet to a point; thence continue along the northerly right of way of Kaliste Saloom Road a bearing of South 51°44'11" West a distance of 15.94 feet to a point, said point hereinafter to be known as the Point of Beginning (POB); thence proceed along the northerly right of way of Kaliste Saloom Road a bearing of South 51°44'11" West a distance of 172.90 feet to a point; thence proceed along a bearing of North 45°50'00" West a distance of 319.80 feet to a point, thence proceed along a bearing of North 48°00'28" East a distance of 171.78 feet to a point; thence proceed along a bearing of South 45°50'50" East a distance of 331.07 feet to the Point of Beginning.

SERVITUDE PARCEL

Together with rights granted in Non-Exclusive Access and Parking Easements pursuant to Non-Exclusive Access and Parking Easement Agreement by RR Company of America, L.L.C. to Carrabba's Italian Grill, Inc. dated October 28, 2005, recorded under File No. 2005-00049221 on November 2, 2005, in the conveyance records.

248. FEE PARCEL DESCRIPTION: UNIT 7101

BEGINNING FOR THE SAME at a point on the southern right of way line of Maryland Route 103, where it intersects the western right of way line of Long Gate Parkway, thence running with the said western right of way line the following five courses and distances, viz:

1) South 32 degrees 22 minutes 52 seconds West 32.14 feet to a point,

2) South 09 degrees 31 minutes 44 seconds East 32.99 feet to a point,

3) North 38 degrees 16 minutes 17 seconds West 131.54 feet to a point,

4) 50.70 feet along the arc of a curve to the right, which curve is subtended by a chord bearing South 39 degrees 01 minutes 13 seconds West 50.70 feet, the curve being of radius 1940.00 feet, and

5) South 39 degrees 46 minute 08 seconds West 67.73 feet to the point, thence departing the said western right of way line and running with the line of division between Parcel K and Parcel J as shown on thePlat entitled “Long Gate Center, Parcels I, J & K” and recorded among the Land Records of Howard County, Maryland as Plat No. 12357, the following course and distances, viz:

6) North 50 degrees 13 minutes 52 seconds West 300.00 feet to a point, thence leaving said line and running for the following two courses and distances, viz:

7) North 39 degrees 46 minutes 08 seconds East 89.15 feet, thence

8) North 38 degrees 16 minutes 17 seconds East 187.53 feet to a point in the southern right of way line of the said Route 103, thence with the right of way line the following two courses and distances, viz:

9) 59.19 feet along the arc of a curve to the right, which curve is subtended by a chord bearing South 56 degrees 23 minutes 05 seconds East 59.19 feet, the curve being a radius of 2,435.00 feet and

10) South 55 degrees 41 minutes 19 seconds East 213.78 feet to the point of beginning encompassing 86,364 square feet or 1.983 acres of land, more or less.

BEINGall that parcel known as Parcel K on a Plat entitled “Long Gate Center, Parcels I, J & K” and recorded among the Land Records of Howard County, Maryland as Plat No. 12357.

TOGETHER WITH EASEMENTS APPURTENANT to the above described property as defined in Article VI, Shopping Center Easements” in that certain Declaration of Covenants recorded among the Land Records of Howard County, Maryland in Liber 3645, folio 105, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Easement recorded among the aforesaid Land Records in Liber 3645, folio 176.

TOGETHER WITH the beneficial easements set forth in the following:

(a) Easement Agreement dated September 22, 1994 and recorded among the Land Records of Howard County in Liber 3354, folio 384 by and between 103-29 Limited Partnership, Woodberry Corporation, the Long Gate Parkway Limited Partnership; and

(b) Declaration of Maintenance Obligation for Use-In Common Access Area dated September 27, 1995 and recorded among the Land Records of Howard County in Liber 3589, folio 161 by 103-29 Limited Partnership and The Long Gate Parkway Limited Partnership.

Tax ID No. 02-381710

249. FEE PARCEL DESCRIPTION: UNIT 8101

Lot 1 of CORNERSTONE PLAZA, according to the map or plat thereof as recorded in Plat Book 88, Page 22 of the Public Records of Hillsborough County, Florida.

TOGETHER WITH those certain easements as set forth in Declaration of Covenants, Restrictions and Easements recorded in Official Records Book 10225, Page 596, of the Public Records of Hillsborough County, Florida.

250. FEE PARCEL DESCRIPTION: UNIT 8002

Parcel "A" Fee Parcel:

Lots 2 and 3 of BIG BEAR COMMERCIAL PARK PHASE 1, according to the map or plat thereof as recorded in Plat Book 93, Page 20 of the Public Records of Hillsborough County, Florida, LESS AND EXCEPT that part of Lot 3 described as follows:

Begin at the Easternmost corner of Lot 4 of Big Bear Commercial Park Phase 1, according to a map or plat thereof, as recorded in Plat Book 93, Page 20 of the Public Records of Hillsborough County, Florida and run thence South 41°45'28" West, along the Southeasterly boundary of said Lot 4, a distance of 239.75 feet to the Southernmost corner of said Lot 4; thence departing said Southeasterly boundary, North 48°20'08" West, along the Southwesterly boundary of said Lot 4, a distance of 162.69 feet to a point of intersection with the Southerly right of way line of Dona Michelle Drive according to said map or plat of Big Bear Commercial Park Phase 1; thence departing said Southwesterly boundary, North 01°11'48" West, along said southerly right of way line, a distance of 93.30 feet to the beginning of a curve, said curve being concave to the Southeast and having a radius of 200.00 feet; thence Northerly, along the arc of said curve and said Southerly right of way line, a distance of 161.31 feet, said curve having a chord bearing of North 21°54'33" East and chord distance of 156.97 feet to a point of tangency; thence continue along said Southerly right of way line, North 45°00'53" East, a distance of 118.15 feet to a point of intersection with a line lying and being 94.32 feet East of and parallel with the common boundary between Lots 3 and 4 according to said map or plat of Big Bear Commercial Park Phase 1; thence departing said Southerly right of way line, South 48°20'08" East, along said parallel line, a distance of 272.85 feet to a point of intersection with the Southeasterly boundary of said Lot 3; thence departing said parallel line, South 41°45'28" West, along said Southeasterly boundary of Lot 3, a distance of 94.32 feet to the point of beginning.

Parcel "B" Easement Parcel

TOGETHER WITH non-exclusive easements, rights and interests appurtenant to Parcel "A" created and described in that certain Drainage Declaration (Including Covenants, Conditions, Restrictions and Easements) recorded June 6, 2002, in Official Records Book 11691, at Page 1738 of the Public Records of Hillsborough County, Florida, over, under, and across the lands described therein, LESS AND EXCEPT any portion thereof lying within hereinabove described Parcel "A":

Parcel “C” Easement Parcel:

TOGETHER WITH all easement rights appurtenant to Parcel A as described in that Easement Agreement recorded in Official Records Book 8986, at Page 1098 as supplemented by that Supplement to Easement Agreement recorded in Official Records Book 9783, page 468 both recorded in the Public Records of Hillsborough County, Florida.

Parcel “D” Easement Parcel:

TOGETHER WITH all easement rights appurtenant to Parcel A as described in that Grant of Easement recorded in Official Records Book 11723, page 1929 of the Public Records of Hillsborough County, Florida.

Parcel “E” Easement Parcel:

TOGETHER WITH all easement rights appurtenant to Parcel A as described in that Grant of Easement recorded in Official Records Book 11723, page 1943 of the Public Records of Hillsborough County, Florida.

Parcel “F” Easement Parcel:

TOGETHER WITH all easement rights appurtenant to Parcel A as described in that Declaration of Covenants, Conditions, Restrictions and Easements recorded in Official Records Book 12033, page 1202 of the Public Records of Hillsborough County, Florida.

251. FEE PARCEL DESCRIPTION: UNIT 8109

PARCEL I:

ALL that certain lot, parcel or tract of land, situate and lying in the Township of Evesham, County of Burlington, State of New Jersey, and being more particularly described as follows:

BEG1NNNG at a point in the Westerly line of New Jersey State Highway Route 73 (126 feet wide) a distance of 618.92 feet Southwardly from a monument corner to lands now or formerly of Theodore Plaska (Block 36, Lot 4, Evesham Township Tax Map) said point also being in the division line between Lots 4.02 and 4.05, Block 36 on the Plan hereinafter mentioned and extending; thence

(1) South 89 degrees 07 minutes 43 seconds West along said division line a distance of 480.18 feet to a point said point being in the Township dividing line of the Township of Evesham (Burlington County) from the Township of Voorhees (Camden County); thence

(2) North 12 degrees 41 minutes 15 seconds West along said Township line a distance of 605.95 feet to a point in the line of lands now or formerly of Theodore Plaska (Lot 4, Block 36, Tax Map); thence

(3) North 86 degrees 42 minutes 36 seconds East along said lands of Plaska, a distance of 610.91 feet to a point in the Westerly line of New Jersey State Highway Route 73; thence

(4) South 00 degrees 18 minutes 23 seconds East along the Westerly line of New Jersey State Highway Route 73, a distance of 618.92 feet to the first mentioned point and place of beginning.

PARCEL II:

Together with rights under the Declaration of Cross Easements as set forth in Deed Book 3888 page 264; Amended & Restated Declaration of Cross Easement as set forth in Deed Book 6352, page 230; Supplement to Amended and Restated Declaration of Cross Easements as set forth in Deed Book 6352, page 259; First Amendment to Supplement to Amended and Restated Declaration of Cross Easements in Deed Book 6399, page 960 and First Amendment to Amended and Restated Declaration of Cross Easements as set forth in Deed Book 6399, page 968.

BEING shown and designated as Lot 4-BA, Block 36, on Plan of Minor Subdivision, Plate 6, Block 36, Lot 4, Evesham Township, Burlington County, prepared by Korab, McConnell & Dougherty Assoc., PA, dated 11/20/1985 and last revised 12/09/1987 and duly filed in the Burlington County Clerk's Office on 10/12/1988 as Map #04807.

FOR INFORMATIONAL PURPOSES ONLY:

Premises described herein is designated as Lot 4.05 Block 36 on the Tax Map of the Township of Evesham, Burlington County, NJ

252. FEE PARCEL DESCRIPTION: UNIT 8302

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF STERLING HEIGHTS, MACOMB COUNTY, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

Part of the East 131.00 feet of Lot 44, Lakeside Subdivision No. 6, according to the recorded plat thereof, as recorded in Liber 73 of Plats, pages 15 and 16, Macomb County Records, described as that part of Lot 44:

Commencing at the Northwest corner of Lot 44; thence along the North lot line North 87°50'31" East, 49.00 feet to the Point of Beginning; thence continuing along said North lot line North 87°50'31" East, 75.00 feet; thence South 02°09'29" East, 439.50 feet to a point on the South lot line of said Lot 44; thence along said lot line South 87°50'31" West, 75.00 feet; thence North 02°09'29" West, 439.50 feet to the Point of Beginning.

Parcel 2:

All of Lot 43 and that part of Lot 44 described as follows:

Beginning at the Northwest corner of Lot 44; thence along the North lot line North 87 degrees 50 minutes 31 seconds East, 49.00 feet; thence South 02 degrees 09 minutes 29 seconds East, 439.50 feet to the Southerly line of said Lot 44; thence South 87 degrees 50 minutes 31 seconds West, 4.00 feet; thence 45.02 feet along a curve to the left, said curve having a radius of 763.34 feet and central angle of 03 degrees 22 minutes 50 seconds and a chord bearing and distance of South 86 degrees 09 minutes 06 seconds West, 45.01 feet to the Southwest corner of said Lot 44; thence North 02 degrees 09 minutes 29 seconds West, 440.83 feet to the Point of Beginning, included in the plat of Lakeside Subdivision No. 6, according to the plat thereof, as recorded in Liber 73, pages 15 and 16 of Plats, Macomb County Records.

TOGETHER WITH the non-exclusive rights, and subject to the terms, conditions, provisions and limitations contained in the Operating Agreement recorded in Liber 2507, page 550, as affected by Affidavit recorded in Liber 2614, page 845, and as amended by First Amendment to Operating Agreement recorded in Liber 2627, page 952 and Second Amendment to Operating Agreement recorded in Liber 2793, page 209 and Supplemental Agreement recorded in Liber 2861, page 346.

Parcel ID: 10-01-102-008
Street Address: 13905 Lakeside Circle, Sterling Heights

253. FEE PARCEL DESCRIPTION: UNIT 8609

Situated in the Township of Boardman, County of Mahoning and State of Ohio: And known as being Sublot No. 4, in Tiffany Plat No. 4, a subdivision of a part of original Boardman Township Great Lot No. 30—3rd division, as shown by the recorded plat of said subdivision in Map Volume 74, Page 249, of the Mahoning County Records; together with two perpetual non-exclusive easements of ingress and egress, granted by Deed dated August 25, 1983, and filed for record on September 6, 1983, in Deed Volume 1498, Page 649, and Volume 1498, Page 653, of the Mahoning County Records of Deeds, respectively.

Being the same property as conveyed to Outback Steakhouse of Florida Inc., a Florida corporation by virtue of a Quit Claim Deed from Chi Chi's Inc, a corporation organized and existing under the laws of Delaware dated February 22, 2005, recorded March 1, 2005, by Instrument No. 200500006621, as affected by that certain Declaration Regarding Merger recorded on November 23, 2011 as Volume 5933, Page 2136, Mahoning County, OH Deed Records

254. FEE PARCEL DESCRIPTION: UNIT 8705

All that certain tract or parcel of land situated in the City of Charlottesville, Virginia, at the northeasterly intersection of U.S. Route 29 and Seminole Court, more particularly described as Lot 1, Block C of Seminole Square, containing 1.482 acres, more or less, as shown and described on plat of William S. Roudabush, Inc., dated April 26, 1984, last revised July 30, 1984, and recorded in the Clerk's Office of the Circuit Court of the City of Charlottesville in Deed Book 454, Pages 678 and 679.

TOGETHER WITH an appurtenant non-exclusive easement for access and parking across and on the property shown on the aforesaid plat in the shaded area adjoining the above lot and labeled "Parking Easement", said easement being more particularly described in deed of record in the aforesaid Clerk's Office in Deed Book 454, Page 674.

BEING the same property conveyed to Private Restaurant Properties, LLC, by deed dated June 14, 2007 and recorded April 7, 2008 in Deed Book 1183, Page 45.

Tax Map No. 41C003200

255. FEE PARCEL DESCRIPTION: UNIT 8908

ALL THAT CERTAIN lot or tract of ground being known as Lot No. 2 as shown on a Final Plan of North Pointe Center, as prepared by Rettew Associates, Inc., for High Associates, Ltd. on a drawing

dated April 27, 1988, being drawing No. 87-204-03FF, said plan being recorded in the Recorder of Deeds Office in and for Lancaster County, Pennsylvania in Plan Book J-160, page 30, situate in the Township of Manheim, County of Lancaster and Commonwealth of Pennsylvania, being more fully bounded and described as follows, to wit:

BEGINNING at a point at the Southern right of way line of North Pointe Boulevard at the common property corner of Lots 2 and 3; thence, from said point of beginning the following sixteen (16) courses and distances: (1) along said right of way of North Pointe Boulevard by a curve to the left, having a radius of 175.00 feet and an arc length of 82.36 feet to a point; thence (2) along said right of way of North Pointe Boulevard South 82 degrees 19 minutes 20 seconds East, a distance of 26.05 feet to a point; thence (3) along said right of way of North Pointe Boulevard by a curve to the right; having a radius of 180.00 feet and an arc length of 85.34 feet to a point; thence, (4) along said right of way of North Pointe Boulevard South 55 degrees 09 minutes 30 seconds East, a distance of 119.33 feet to a point; thence (5) by a curve, curving to the right, having a radius of 17.00 feet and a length of 26.70 feet to a point on the Western right of way of the Oregon Pike; thence (6) along said right of way of the Oregon Pike, South 34 degrees 50 minutes 30 seconds West, a distance of 113.27 feet to a point; thence (7) along said right of way line of the Oregon Pike, North 55 degrees 09 minutes 30 seconds West, a distance of 24.00 feet to a point; thence (8) along said right of way of the Oregon Pike, South 34 degrees 50 minutes 30 seconds West, a distance of 132.25 feet to a point; thence (9) along said right of way of the Oregon Pike, North 55 degrees 18 minutes 46 seconds West, a distance of 2.58 feet to a point; thence (10) along said right of way of the Oregon Pike on a curve, curving to the right, with a radius of 428.34 feet and a length of 360.40 feet to a point on the Northern right of way of a ramp leading to Route 30 West; thence (11) along said right of way of the ramp leading to Route 30 West, South 83 degrees 03 minutes 38 seconds West, a distance of 298.26 feet to a point; thence (12) along said right of way of the ramp leading to Route 30 West, North 76 degrees 08 minutes 03 seconds West, a distance of 268.61 feet to a point; thence (13) along the Southern boundary of Beverly Estates, North 79 degrees 31 minutes 40 seconds East, a distance of 317.39 feet to an iron pin; thence (14) along the Eastern Boundary of Beverly Estates, North 07 degrees 40 minutes 40 seconds East, a distance of 264.82 feet to a point; thence (15) South 82 degrees 19 minutes 20 seconds East, a distance of 247.66 feet to a point, thence (16) North 34 degrees 38 minutes 38 seconds East, a distance of 251.36 feet to a point, said point being the place of beginning.

CONTAINING 242,586.37 square feet or 5.5690 acres.

Together with all common use and interest in Easements as set forth in Declaration of Covenants, Easements, Conditions and Restrictions of The North Pointe Center dated November 7, 1990 by Oregon Pike Associates and recorded in Book 3033, Page 393. Together with all common use and interest in Easements as set forth in Cross Easement Agreement dated June 28, 1999 between Outback Steakhouse of Florida, Inc. and 120 North Pointe Associates recorded in Book 6308, Page 294.

Being the same premises Oregon Pike Associates and High Associates, Ltd. by Deed dated 02-23-1998 and recorded 02-25-1998 in Lancaster County in Instrument Number conveyed unto Outback Steakhouse of Florida, Inc., a Florida Corporation, in fee.

Being the same premises which Outback Steakhouse of Florida, Inc., a Florida Corporation by Deed dated 4-11-2007 and recorded 7-5-2007 in Lancaster County in Instrument Number 5632567 conveyed unto Private Restaurant Properties, LLC, a Delaware limited liability company, in fee.

256. FEE PARCEL DESCRIPTION: UNIT 9301

All that tract or parcel of land lying and being in the District of Knox County, Tennessee, and being more particularly described as follows:

SITUATED In District Six of Knox County, Tennessee, and within the 47th Ward of the City of Knoxville, Tennessee and being designated as Lot 2R1 of The Market Place Subdivision, as shown by plat titled “Resubdivision of Lot Number 2 of The Market Place Subdivision”, of record in Cabinet L, Slide 248-B, In the Office of the Register of Deeds for Knox County, Tennessee, and being more particularly described as follows:

BEGINNING at an iron rod set in the northerly right-of-way line of N. Peters Road at the point of curvature of the westerly right-of-way line of Market Place Boulevard, said point also being North 82 deg. 09 min. 35 sec. West, 81.90 feet from the centerline intersection of N. Peters Road and The Market Place Subdivision; thence along the northerly right-of-way line of N. Peters Road the following three (3) calls, 39.04 feet along a curve to the left having a radius of 2040.00 feet, a chord bearing of South 67 deg. 02 min. 49 sec. West, and a chord distance of 39.03 feet to an iron rod set; thence South 66 deg. 30 min. 00 sec. West, 80.76 feet to an Iron rod set; thence 31.67 feet along a curve to the right having a radius of 1410.00 feet, a chord bearing of South 67 deg. 08 min. 35 sec. West, and a chord distance of 31.67 feet to an Iron rod set at the common corner with Lot 1R3R of The Market Place Subdivision; thence, leaving the northerly right-of-way line of N. Peters Road along the common line with Lot 1R3R, North 12 deg, 37 min. 00 sec, West, 359.84 feet to an Iron rod set at the common line with Lot 2R2 of The Market Place Subdivision; thence leaving the common line of Lot 1R3R along the common line of Lot 2R2, said common line also being the centerline of a 25 foot wide joint permanent easement, North 76 deg. 10 min. 40 sec. East, 248.68 feet to a spike found in the westerly right-of-way line of Market Place Boulevard; thence leaving the common line with Lot 2R2 along the westerly right-of-way line of Market Place Boulevard the following six (6) calls, South 13 deg. 49 min. 20 sec. East, 12.50 feet to a spike found; thence South 58 deg. 49 min. 20 sec. East, 17.68 feet to a punch point in a concrete curb; thence 64.01 feet along a curve to the right having a radius of 170.79 feet, a chord bearing of South 02 deg. 43 min. 57 sec. West, and a chord distance of 63.64 feet to an Iron rod found; thence South 13 deg. 33 min. 12 sec, West, 50.00 feet to an iron rod found; thence 159.69 feet along a curve to the left having a radius of 317.89 feet a chord bearing of South 00 deg. 50 min. 17 sec. East, and a chord distance of 158.02 feet to an iron rod found; thence 72.28 feet along a curve to the right having a radius of 50.00 feet, a chord bearing of South 26 deg. 11 min. 01 sec. West, and a chord distance of 66.15 feet to the Point of Beginning.

BEING the same property conveyed to Private Restaurant Properties, LLC by Quit Claim Deed dated June 14, 2007, recorded in Instrument No. 200706290107530, in the Register’s Office for Knox County, Tennessee.

Easement Parcel

Together with those easements contained in that Declaration of Permanent Access Easement dated April 6, 1988, of record in Deed Book 1943, page 148, corrected and restated in Deed Book 1952, page 999, in the Register’s Office for Knox County, Tennessee and as shown centered inside northern lot line.

257. FEE PARCEL DESCRIPTION: UNIT 9407

Parcel One

Being all of Lot 2-R containing 1.33 acres, more or less, as shown on a map entitled "Replat of Lots 1 & 2, Voncannon Property, Property of Barrel Boys, LLC, Sandhills Township, Moore County, North Carolina", dated July 15, 2004, prepared by Stephen R. Sheffield & Associates P.A. which map was recorded in Plat Cabinet 11 at Slide 727 of the Moore County Public Registry, to which map and its recordation reference is hereby made for a more complete, accurate and particular description of said lot.

Parcel Two

Together with the non-exclusive rights, if any, and subject to the terms, conditions, provisions and limitations of that certain Cross Parking and Access Agreement recorded September 23, 2004 in Book 2650, Page 471, Moore County Registry.

258. FEE PARCEL DESCRIPTION: UNIT 9410

BEING a 1.5872 acre tract of land, more or less out of and a part of Lot "D", Block Thirty-Six (36) of the CARTWRIGHT AND ROBERTS SUBDIVISION "A", being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found for the northeast corner of said 3.5 acre tract of land and the northeast corner of a 0.608 of an acre tract of land conveyed to Snowden-Clark Company by Edward Snowden by deed dated July 20, 1981, and recorded in Volume 2327 at Page 238 of the Deed Records of Jefferson County, Texas, in the west right of way line of Interstate Highway No. 10, 300 foot right of way, from this corner a Texas Highway Department concrete monument found for the point of curvature in the west right of way line of Interstate Highway No. 10 bears North 00 degrees 32 minutes 46 seconds East, 22.52 feet;

THENCE South 89 degrees 29 minutes 17 seconds West with the north line of said 3.5 acre tract of land and the North line of said 0.608 of an acre tract of land, a distance of 203.93 feet to a 1/2 inch iron rod found for the northwest corner of said 3.5 acre tract of land and the northwest corner of said 0.608 of an acre tract of land and in the east right of way of Hillebrandt Bayou, 150 foot right of way;

THENCE South 07 degrees 27 minutes 25 seconds East with the west line of said 3.5 acre tract of land, the west line of said 0.608 of an acre tract of land and the east right of way line of Hillebrandt Bayou, a distance of 252.55 feet to a 5/8 inch iron rod found for the northwest corner of this tract of land and the Place of Beginning and the southwest corner of a 0.646 of an acre tract of land conveyed to Edward Snowden by Willard W. Clark Sr. by deed recorded at Film Code No. 100-13-1178 of the Official Public Records of Real Property of Jefferson County, Texas;

THENCE North 89 degrees 30 minutes 38 seconds East with the north line of this tract and with the south line of said 0.646 of an acre tract of land, a distance of 230.05 feet to a 1/2 inch iron rod set for the northeast corner of this tract of land and the southeast corner of said 0.646 of an acre tract of land in the east line of said 3.5 acre tract and in the west right of way line of Interstate Highway No. 10 and in a curve to the right in the right of way line of Interstate Highway No. 10 a radial bearing of North 86 degrees 29 minutes 13 seconds West;

THENCE in a southerly direction with the east line of this tract, the east line of said 3.5 acre tract and a curve to the right in the west right of way line of Interstate Highway No. 10, having a central angle of 04 degrees 33 minutes 45 seconds, a radius of 3694.76 feet and a length of 294.21 feet and a chord bearing and distance of South 05 degrees 47 minutes 40 seconds West, 294.13 feet to a 1/2 inch iron rod set for the southeast corner of this tract of land a radial bearing of North 81 degrees 55 minutes 28 seconds West;

THENCE South 89 degrees 30 minutes 38 seconds West with the south line of this tract of land, a distance of 238.98 feet to a 1/2 inch iron rod found for the southwest corner of this tract of land and in the west line of said 3.5 acre tract of land and in the east right of way line of Hillebrandt Bayou;

THENCE North 07 degrees 31 minutes 02 seconds East with the west line of this tract, the west line of said 3.5 acre tract and the east right of way line of Hillebrandt Bayou, a distance of 295.24 feet to the Place of Beginning containing within said boundaries, 1.5872 acres of land, more or less.

259. FEE PARCEL DESCRIPTION: UNIT 9414

TRACT I: FEE SIMPLE

Lot 6, Block A of Fairview Farm Marketplace, an addition to the City of Plano, Collin County, Texas, according to the plat thereof recorded in Cabinet N, Page 22, Map Records, Collin County, Texas.

TRACT II (EASEMENT ESTATE)

Those easement rights created in that certain Construction, Operation and Reciprocal Easement Agreement executed by and between Fairview Farm Land Company, Ltd. and Costco Wholesale Corporation, dated February 2, 2000, filed for record February 3, 2000 and recorded in Volume 4596, Page 19, Land Records, Collin County, Texas.

TRACT III (EASEMENT ESTATE)

Those easement rights created in that certain Non-Exclusive Parking Easement Agreement executed by and between Cypress/UE Plano I, L.P. and Fairview Farm Land Co., Ltd. dated September 21, 2001, filed for record September 24, 2001 and recorded in Volume 5009, Page 1449, Land Records, Collin County, Texas.

TRACT IV (EASEMENT ESTATE)

Those easement rights created in that certain Reciprocal Easement Agreement and Restrictions executed by and between Landry's Crab Shack, Inc. and Fairview Farm Development Co., Ltd. dated September 9, 1997, filed for record September 12, 1997 and recorded in Volume 3996, Page 1582, Land Records, Collin County, Texas.

260. FEE PARCEL DESCRIPTION: UNIT 9704

Being all of Parcel 1-B, Trinity Centre as recorded in Deed Book 11662 at Page 1559 among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the northerly right-of-way line of Lee Highway – Route 29 (r-o-w varies), said point also being the southwesterly corner of Parcel 1-C, Trinity Centre as recorded in Deed Book 11662 at Page 1559 among the aforementioned Land Records; thence running with said northerly right-of-way line of Lee Highway the following:

1. South 87°57'29" West, 62.21m (204.10') to a point being the southerly corner of Parcel 13-B, Trinity Centre as recorded in Deed Book 11662 at Page 1559 among the aforementioned Land Records; thence leaving Lee Highway – Route 29 and running with said Parcel 13-B, Trinity Centre the following six (6) courses and distances;

2. North 29°54'13" West, 6.816m (22.36') to a point; thence

3. North 00°42'33" West, 8.230m (27.00') to a point; thence

4. North 16°12'12" West, 37.231m (122.15') to a point; thence

5. North 29°14'29" West, 36.851m (120.90') to a point; thence

6. North 60°45'11" East, 31.207m (102.38') to a point, thence

7. North 87°57'29" East, 65.012m (213.30') to a point being the northwesterly corner of the aforementioned Parcel 1-C Trinity Centre; thence running leaving Parcel 13-B Trinity Centre and running with Parcel 1-C the following three (3) courses and distances;

8. South 02°02'31" East, 39.999m (131.23') to a point; thence

9. South 87°57'29" West, 1.600m (5.25') to a point; thence

10. South 02°02'31" East, 57.395m (188.30') to the point of beginning and containing 7,318.8 square meters (78,779 sq. ft.) or 0.73188 hectares (1.80852 acres), more or less.

TOGETHER WITH AND SUBJECT TO those non-exclusive easements set forth in the Declaration of Trinity Centre as recorded in Deed Book 10489 at Page 1262, as supplemented by the Supplementary Declaration for Trinity Centre Restaurant Park and Amendment to Declaration for Trinity Centre as recorded in Deed Book 13582 at Page 716, among the aforesaid Land Records.

(Note: Review of Survey is required to determine if this is a beneficial easement).

TOGETHER WITH those non-exclusive easements set for in the Reciprocal Easement Agreement dated June 6, 1990 and recorded among the land Records on June 7, 1990 in Deed Book 7605 at Page 808, as amended by the First Amendment to Reciprocal Easement Agreement dated August 24, 1995 and recorded among the Land Records on September 27, 1995 in Deed Book 9517 at Page 505.

(Note: Review of Survey is required to determine if this is a beneficial easement).

TOGETHER WITH Easements as set forth in the Easement Agreement dated April 20, 1998 and recorded among the Land Records on May 18, 1995 in Deed Book 9411 at Page 1962.

(Note: Review of Survey is required to determine if this is a beneficial easement).

NOTE FOR INFORMATIONAL PURPOSES ONLY: Tax Map No. 054-3-21-0001B

261. FEE PARCEL DESCRIPTION: UNIT 9802

Parcel 1 of Certified Survey Map No. 1925, recorded on August 21, 1973 in Volume 13 of Certified Survey Maps, at Pages 191, 192 and 193, as Document No. 860635, being a part of the Southwest 1/4 of Section 28, Township 7 North, Range 20 East, in the City of Brookfield, County of Waukesha, State of Wisconsin;

AND a parcel of land in said Southwest 1/4, both of which are bounded and described as follows:

COMMENCING at the West 1/4 corner of said Section 28; thence South 00°34’51” East a distance of 1203.12 feet along the West line of said Section 28; thence North 83°56’ 09” East, a distance of 1147.58 feet; thence South 00° 02’ 25” East, a distance of 85.48 feet; thence North 83° 56’ 09” East, a distance of 190.07 feet along the South right-of-way line of Bluemound Road, 170 feet wide, to THE POINT OF BEGINNING of this description, said point being the Northwest corner of Parcel 1 of the aforementioned Certified Survey Map; thence North 83° 56’ 09” East, a distance of 380.23 feet along the South right-of-way line of Bluemound Road; thence South 87°49’18” East, a distance of 34.85 feet; thence South 00° 02’ 25” East, a distance of 383.47 feet; thence South 83° 56’ 09” West, a distance of 415.24 feet; thence North 00° 02’ 25” West a distance 388.49 feet to the POINT OF BEGINNING.

Exhibit 10.27

AMENDED AND RESTATED GUARANTY

This AMENDED AND RESTATED GUARANTY (this "Guaranty"), dated as of the 27th day of March, 2012, is made by OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("Guarantor"), to and for the benefit of NEW PRIVATE RESTAURANT PROPERTIES, LLC, a Delaware limited liability company ("Landlord").

W I T N E S S E T H :

WHEREAS, Private Restaurant Properties, LLC ("Original Landlord"), as lessor, and Private Restaurant Master Lessee, LLC, a Delaware limited liability company ("Tenant"), as lessee, entered into that certain Master Lease Agreement, dated as of June 14, 2007 (as subsequently amended pursuant to that certain First Amendment to Master Lease Agreement, dated as of September 15, 2007, and as may have been further amended, supplemented, restated or otherwise modified from time to time prior to the date hereof, the "Original Lease"), pursuant to which Original Landlord leased to Tenant the premises described therein;

WHEREAS, all of the membership interests in Tenant are owned by Guarantor;

WHEREAS, as a material inducement to Original Landlord entering into the Original Lease, Guarantor executed and delivered that certain Guaranty, dated as of June 14, 2007 (the "Original Guaranty"), guaranteeing Tenant's obligations under the Original Lease;

WHEREAS, on the date hereof, Original Landlord has conveyed all of its right, title and interest in and to the Leased Properties (as hereinafter defined) to Landlord and Landlord and Tenant have amended the Original Lease pursuant to that certain Amended and Restated Master Lease Agreement, dated of even date herewith, a copy of which is attached hereto as Exhibit A (as the same may be further amended, assigned, supplemented or modified in accordance with the terms thereof and this Guaranty, the "Lease"), pursuant to which Landlord leases to Tenant the properties described therein (the "Leased Properties"). Capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Lease; and

WHEREAS, Guarantor and Landlord have agreed to amend and restate the Original Guaranty in its entirety pursuant the terms of this Guaranty, the execution and delivery by Guarantor of this Guaranty is a material inducement to Landlord entering into the Lease, and Guarantor expects to derive financial benefit from the Lease.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged by Guarantor, and intending to be legally bound, Guarantor hereby agrees as follows:

ARTICLE I
GUARANTEE

Section 1.01. Guaranteed Obligations. Guarantor hereby absolutely unconditionally and irrevocably guarantees to Landlord and its successors and assigns the due, punctual and full payment, performance and observance of the following (collectively, the "Guaranteed Obligations"):

(a) the full and timely payment of all Rent and all other amounts due or to become due to Landlord from Tenant under the Lease (collectively, the "Monetary Obligations"); and

(b) all covenants, agreements, terms, obligations and conditions, undertakings and duties contained in the Lease required to be observed, performed by or imposed upon Tenant under the Lease, including, but not limited to, those contained in Section 5.3 and Article XIII thereof (collectively, the " Performance Obligations"),

as and when such payment, performance or observance shall become due (whether by acceleration or otherwise) in accordance with the terms of the Lease. If for any reason any Monetary Obligation shall not be paid promptly when due, Guarantor shall, within five (5) Business Days after written demand, pay the same to Landlord or the person or entity to whom such amounts are to be paid under the Lease. If for any reason Tenant shall fail to perform or observe any Performance Obligation, Guarantor shall upon written demand, perform and observe the same or cause the same to be performed or observed prior to the expiration of any applicable cure period available to Tenant under the Lease with respect thereto. The notice and cure periods afforded to Guarantor under this Guaranty may be triggered by Landlord and may run concurrently with any similar notice and cure period, if any, afforded under the terms of the Lease.

Section 1.02. Guarantee Unconditional. The obligations of Guarantor hereunder are continuing, absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, discharged, abated, impaired or in any way affected by:

(a) any amendment, modification, extension, renewal or supplement to the Lease or any termination of the Lease as to all or any portion of the Leased Properties either pursuant to Article I or X thereof or otherwise;

(b) any assumption by any party of Tenant's obligations under, or Tenant's assignment of any of its interest in, the Lease;

(c) any exercise or nonexercise of or delay in exercising any right, remedy, power or privilege under or in respect of this Guaranty or the Lease or pursuant to applicable law, including, without limitation, any so-called self-help remedies, or any waiver, consent, compromise, settlement, indulgence or other action or inaction in respect thereof;

(d) any change in the financial condition of Tenant, the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshalling of assets and liabilities, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting Tenant or Guarantor or any of their assets or any impairment, modification, release or limitation of liability of Tenant or Guarantor or their respective estates in bankruptcy or of any remedy for the enforcement of such liability resulting from the operation of any present or future provision of the United States Bankruptcy Code or other similar statute or from the decision of any court;

(e) any extension of time for payment or performance of the Guaranteed Obligations or any part thereof;

(f) except to the extent that Tenant is released from certain obligations and liabilities under the provisions of Article I or Article X of the Lease expressly providing for such release (and then only to such extent as is provided therein with respect to the circumstances giving rise thereto), the release or discharge of or accord and satisfaction with Tenant from performance or observance of any of the agreements, covenants, terms or conditions contained in the Lease by operation of law;

(g) the failure of Landlord to keep Guarantor advised of Tenant's financial condition, regardless of the existence of any duty to do so;

(h) any assignment by Landlord of all of Landlord's right, title and interest in, to and under the Lease and/or this Guaranty as collateral security for Landlord's Debt;

(i) any present or future law or order of any government (*de jure* or *de facto*) or of any agency thereof purporting to reduce, amend or otherwise affect the Guaranteed Obligations or any or all of the obligations, covenants or agreements of Tenant under the Lease (except by payment and performance in full of all Guaranteed Obligations) or Guarantor under this Guaranty (except by payment and performance in full of all Guaranteed Obligations);

(j) the default or failure of Guarantor fully to perform any of its obligations set forth in this Guaranty;

(k) any actual, purported or attempted sale, assignment or other transfer by Landlord of the Lease or the Leased Properties or any part thereof or of any of its rights, interests or obligations thereunder;

(l) any merger or consolidation of Tenant into or with any other entity, or any sale, lease, transfer or other disposition of any or all of Tenant's assets or any sale, transfer or other disposition of any or all of the shares of capital stock or other securities of or ownership interests in Tenant or any affiliate of Tenant to any other person or entity; or

(m) Tenant's failure to obtain, protect, preserve or enforce any rights in or to the Lease or the Leased Properties or any interest therein against any party or the invalidity or unenforceability of any such rights;

all of which may be given or done without notice to, or consent of, Guarantor, except as to demands upon Guarantor hereunder, as expressly provided in the portion of Section 1.01 hereof following Section 1.01(b) hereof.

No setoff, claim, reduction or diminution of any obligation, or any defense of any kind or nature (except the Tenant's performance of such obligations) which Tenant or Guarantor now has or hereafter may have against Landlord shall be available hereunder to Guarantor against Landlord.

Section 1.03. Disaffirmance of Lease. Guarantor agrees that, in the event of rejection or disaffirmance of the Lease by Tenant or Tenant's trustee in bankruptcy pursuant to the United States Bankruptcy Code or any other law affecting creditors' rights, Guarantor will, if Landlord so requests, assume all obligations and liabilities of Tenant under the Lease, to the same extent as if Guarantor had been originally named instead of Tenant as a party to the Lease and there had

been no rejection or disaffirmance; and Guarantor will confirm such assumption in writing at the request of Landlord on or after such rejection or disaffirmance. Guarantor, upon such assumption, shall have all rights of Tenant under the Lease (to the extent permitted by law).

Section 1.04. Preferential Payment. Guarantor further agrees that to the extent Tenant or Guarantor makes any payment to Landlord in connection with the Guaranteed Obligations and all or any part of such payment is subsequent invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Landlord or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (any such payment is hereinafter referred to as a "Preferential Payment"), then this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by Landlord, Tenant's Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if such Preferential Payment had not been made.

Section 1.05. No Notice or Duty to Exhaust Remedies. Guarantor hereby waives notice of any default in the payment or non-performance of any of the Guaranteed Obligations (except as expressly required hereunder), diligence, presentment, demand, protest and all notices of any kind. Subject only to the notice and cure periods afforded to Guarantor as provided in the portion of Section 1.01 hereof following Section 1.01(b) hereof, Guarantor agrees that liability under this Guaranty shall be primary and hereby waives any requirement that Landlord exhaust any right or remedy, or proceed first or at any time, against Tenant or any other guarantor of, or any security for, any of the Guaranteed Obligations. Landlord may pursue its rights and remedies under this Guaranty and under the Lease in whatever order it chooses, or collectively. This Guaranty is a guaranty of payment and performance and not merely of collection.

Landlord may pursue its rights and remedies under this Guaranty notwithstanding any other guarantor of or security for the Guaranteed Obligations or any part thereof. Guarantor authorizes Landlord, at its sole option, without notice or demand and without affecting the liability of Guarantor under this Guaranty, to terminate the Lease, either in whole or in part, in accordance with its terms.

Each default with regard to any of the Guaranteed Obligations shall give rise to a separate cause of action and separate suits may be brought hereunder as each cause of action arises or, at the option of Landlord, any and all causes or action which arise prior to or after any suit is commenced hereunder may be included in such suit.

Section 1.06. Waiver of Defenses. To the fullest extent permitted by law, Guarantor waives (a) any right to require Landlord to (i) proceed against Tenant or any other person or entity; (ii) proceed against or exhaust any security held from Tenant; (iii) pursue any other remedy in Landlord's power against Tenant which Guarantor cannot itself pursue, and which would lighten its burden; (b) all statutes of limitation as a defense to any action brought against Guarantor by Landlord to the fullest extent permitted by law; (c) any defense based upon the bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding of Tenant; and (d) presentment, demand, protest and notice of any kind (except, as to demands upon Guarantor hereunder, as expressly provided in the portion of Section 1.01 hereof following Section 1.01(b) hereof). Except as required hereunder, Guarantor waives all demand and notices, including demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guaranty.

Section 1.07. Subrogation. Notwithstanding any other provision of this Guaranty to the contrary, until the Guaranteed Obligations are fully performed and paid, Guarantor hereby waives any claims or other rights which Guarantor may now have or hereafter acquire against Tenant or any other guarantor of all or any of the Guaranteed Obligations, which claims or other rights arise from the existence or performance of Guarantor's obligations under this Guaranty (all such claims and rights are referred to as "Guarantor's Conditional Rights"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of Landlord against Tenant or any collateral which Landlord now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Tenant, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other right. If, notwithstanding the foregoing provision, any amount shall be paid to Guarantor on account of any Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when the Guaranteed Obligations shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to Guarantor, any payment made by Tenant to Landlord is at any time determined to be a Preferential Payment, then such amount paid to Guarantor shall be held in trust for the benefit of Landlord and shall forthwith be paid to Landlord to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as Landlord, in its sole and absolute discretion, shall determine.

To the extent that any of the provisions of this Section 1.07 shall not be enforceable, Guarantor agrees that until such time as the Guaranteed Obligations have been paid and performed in full and the period of time has expired during which any payment made by Tenant or Guarantor to Landlord may be determined to be a Preferential Payment, Guarantor's Conditional Rights to the extent not validly waived shall be subordinate to Landlord's right to full payment and performance of the Guaranteed Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period.

ARTICLE II
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01. Representations and Warranties. Guarantor hereby represents and warrants to Landlord as follows:

(a) Organization and Qualification. Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware

(b) Authority and Authorization. Guarantor has full power, authority and legal right to execute and deliver the Guaranty and to perform its obligations hereunder, and all such action has been duly and validly authorized by all necessary limited liability company proceedings on its part.

(c) Execution and Binding Effect. The Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights generally.

(d) Absence of Conflicts. Except as would not reasonably be expected to have a material adverse effect on the ability of Guarantor to perform its obligations under this Guaranty, neither the execution and delivery of this Guaranty nor performance of or compliance with the terms and conditions hereof will (i) violate any law, rule or regulation, (ii) conflict with or result in a breach of or a default under the certificate of formation or limited liability company agreement of Guarantor or any agreement or instrument to which Guarantor is a party or by which it or any of its assets (now owned or hereafter acquired) may be subject or bound, or (iii) result in the creation or imposition of any lien, charge, security interest or encumbrance upon any asset (now owned or hereafter acquired) of Guarantor.

(e) Authorizations and Filings. Except as would not reasonably be expected to have a material adverse effect on the ability of Guarantor to perform its obligations under this Guaranty, no authorization, consent, approval, license, exemption or other action by, and no registration, qualification, designation, declaration or filing with, any Governmental Authority is required in connection with the execution and delivery of the Guaranty or performance of or compliance with the terms hereof.

(f) Litigation. There are no actions, suits or proceedings pending or, to the best of Guarantor's knowledge, threatened against or affecting Guarantor at law or in equity by or before any court or administrative office or agency which if adversely decided would have a material adverse effect on the ability of Guarantor to perform its obligations under this Guaranty.

Section 2.02. Notice of Certain Events. Promptly upon becoming aware thereof, Guarantor shall give Landlord notice of any downgrade in the corporate family and credit ratings from Moody's Investor Service Inc. and Standard & Poor's, respectively, of Guarantor; provided, that no such notice shall be required to the extent that a press release of any such downgrade is issued by Moody's Investor Service Inc. and Standard & Poor's, as applicable.

Section 2.03. Estoppel Certificates.

(a) Guarantor shall, at any time upon not less than ten (10) days' prior written request by Landlord or Landlord's Lender (but not more than four (4) times in any calendar year), deliver to the party requesting the same a statement in writing, executed by a duly authorized officer of Guarantor, certifying, as of the date thereof, (i) that, except as otherwise specified, this Guaranty is unmodified and in full force in effect, (ii) that, except as otherwise specified, Guarantor is not in default hereunder and that no event has occurred or condition exists which, with the giving of notice or the passage of time or both, would constitute a default hereunder, (iii) that, except as otherwise specified, Guarantor has no knowledge of any defense, setoff or counterclaim against Landlord arising out of or in any way related to this Guaranty, and (iv) as to such other matters as Landlord or Landlord's Lender may reasonably request.

(b) Landlord shall, at any time upon not less that ten (10) days' prior written request by Tenant or Guarantor (but not more than four (4) times in any calendar year), deliver to Guarantor a statement in writing, executed by a duly authorized officer of Landlord, certifying, as of the date thereof, (i) that, except as otherwise specified, this Guaranty is unmodified and in full force and effect, (ii) that, except as otherwise specified, Guarantor is not in default hereunder and that no event has occurred or condition exists which, with the giving of notice or the passage of time or both, would constitute a default hereunder, (iii) that, except as otherwise specified, Landlord has no knowledge of any claim against Guarantor arising out of or in any way related to this Guaranty, for the Guaranteed Obligations or otherwise, and (iv) as to such other matters as Guarantor may reasonably request.

Section 2.04. Acknowledgement of Transition Covenant. Guarantor covenants and agrees that it shall, and shall cause its Subsidiaries and Affiliates to, comply with the provisions of Section 5.3 of the Lease and perform any Transition Services that may be required from time to time under the terms of Section 13.2 of the Lease and any obligations of Tenant under Section 13.3 of the Lease, in each case as a primary and not secondary obligation and to the same extent as if Guarantor were the "Tenant" under the Lease. Guarantor acknowledges and agrees that, in accordance with the terms of Section 13.4 of the Lease, the rights of Landlord provided in Sections 5.3, 13.2 and 13.3 of the Lease may be exercised directly by Landlord's Lender as a Superior Party, and Guarantor agrees accordingly that Landlord's Lender shall be entitled to act on behalf of Landlord in enforcing any right, exercising any option or giving any notices or directions under Sections 5.3, 13.2 and 13.3 of the Lease and any corresponding obligation of Guarantor under this Guaranty (including this Section 2.04). Each of Landlord and Tenant agree that Guarantor shall be entitled to rely on any and all communications or acts of Landlord's Lender, or of any party claiming to be Landlord's Lender's agent or representative (but shall not be required to rely if Tenant, Guarantor or any of their respective Affiliates questions in good faith the authority of the Person claiming to be the agent or representative of Landlord's Lender), with respect to the exercise of any such rights or the giving of any such notice or direction, without the necessity of making any inquiry as to the authority of such Person with respect to such matter and notwithstanding any conflicting instructions from Landlord, and Landlord shall hold Guarantor and its Affiliates harmless for any damages suffered by Guarantor or any such Affiliate incurred because of such reliance by Guarantor or its Affiliates.

Section 2.05. Amendments/Assignments Not Effective. By execution of this Guaranty, Landlord and Tenant hereby affirm and agree that no amendment to or assignment of the Lease shall be effective unless Guarantor shall have affirmed in writing that this Guaranty continues in full force and effect notwithstanding such amendment or assignment.

ARTICLE III
EVENTS OF DEFAULT

Section 3.01. Events of Default. The occurrence of any one or more of the following shall constitute an " Event of Default" under this Guaranty:

(a) a failure by Guarantor to pay when due any Monetary Obligation required to be paid by Guarantor pursuant to the terms of this Guaranty;

(b) a failure by Guarantor duly to perform and observe, or a violation or breach of, any other provision hereof not otherwise specifically mentioned in this Section 3.01;

(c) any representation or warranty made by Guarantor herein proves to be untrue or incorrect when made, in any material respect;

(d) Guarantor shall (i) voluntarily be adjudicated a bankrupt or insolvent, (ii) seek or consent to the appointment of a receiver for itself or its assets, (iii) file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, (iv) make a general assignment for the benefit of creditors, or (v) be unable to pay its debts as they mature;

(e) a court shall enter an order, judgment or decree appointing, without the consent of Guarantor, a receiver or trustee for it or approving a petition filed against Guarantor which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and such order, judgment or decree shall remain undischarged or unstayed sixty (60) days after it is entered; or

(f) Guarantor shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution.

ARTICLE IV
MISCELLANEOUS

Section 4.01. Further Assurances. From time to time upon the request of Landlord, Guarantor shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents necessary for the continuing effectiveness of this Guaranty. In no event shall Guarantor be required to execute any such instrument or document which would modify, amend or change any term or provision hereof.

Section 4.02. Amendments, Waivers, Etc. This Guaranty cannot be amended, modified, waived, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of such amendment, modification, waiver, change, discharge or termination is sought.

Section 4.03. No Implied Waiver; Cumulative Remedies. No course of dealing and no delay or failure of Landlord in exercising any right, power or privilege under this Guaranty or the Lease shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of Landlord under this Guaranty are cumulative and not exclusive of any rights or remedies which Landlord would otherwise have under the Lease, at law or in equity.

Section 4.04. Notices. All notices, requests, demands, directions and other communications (collectively " notices") under the provisions of this Guaranty shall be in writing unless otherwise expressly permitted hereunder and shall be sent by (a) first-class or first-class express mail, (b) national overnight courier (e.g., Federal Express, UPS), or (c) for notices other than notices of

the occurrence of an Event of Default or the request for payments of the Guaranteed Obligations only, facsimile with confirmation of receipt, in all cases with charges prepaid, and any such properly given notice shall be effective when received or when delivery is refused. All notices shall be sent to the applicable party addressed, if to Landlord, at the address set forth in the Lease with copies thereof to the parties designated to receive copies of notices to Landlord under the Lease, and, if to Guarantor, to the following parties:

Guarantor:	OSI Restaurant Partners, LLC 2202 North West Shore Boulevard, 5th Floor Tampa, FL 33607 Attention: Chief Financial Officer Telecopy No.: (813) 282-9195 Telephone No.: (813) 282-1225
With a copy to:	Bain Capital Partners, LLC John Hancock Tower 200 Clarendon Street Boston, MA 02116 Attention: Dave Humphrey Telecopy No.: (617) 652-3112 Telephone No.: (617) 516-2112
With a copy to:	Sullivan & Cromwell LLP 125 Broad Street New York, N.Y. 10004-2498 Attention: Arthur Adler, Esq. Telecopy No.: (212) 291-9001 Telephone No.: (212) 558-3960
With a copy to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199-3600 Attention: Richard E. Gordet, Esq. Telecopy No.: (617) 951-7050 Telephone No.: (617) 951-7491

or in accordance with the last unrevoked written direction from such party to the other party.

Section 4.05. Expenses. Guarantor agrees to pay or cause to be paid and to save Landlord harmless against liability for the payment of all reasonable out-of-pocket expenses, including fees and expenses of counsel for Landlord, incurred by Landlord from time to time arising in connection with Landlord's enforcement or preservation of rights under this Guaranty, including but not limited to, such expenses as may be incurred by Landlord in connection with any default by Guarantor of any of its obligations hereunder. Such obligation of Guarantor to indemnify Landlord shall survive the payment and performance in full of the Guaranteed Obligations.

Section 4.06. Severability. If any term or provision of this Guaranty or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Guaranty, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

Section 4.07. Counterparts. This Guaranty may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

Section 4.08. Governing Law.

(a) This Guaranty shall be construed in accordance with, and this Guaranty and all matters arising out of or relating to this Guaranty shall be governed by, the law of the State of New York without regard to conflicts of law principles.

(b) The parties hereto each hereby consent to the exclusive jurisdiction of any state or federal court located within the County of New York, State of New York, and each irrevocably agrees that all actions or proceedings arising out of or relating to this Guaranty shall be litigated in such courts. The parties hereto each accepts, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and waives any defense of forum non-conveniens, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Guaranty.

(c) EACH OF THE PARTIES HERETO, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTY.

(c) Guarantor acknowledges that the provisions of this Section 4.08 are a material inducement to Landlord's accepting this Guaranty and entering into the Lease.

Section 4.09. Successors and Assigns. This Guaranty shall bind Guarantor and its successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns.

Section 4.10. Incorporation of Recitals. The recitals set forth in the WHEREAS clauses of this Guaranty are hereby specifically incorporated into the operative terms of this Guaranty as if fully set forth in the body of this Guaranty.

Section 4.11. Rights of Landlord's Lender. Guarantor acknowledges that if the rights of Landlord under this Guaranty are assigned to Landlord's Lender, Landlord's Lender shall have all of the rights and benefits of Landlord hereunder; provided, however, in no event shall Guarantor be liable to Landlord's Lender or Landlord for any payment or performance of any Guaranteed Obligation by Guarantor to the other (i.e., if Guarantor pays or performs a Guaranteed Obligation in accordance with the terms of this Guaranty to either Landlord or Landlord's Lender, Guarantor shall not retain the obligation to pay or perform the same Guaranteed Obligation thereafter to the other such party).

Section 4.12. Termination of Original Guaranty. The parties hereto agree that, upon execution and delivery of this Guaranty, the Original Guaranty shall be superseded in its entirety by this Guaranty and be of no further force and effect and Guarantor shall not have any obligation or liability thereunder.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, Guarantor has duly executed and delivered this Guaranty as of the date first above written.

OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Acceptance

NEW PRIVATE RESTAURANT PROPERTIES, LLC, a Delaware limited liability company, hereby accepts this Guaranty and agrees to the terms hereof.

NEW PRIVATE RESTAURANT PROPERTIES, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

For purposes of Sections 2.04 and 2.05 hereof only, PRIVATE RESTAURANT MASTER LESSEE, LLC, a Delaware limited liability company, hereby accepts this Guaranty and agrees to the terms hereof.

PRIVATE RESTAURANT MASTER LESSEE, LLC,
a Delaware limited liability company

By: /s/ Karen Bremer
Name: Karen Bremer
Title: Vice President of Real Estate

Exhibit 10.28

OSI RESTAURANT PARTNERS, LLC
Officer Employment Agreement

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into effective June 14, 2007, by and between DIRK A. MONTGOMERY (the "Executive") and OSI RESTAURANT PARTNERS, LLC (the "Company").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

(a.) WHEREAS, the Company is engaged in the business of owning and operating, through its Affiliates, various restaurant concepts utilizing operating systems and trademarks owned by or licensed to the Company; and

(b.) WHEREAS, Kangaroo Holdings, Inc. and its wholly owned subsidiary Kangaroo Acquisition, Inc. (" Acquisition") entered into an Agreement and Plan of Merger dated as of November 5, 2006 with OSI Restaurant Partners, Inc. (" OSI") (the "Merger Agreement"), pursuant to which Acquisition merged with and into OSI on the "Closing Date" (as defined in the Merger Agreement); and

(c.) WHEREAS, immediately following the merger of Acquisition into OSI, OSI converted into the Company; and

(d.) WHEREAS, the Company desires, on the terms and conditions stated herein, to continue to employ the Executive as Chief Financial Officer of the Company; and

(e.) WHEREAS, the Executive desires, on the terms and conditions stated herein, to continue to be employed by the Company as its Chief Financial Officer.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. ***Employment and Term***. Subject to earlier termination as provided for in ***Section 8*** hereof, the Company hereby desires to continue to employ the Executive, and the Executive hereby accepts such continued employment with the Company, as Chief Financial Officer of the Company for a term commencing on the date hereof and expiring on the fifth anniversary hereof (the " Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. ***Representations and Warranties***. The Executive hereby represents and warrants to the Company that the Executive (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Executive's employment with the Company or its Affiliates (other than any prior agreement with the Company), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Executive's employment with

the Company or its Affiliates (other than any prior agreement with the Company) and (iii) has brought to the Company and its Affiliates no trade secrets, confidential business information, documents or other personal property of a prior employer.

3. ***Duties***. As Chief Financial Officer of the Company, the Executive shall diligently and faithfully perform such duties and functions as may be assigned to the Executive commensurate with his position as Chief Financial Officer of the Company by the Board of Directors of the Company.

The Executive shall be required hereunder to devote substantially all of the Executive's business time and effort to the business affairs of the Company and its Affiliates. The Executive shall be responsible for directly reporting to the Board of Directors, and for diligently and faithfully performing such duties and functions as may be assigned to the Executive commensurate with his position as Chief Financial Officer of the Company by the Board of Directors of the Company on all matters for which the Executive is responsible.

Notwithstanding the foregoing, the Executive shall be permitted to invest the Executive's personal assets and manage the Executive's personal investment portfolio in such a form and manner as will not require any business services on the Executive's part to any third party, and provided it does conflict with the Executive's duties and responsibilities to the Company or the provisions of ***Section 10*** or ***Section 11*** hereof, or conflict with any material published policy of the Company or its Affiliates, including, but not limited to, the insider trading policy of the Company or its Affiliates.

Notwithstanding the foregoing, the Executive shall also be permitted to participate in customary civic, nonprofit, religious, welfare, social and professional activities that will not materially affect the Executive's performance of his duties hereunder. The Executive may continue to serve on any board of directors and advisory committees of companies on which the Executive currently serves, as long as the business of such companies is not competitive with that of the Company or any of its Affiliates. The Executive shall not serve on the board of directors or advisory committee of any other company without the prior consent of the Company, which consent shall not be unreasonably withheld.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Executive shall, during the term of this Agreement and at the request of the Company, also serve as an officer of any Affiliate of the Company as the Board of Directors shall reasonably request. In such capacity, the Executive shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to the Executive while serving in such office as though the Executive and such Affiliate of the Company or the Company had separately entered into this Agreement, except that the Executive shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such Affiliate of the Company.

4. ***Compensation***.

a. Base Salary. During the Term of Employment, subject to the Executive's performance in accordance with this Agreement, the Executive shall be entitled to an annual base

salary of at least $420,000.00, payable in equal biweekly installments by the Company, subject to annual increase by the Board of Directors of the Company. The base salary as shall be in effect from time to time hereunder shall be referred to herein as the " Base Salary."

b. Bonus. During the Term of Employment, the Executive shall participate in the Company's annual incentive bonus plan, as in effect as of the date hereof, and as may be amended by the Board of Directors of the Company from time to time in accordance with its terms, as the same may be in effect from time to time. The Executive's maximum bonus opportunity for each fiscal year shall equal 150% of Base Salary.

5. ***Vacation***. The Executive shall be entitled to four (4) weeks paid vacation (selected by the Executive, but subject to the reasonable business requirements of the Company) during each full year during the Term of Employment, and otherwise in accordance with Company policy as may be in effect from time to time.

6. ***Fringe Benefits***. In addition to any other rights the Executive may have hereunder, the Executive shall also be entitled to participate in employee benefits plans, and be eligible to receive those fringe benefits, including, but not limited to, complimentary food, life insurance, medical benefits, *etc*., if any, as may be provided by the Company to similar employees of the Company, in each case, as such plans, programs and arrangements may be in effect from time to time, all subject to the terms of such plans, programs or arrangements and applicable policies of the Company; provided, however, that benefits and perquisites available to the Executive shall be no less favorable than those provided to the Executive prior to the " Closing" (as defined in the Merger Agreement), including with respect to airplane usage and split dollar life insurance; it being understood that the split dollar life insurance policies were "vested" by the board of directors of OSI (as reflected on Exhibit A).

In addition to the foregoing, commencing at age sixty-five (65), and contingent upon the Executive having been employed by the Company or its predecessors for seven years, the Executive will be reimbursed on a "grossed up" basis to the extent he incurs federal or state income tax liability as a result of phantom income allocated to the Executive due to the maintenance of the split dollar life insurance policies.

7. ***Expenses***. Subject to compliance with the Company's policies as in effect from time to time, the Executive may incur and be reimbursed by the Company for reasonable expenses on behalf of and in furtherance of the business of the Company.

8. ***Termination***. Notwithstanding the provisions of ***Section 1*** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in ***Section 1*** hereof, immediately upon:

(a) The death of the Executive; or

(b) At the election of the Company in the event of the Executive's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Executive, arising out of any medically determinable physical or mental impairment, to perform the services required of the Executive hereunder for a period of (i) one-

hundred eighty (180) consecutive days or (ii) two-hundred forty (240) total days during any period of three-hundred and sixty-five (365) consecutive calendar days; or

(c) The existence of Cause. For purposes of this Agreement, "Cause" means any of the following: the Executive's (i) gross neglect of duty or prolonged absence from duty (other than any such failure resulting from incapacity due to physical or mental illness) without the consent of the Company, as determined in good faith by the Board of Directors of the Company and following notice to the Executive and a reasonable opportunity to cure, (ii) conviction or a plea of guilty or *nolo contendere* with respect to commission of a felony under federal law or in the law of the state in which such action occurred, (iii) the willful engaging in illegal misconduct or gross misconduct that is materially and demonstrably injurious to the Company or (iv) any material violation of any material covenant or restriction contained in this Agreement; or

(d) At the election of the Company, at any time and including in the event of a determination by the Company to cease business operations; or

(e) At the election of the Executive from time to time no later than thirty (30) days following the occurrence of Good Reason; or

(f) At the election of the Executive at any time upon fifteen (15) days notice.

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred on the date of the Executive's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

9. ***Severance***.

(a) ***General***. In the event of termination of the Term of Employment pursuant to ***Section 8*** hereof, the Executive or the Executive's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Executive's death or any disability benefits payable under any disability plan maintained by the Company) the Base Salary provided for herein up to and including the effective date of termination (the "Termination Effective Date"), prorated on a daily basis. Except as provided in ***Section 9(b) or Section 9(c)*** below, the Executive shall not be entitled to receive any severance compensation.

(b) ***Severance***. In the event of termination of the Term of Employment pursuant to ***Section 8(d)*** or ***Section 8(e)*** hereof (including, for the avoidance of doubt, the failure of the Company to renew the Term of Employment), the Executive shall be entitled to receive as full and complete severance compensation, an amount equal to the sum of (i) the Base Salary then in effect plus (ii) the average of the three most recent annual bonuses paid to the Executive (together, the "Severance"), such severance payable in twelve (12) equal monthly installments from the effective date of such termination. The Company shall continue to provide medical, dental and vision benefits to the Executive and his eligible dependents that are substantially similar to those provided generally to executive officers of the Company pursuant to such welfare plans as may be in effect from time to time as if the Executive's employment had not been terminated for the one (1) year period commencing on the day after the effective day of such termination (which may include reimbursing the Executive for the Executive's payment of

COBRA premiums). The Company's payments of Severance are expressly conditioned upon (x) the Executive executing and delivering to the Company a timely and effective separation agreement, which shall include, but not be limited to, a general release of claims by the Executive, in the form attached hereto as Exhibit B, and (y) the Executive's continued compliance, including after the Term of Employment, with the covenants contained in ***Section 10***, ***Section 11***, ***Section 12*** and ***Section 27*** hereof.

(c) ***Accrued Bonus***. In the event the Executive's employment is terminated by the Company without Cause or by the Executive for Good Reason, or as the result of the Executive's death or Disability, the Executive shall receive, in addition to any other payments to which he is entitled pursuant to ***Sections 9(a)*** and ***(b)*** above, any accrued but unpaid bonus in respect of the fiscal year preceding the year in which such termination of employment occurred.

(d) ***Acknowledgement***. The Executive acknowledges and agrees that in the event of termination of the Term of Employment pursuant to ***Section 8(d)*** hereof, and except for any vested benefits in tax-qualified pension plans maintained by the Company, the Severance provided in this ***Section 9*** shall be the only obligation that the Company or any of its Affiliates shall have to the Executive.

10. ***Noncompetition***.

(a) ***During Term***. Except with the prior written consent of the Company, during the Executive's employment with the Company, the Executive shall not, individually or jointly with others, directly or indirectly, whether for the Executive's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a full service restaurant business, and the Executive shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person or entity.

(b) ***Post Term***. For a continuous period of one (1) year commencing on termination of the Executive's employment with the Company, regardless of any termination pursuant to ***Section 8*** hereof or any voluntary termination or resignation by the Executive, the Executive shall not, individually or jointly with others, directly or indirectly, whether for the Executive's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a full service restaurant business that is located or intended to be located anywhere within a radius of thirty (30) miles of any restaurant owned or operated by the Company or any of its Affiliates, or any proposed full service restaurant to be owned or operated by any of the foregoing, and the Executive shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person or entity. For purposes of this ***Section 10(b)***, full service restaurants owned or operated by the Company or any of its Affiliates shall include any entity in which the Company or any of its Affiliates has an interest, including, but not limited to, an interest as a franchisor, but shall not include any entities to whose exclusion the Company consents. The term "proposed full service restaurant" shall include all locations for which the Company or any of its franchisees or Affiliates is conducting active, bona fide negotiations to

secure a fee or leasehold interest with the intention of establishing a full service restaurant thereon.

(c) ***Limitation***. Notwithstanding ***subsections (a)*** and ***(b)*** immediately above, it shall not be a violation of this ***Section 10*** for the Executive to own a three percent (3%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

11. ***Nondisclosure; Nonsolicitation; Nonpiracy***. Except in the performance of the Executive's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall the Executive, individually or jointly with others, for the benefit of the Executive or any third party, publish, disclose, use or authorize anyone else to publish, disclose or use any secret or confidential material or information relating to any aspect of the business or operations of the Company or any of its Affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures, financial data, processes, vendors and other information or know-how of the Company or any of its Affiliates, except (i) to the extent required by law, regulation or valid subpoena, or (ii) to the extent that such information or material becomes publicly known or available through no fault of the Executive or his affiliates. Moreover, during the Executive's employment with the Company and for one (1) year thereafter, except as is the result of a broad solicitation that is not targeting employees of the Company or any of its franchisees or Affiliates, the Executive shall not offer employment to, or hire, any employee of the Company or any of its franchisees or Affiliates, or otherwise directly or indirectly solicit or induce any employee of the Company or any of its franchisees or Affiliates to terminate his or her employment with the Company or any of its franchisees or Affiliates; nor shall the Executive act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, of or for any person or entity that solicits or otherwise induces any employee of the Company or any of its franchisees or Affiliates to terminate his or her employment with the Company or any of its franchisees or Affiliates.

12. ***Company Property: Executive Duty to Return***. All Company property and assets, including products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks and all other like information or products, including all copies, duplications, replications and derivatives of such information or products, now in the possession of the Executive or acquired by the Executive while in the employ of the Company, shall be the exclusive property of the Company, and shall be returned to the Company no later than the date of the Executive's last day of work with the Company.

13. ***Inventions, Ideas, Processes and Designs***. All inventions, ideas, recipes, processes, programs, software and designs (including all improvements) related to the business of the Company shall be disclosed in writing promptly to the Company, and shall be the sole and

exclusive property of the Company, if either (i) conceived, made or used by the Executive during the course of the Executive's employment with the Company (whether or not actually conceived during regular business hours) or (ii) made or used by the Executive for a period of six (6) months subsequent to the termination or expiration of such employment. Any invention, idea, recipe, process, program, software or design (including an improvement) shall be deemed "related to the business of the Company" if (i) it was made with equipment, facilities or confidential information of the Company, (ii) results from work performed by the Executive for the Company or (iii) pertains to the current business or demonstrably anticipated research or development work of the Company. The Executive shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly assign all such inventions, ideas, recipes, processes and designs to the Company. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Company, and the Executive shall be bound by such decision. The Executive shall provide, on the back of this Agreement, a complete list of all inventions, ideas, recipes, processes and designs if any, patented or unpatented, copyrighted or non-copyrighted, including a brief description, that the Executive made or conceived prior to the Executive's employment with the Company, and that, therefore, are excluded from the scope of this Agreement.

14. ***Restrictive Covenants: Consideration; Non–Estoppel; Independent Agreements; and Non-Executory Agreements*** . The restrictive covenants of ***Section 10***, ***Section 11*** and ***Section 13*** of this Agreement are given and made by the Executive to induce the Company to continue to employ the Executive and to enter into this Agreement with the Executive, and the Executive hereby acknowledges that employment with the Company is sufficient consideration for these restrictive covenants.

The restrictive covenants of ***Section 10***, ***Section 11*** and ***Section 13*** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of the Executive against the Company, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant.

The refusal or failure of the Company to enforce any restrictive covenant of ***Section 10***, ***Section 11*** and ***Section 13*** of this Agreement (or any similar agreement) against any other employee, agent or independent contractor, for any reason, shall neither constitute a defense to the enforcement by the Company of any such restrictive covenant, nor give rise to any claim or cause of action by the Executive against the Company.

15. ***Reasonableness of Restrictions; Reformation; Enforcement*** . The parties hereto recognize and acknowledge that the geographical and time limitations contained in ***Section 10***, ***Section 11*** and ***Section 13*** hereof are reasonable and properly required for the adequate protection of the Company's interests. The Executive acknowledges that the Company is the owner or the licensee of various trademarks, and the owner or the licensee of various restaurant operating systems, and has provided and will continue to provide to the Executive training in and confidential information concerning such restaurant operating systems in reliance on the covenants contained in ***Section 10***, ***Section 11*** and ***Section 13*** hereof. It is agreed by the parties hereto that if any portion of the restrictions contained in ***Section 10***, ***Section 11*** and ***Section 13***

hereof are held to be unreasonable, arbitrary or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary or against public policy, a lesser time period or geographical area that is determined to be reasonable, nonarbitrary and not against public policy may be enforced against the Executive. If the Executive shall violate any of the covenants contained herein and if any court action is instituted by the Company to prevent or enjoin such violation, then the period of time during which the Executive's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Executive's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Company to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in ***Section 10***, ***Section 11*** or ***Section 13*** hereof, each party shall pay its own legal fees, and the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs of such proceedings, including appellate proceedings.

16. ***Specific Performance***. The Executive agrees that a breach of any of the covenants contained in ***Section 10***, ***Section 11*** or ***Section 13*** hereof will cause irreparable injury to the Company for which the remedy at law will be inadequate and would be difficult to ascertain, and, therefore, in the event of the breach or threatened breach of any such covenants, the Company shall be entitled, in addition to any other rights and remedies that it may have at law or in equity, to obtain an injunction to restrain the Executive from any threatened or actual activities in violation of any such covenants. The Executive hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Company does apply for such an injunction, the Executive shall not raise as a defense thereto that the Company has an adequate remedy at law.

17. ***Certain Covenants***. For the avoidance of doubt, the termination of this Agreement or expiration of the Term of Employment, for any reason, shall not extinguish those obligations of the Executive specified in ***Section 10***, ***Section 11***, ***Section 13*** and ***Section 27*** hereof, those obligations of the Company specified in ***Section 9*** hereof, or the obligation of the Company to provide the Executive with gross-up payments referenced in the second paragraph of ***Section 6*** and, with respect to the merger of Acquisition and OSI, as specified in ***Section 30*** hereof.

18. ***Captions; Terms***. The captions of this Agreement are for convenience only, and shall not be construed to limit, define or modify the substantive terms hereof.

19. ***Acknowledgments***. The Executive hereby acknowledges that the Executive has been provided with a copy of this Agreement for review prior to signing it, that the Executive has been given the opportunity to have this Agreement reviewed by Executive's attorney prior to signing it, that the Executive understands the purposes and effects of this Agreement and that the Executive has been given a signed copy of this Agreement for the Executive's own records.

20. ***Notices***. All notices or other communications provided for herein to be given or sent to a party by another party shall be deemed validly given or sent if in writing and mailed, postage prepaid, by certified United States mail, return receipt requested (with effect two (2) business days after sent), delivered by hand (with effect upon delivery) or by nationally recognized overnight courier (with effect one (1) business day after sent) addressed to the parties at their addresses set forth on the records of the company. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed (which shall be effective upon receipt).

21. ***Severability***. Each section and subsection of this Agreement constitutes a separate and distinct undertaking, covenant or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

22. ***Waiver***. The failure of a party to enforce any term, provision or condition of this Agreement at any time or times shall not be deemed a waiver of that term, provision or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such term, provision, or condition for any future time or times.

23. ***Assignment; Parties***. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their legal representatives, executors, administrators, heirs and proper successors or permitted assigns, as the case may be. This Agreement and the rights and duties created hereunder shall not be assignable or delegable by the Executive. The Company shall have the right, without the Executive's knowledge or the Executive's consent, to assign this Agreement, in whole or in part, and any or all of the rights and duties hereunder, to any Affiliate of the Company, or any successor to the Company, and the Executive shall be bound by such assignment.

24. ***Governing Law***. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

25. ***Consent to Personal Jurisdiction and Venue***. The Executive hereby consents to personal jurisdiction and venue, for any action brought by the Company arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida and, if applicable, the federal and state courts in any jurisdiction where the Executive is employed or resides; the

Executive hereby agrees that any action brought by the Executive, alone or in combination with others, against the Company, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

26. ***Affiliate***. Whenever used in this Agreement, the term "Affiliate" shall mean, with respect to any entity, all persons or entities directly or indirectly controlled by Kangaroo Holdings, Inc., where control may be by management authority, contract or equity interest.

27. ***Cooperation***. The Executive shall cooperate fully with all reasonable requests for information and participation by the Company, its agents or its attorneys in prosecuting or defending claims, suits and disputes brought on behalf of or against the Company and in which Executive is involved or about which Executive has knowledge.

28. ***Fees and Expenses***. The Company will pay, or cause to be paid, all reasonable legal fees incurred by the Executive arising out of the negotiation and drafting of this Agreement, the Executive's rollover stock agreement, the option agreement and any other agreements or arrangements ancillary thereto.

29. ***Amendments***. No change, modification or termination of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

30. ***280G***. With respect to the merger of Acquisition and OSI as contemplated by the Merger Agreement, the Company shall provide the Executive with the gross-up payments provided for under Section 34 of the Executive's employment agreement dated as of March 8, 2006, as amended November 5, 2006. If, after the date hereof, there occurs a transaction that constitutes a "change of control" under Regulation 1.280G of the Internal Revenue Code of 1986, as amended (the "Code"), the Company and the Executive shall use commercially reasonable best efforts to take such actions as may be necessary to avoid the imposition of any the excise tax imposed by Section 4999 of the Code on the Executive, including seeking to obtain stockholder approval in accordance with the terms of Section 280G(b)(5).

31. *WAIVER OF JURY TRIAL*. THE PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED –FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY

PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THAT THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

32. ***Entire Agreement; Counterparts***. This Agreement and the agreements referred to herein constitute the entire agreement between the parties hereto concerning the subject matter hereof, and supersede all prior memoranda, correspondence, conversations, negotiations and agreements. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

33. Definitions.

"Good Reason" means any of the following: (i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as in effect immediately prior to the date hereof, or any diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and that is remedied by the Company promptly after receipt of notice thereof given by the Executive, (ii) a reduction by the Company in the Executive's Base Salary or benefits as in effect immediately prior to the date hereof, (iii) the Company requiring the Executive to be based at or generally work from any location more than fifty (50) miles from the location at which the Executive was based or generally worked immediately prior to the effective date hereof or (iv) without limiting the generality of clause (ii) above, failure by the Company to comply with the proviso of ***Section 6*** hereof.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EXECUTIVE"

/s/ Dirk A. Montgomery
Dirk A. Montgomery

"THE COMPANY"

OSI RESTAURANT PARTNERS, LLC

By: /s/ A. William Allen, III
Name: A. William Allen, III
Title: Authorized Representative

AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment") is made effective as of January 1, 2009, by and between **OSI Restaurant Partners, LLC** (the "Company"), and **Dirk A. Montgomery** (the "Executive").

Background Information

The parties to this Amendment (the "Parties") entered into an Officer Employment Agreement as of June 14, 2007 (the "Employment Agreement"), regarding the Executive's employment relationship with the Company. The Parties desire to amend the Employment Agreement in order to comply with the final Treasury Regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The Employment Agreement, as amended by this Amendment, is hereinafter collectively referred to as the "Agreement."

Amendment of the Employment Agreement

The Parties hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. ***Definitions.*** All capitalized terms used in this Agreement but which are not otherwise defined herein, shall have the respective meanings given those terms in the Employment Agreement, as applicable.

2. ***Bonus.*** Section 4(b) of the Agreement is hereby amended by adding the following to the end thereof:

"Unless otherwise specified in the Company policies or other governing documents regarding executive compensation and bonus plans, any bonus awarded to Executive by Company shall be paid in a single lump sum payment within 90 days after the end of the performance period."

3. ***Fringe Benefits.*** Section 6 of the Agreement is hereby amended by adding the following to the end thereof:

"Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 6 that are not 'disability pay' or 'death benefits' within the meaning of Treasury Regulations Section 1.409A-1(a)(5) (collectively, the 'Applicable Benefits') shall be subject to the following requirements in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to

reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

4. ***Expenses***. Section 7 of the Agreement is hereby amended by adding the following to the end thereof:

"If any reimbursements under this provision are taxable to the Executive, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. Further, Executive may not liquidate or exchange the right to reimbursement of such expenses for any other benefits."

5. ***Termination.*** Section 8 of the Agreement is hereby amended by adding the following sub-section (g) to the end thereof:

"(g) Termination of Employment for all purposes under this Agreement will be determined to have occurred in accordance with the 'separation from service' requirements of Code Section 409A and the Treasury Regulations and other guidance issued thereunder, and based on whether the facts and circumstances indicate that Company and Executive reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services Executive would perform after such date (as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period (or actual period of service, if less)."

6. ***Severance.*** Section 9(b) of the Agreement is hereby amended by adding the following to the end thereof:

"Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 9 that are not Applicable Benefits shall be subject to the following requirements in order to comply with Code Section 409A. The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

7. ***Accrued Bonus.*** Section 9(c) of the Agreement is hereby amended by adding the following to the end thereof:

"Such bonus payments shall be paid in a single lump sum payment within 90 days after the end of the fiscal year in which such termination of employment occurred."

8. ***Fees and Expenses.*** Section 28 of the Agreement is hereby amended by adding the following to the end thereof:

"If any reimbursements under this provision are taxable to the Executive, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. In addition, Executive may not liquidate or exchange the right to reimbursement of such expenses for any other benefits."

9. ***280G.*** Section 30 of the Agreement is hereby amended by adding the following to the end thereof:

"Any such gross-up payment provided for under this Section shall be made as soon as feasible and in all cases no later than the end of the calendar year following the year in which the applicable taxes were remitted to the applicable taxing authority."

10. ***Section 409A***. Section 34 is hereby added to the end of the Agreement to read as follows:

"34. Code Section 409A. The Company makes no representation as to whether any such payment or any part thereof constitutes or may constitute non-qualified deferred compensation. Neither the Company nor any of its directors, officers, employees, agents or professional advisors shall have any liability to the Executive or any other person or any amounts incurred by Executive or any other such person by reason of the determination made by the Board of Managers pursuant to this paragraph or any action taken or omitted by the Board, the Company, or any of the Company's managers, officers, employees, agents or professional advisors in the course of, or as a result of, making such determination. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A."

11. The terms and conditions of the Agreement between Company and Executive that are unaffected by this Amendment remain in full force and effect.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment on the 31 st day of December, 2008.

DIRK A. MONTGOMERY

/s/ Dirk A. Montgomery_____

OSI RESTAURANT PARTNERS, LLC

By: /s/ Joseph J. Kadow_____

Joseph J. Kadow

Its: Executive Vice President_____

SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment") is made effective as of December 30, 2010, by and between **OSI Restaurant Partners, LLC** (the "Company"), and **Dirk A. Montgomery** (the "Executive").

Background Information

The parties to this Amendment (the "Parties") entered into an Amended and Restated Officer Employment Agreement as of June 14, 2007 (the "Original Employment Agreement"), regarding the Executive's employment relationship with the Company. The Original Employment Agreement was amended on January 1, 2009 (the "First Amendment"). The Original Employment Agreement and the First Amendment are hereinafter collectively referred to as the "Employment Agreement." The Parties desire to further amend the Employment Agreement in order to comply with IRS Notice 2010-6 and Section 409A of the Internal Revenue Code of 1986, as amended. The Employment Agreement, as amended by this Amendment, is hereinafter collectively referred to as the "Agreement."

Amendment of the Employment Agreement

The Parties hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. ***Definitions.*** All capitalized terms used in this Agreement but which are not otherwise defined herein, shall have the respective meanings given those terms in the Employment Agreement, as applicable.

2. ***Severance.*** Section 9(b) of the Agreement is hereby amended by adding the following to the end thereof:

"if such release is not delivered to the Company within thirty (30) days of the date of such termination, Executive's rights to Severance under this section 9(b) are forfeited."

3. ***Reaffirmation***. The terms and conditions of the Agreement between Company and Executive that are unaffected by this Amendment remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment.

DIRK A. MONTGOMERY

/s/ Dirk A. Montgomery

OSI RESTAURANT PARTNERS, LLC

By: /s/ Kelly Lefferts
Kelly Lefferts

Its: Vice President

THIRD AMENDMENT TO EMPLOYMENT AGREEMENT

THIS THIRD AMENDMENT TO EMPLOYMENT AGREEMENT ("Amendment") is entered into by and between OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (the "Employer") and DIRK A. MONTGOMERY (the "Employee") to be effective for all purposes as of January 1, 2012.

WHEREAS, Employer employs Employee as Senior Vice President and Chief Financial Officer of the Employer pursuant to that certain Amended and Restated Officer Employment Agreement dated effective June 14, 2007, as amended by that certain Amendment to Employment Agreement dated effective as of January 1, 2009 and that certain Second Amended to Employment Agreement dated effective December 30, 2010 (as amended, the "Employment Agreement"); and

WHEREAS, the parties hereto desire to enter into this Amendment in order to change the Employment Agreement to reflect that the Employee has been promoted to Executive Vice President and Chief Financial Officer of the Employer.

NOW, THEREFORE, intending to be legally bound, for good consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. **Recitals**. The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

2. **Change of Employee's Title**. The parties acknowledge and agree that all references in the Employment Agreement to the Employee being employed as Senior Vice President and Chief Financial Officer of the Employer are hereby amended to state that the Employee is employed as Executive Vice President and Chief Financial Officer of the Employer effective January 1, 2012.

3. **Ratification**. All other terms of the Employment Agreement as amended hereby are hereby ratified and confirmed by each party.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as set forth above.

"EMPLOYEE"

/s/ Dirk A. Montgomery

DIRK A. MONTGOMERY

"EMPLOYER"

Attest:

OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

January 10, 2012

Dave Pace
Chief Resource Officer
OSI Restaurant Partners, LLC

Dear Dave:

This will evidence my agreement to hereby amend my employment agreement to provide that my bonus target will be 85% of base salary for fiscal year 2012 and all years thereafter.

Very Truly Yours,

/s/ Dirk Montgomery
Dirk Montgomery

Exhibit 10.29

OSI RESTAURANT PARTNERS, LLC
Officer Employment Agreement

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into effective June 14, 2007, by and between JOSEPH J. KADOW (the "Executive") and OSI RESTAURANT PARTNERS, LLC (the "Company").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

(a.) WHEREAS, the Company is engaged in the business of owning and operating, through its Affiliates, various restaurant concepts utilizing operating systems and trademarks owned by or licensed to the Company; and

(b.) WHEREAS, Kangaroo Holdings, Inc. and its wholly owned subsidiary Kangaroo Acquisition, Inc. (" Acquisition") entered into an Agreement and Plan of Merger dated as of November 5, 2006 with OSI Restaurant Partners, Inc. (" OSI") (the "Merger Agreement"), pursuant to which Acquisition merged with and into OSI on the "Closing Date" (as defined in the Merger Agreement); and

(c.) WHEREAS, immediately following the merger of Acquisition into OSI, OSI converted into the Company; and

(d.) WHEREAS, the Company desires, on the terms and conditions stated herein, to continue to employ the Executive as Chief Officer – Legal and Corporate Affairs of the Company; and

(e.) WHEREAS, the Executive desires, on the terms and conditions stated herein, to continue to be employed by the Company as its Chief Officer – Legal and Corporate Affairs.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. ***Employment and Term***. Subject to earlier termination as provided for in ***Section 8*** hereof, the Company hereby desires to continue to employ the Executive, and the Executive hereby accepts such continued employment with the Company, as Chief Officer – Legal and Corporate Affairs of the Company for a term commencing on the date hereof and expiring on the fifth anniversary hereof (the " Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. ***Representations and Warranties***. The Executive hereby represents and warrants to the Company that the Executive (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Executive's employment with the Company or its Affiliates (other than any prior agreement with the Company), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Executive's employment with the Company or its Affiliates (other than any prior agreement with the Company) and (iii) has brought to the Company and its Affiliates no trade secrets, confidential business information, documents or other personal property of a prior employer.

3. ***Duties***. As Chief Officer – Legal and Corporate Affairs of the Company, the Executive shall diligently and faithfully perform such duties and functions as may be assigned to the Executive commensurate with his position as Chief Officer – Legal and Corporate Affairs of the Company by the Board of Directors of the Company.

The Executive shall be required hereunder to devote substantially all of the Executive's business time and effort to the business affairs of the Company and its Affiliates. The Executive shall be responsible for directly reporting to the Board of Directors, and for diligently and faithfully performing such duties and functions as may be assigned to the Executive commensurate with his position as Chief Officer – Legal and Corporate Affairs of the Company by the Board of Directors of the Company on all matters for which the Executive is responsible.

Notwithstanding the foregoing, the Executive shall be permitted to invest the Executive's personal assets and manage the Executive's personal investment portfolio in such a form and manner as will not require any business services on the Executive's part to any third party, and provided it does conflict with the Executive's duties and responsibilities to the Company or the provisions of ***Section 10*** or ***Section 11*** hereof, or conflict with any material published policy of the Company or its Affiliates, including, but not limited to, the insider trading policy of the Company or its Affiliates.

Notwithstanding the foregoing, the Executive shall also be permitted to participate in customary civic, nonprofit, religious, welfare, social and professional activities that will not materially affect the Executive's performance of his duties hereunder. The Executive may continue to serve on any board of directors and advisory committees of companies on which the Executive currently serves, as long as the business of such companies is not competitive with that of the Company or any of its Affiliates. The Executive shall not serve on the board of directors or advisory committee of any other company without the prior consent of the Company, which consent shall not be unreasonably withheld.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Executive shall, during the term of this Agreement and at the request of the Company, also serve as an officer of any Affiliate of the Company as the Board of Directors shall reasonably request. In such capacity, the Executive shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to the Executive while serving in such office as though the Executive and such Affiliate of the Company or the Company had separately entered into this Agreement, except that the Executive shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such Affiliate of the Company.

4. ***Compensation***.

a. Base Salary. During the Term of Employment, subject to the Executive's performance in accordance with this Agreement, the Executive shall be entitled to an annual base salary of at least $458,640.00, payable in equal biweekly installments by the Company, subject to annual increase by the Board of Directors of the Company. The base salary as shall be in effect from time to time hereunder shall be referred to herein as the " Base Salary."

b. Bonus. During the Term of Employment, the Executive shall participate in the Company's annual incentive bonus plan, as in effect as of the date hereof, and as may be amended by the Board of Directors of the Company from time to time in accordance with its terms, as the same may be in effect from time to time. The Executive's maximum bonus opportunity for each fiscal year shall equal 100% of Base Salary.

5. ***Vacation***. The Executive shall be entitled to four (4) weeks paid vacation (selected by the Executive, but subject to the reasonable business requirements of the Company) during each full year during the Term of Employment, and otherwise in accordance with Company policy as may be in effect from time to time.

6. ***Fringe Benefits***. In addition to any other rights the Executive may have hereunder, the Executive shall also be entitled to participate in employee benefits plans, and be eligible to receive those fringe benefits, including, but not limited to, complimentary food, life insurance, medical benefits, *etc*., if any, as may be provided by the Company to similar employees of the Company, in each case, as such plans, programs and arrangements may be in effect from time to time, all subject to the terms of such plans, programs or arrangements and applicable policies of the Company; provided, however, that benefits and perquisites available to the Executive shall be no less favorable than those provided to the Executive prior to the " Closing" (as defined in the Merger Agreement), including with respect to airplane usage and split dollar life insurance; it being understood that the split dollar life insurance policies were "vested" by the board of directors of OSI (as reflected on Exhibit A).

In addition to the foregoing, commencing at age sixty-five (65), and contingent upon the Executive having been employed by the Company or its predecessors for seven years, the Executive will be reimbursed on a "grossed up" basis to the extent he incurs federal or state income tax liability as a result of phantom income allocated to the Executive due to the maintenance of the split dollar life insurance policies.

7. ***Expenses***. Subject to compliance with the Company's policies as in effect from time to time, the Executive may incur and be reimbursed by the Company for reasonable expenses on behalf of and in furtherance of the business of the Company.

8. ***Termination***. Notwithstanding the provisions of ***Section 1*** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in ***Section 1*** hereof, immediately upon:

(a) The death of the Executive; or

(b) At the election of the Company in the event of the Executive's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Executive, arising out of any medically determinable physical or mental impairment, to perform the services required of the Executive hereunder for a period of (i) one- hundred eighty (180) consecutive days or (ii) two-hundred forty (240) total days during any period of three-hundred and sixty-five (365) consecutive calendar days; or

(c) The existence of Cause. For purposes of this Agreement, "Cause" means any of the following: the Executive's (i) gross neglect of duty or prolonged absence from duty (other than any such failure resulting from incapacity due to physical or mental illness) without the consent of the Company, as determined in good faith by the Board of Directors of the Company and following notice to the Executive and a reasonable opportunity to cure, (ii) conviction or a plea of guilty or *nolo contendere* with respect to commission of a felony under federal law or in the law of the state in which such action occurred, (iii) the willful engaging in illegal misconduct or gross misconduct that is materially and demonstrably injurious to the Company or (iv) any material violation of any material covenant or restriction contained in this Agreement; or

(d) At the election of the Company, at any time and including in the event of a determination by the Company to cease business operations; or

(e) At the election of the Executive from time to time no later than thirty (30) days following the occurrence of Good Reason; or

(f) At the election of the Executive at any time upon fifteen (15) days notice.

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred on the date of the Executive's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

9. ***Severance***.

(a) ***General***. In the event of termination of the Term of Employment pursuant to ***Section 8*** hereof, the Executive or the Executive's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Executive's death or any disability benefits payable under any disability plan maintained by the Company) the Base Salary provided for herein up to and including the effective date of termination (the "Termination Effective Date"), prorated on a daily basis. Except as provided in ***Section 9(b) or Section 9(c)*** below, the Executive shall not be entitled to receive any severance compensation.

(b) ***Severance***. In the event of termination of the Term of Employment pursuant to ***Section 8(d)*** or ***Section 8(e)*** hereof (including, for the avoidance of doubt, the failure of the Company to renew the Term of Employment), the Executive shall be entitled to receive as full and complete severance compensation, an amount equal to the sum of (i) the Base Salary then in effect plus (ii) the average of the three most recent annual bonuses paid to the Executive (together, the "Severance"), such severance payable in twelve (12) equal monthly installments from the effective date of such termination. The Company shall continue to provide medical, dental and vision benefits to the Executive and his eligible dependents that are substantially similar to those provided generally to executive officers of the Company pursuant to such welfare plans as may be in effect from time to time as if the Executive's employment had not been terminated for the one (1) year period commencing on the day after the effective day of such termination (which may include reimbursing the Executive for the Executive's payment of COBRA premiums). The Company's payments of Severance are expressly conditioned upon (x) the Executive executing and delivering to the Company a timely and effective separation agreement, which shall include, but not be limited to, a general release of claims by the Executive, in the form attached hereto as Exhibit B, and (y) the Executive's continued compliance, including after the Term of Employment, with the covenants contained in ***Section 10***, ***Section 11***, ***Section 12*** and ***Section 27*** hereof.

(c) ***Accrued Bonus***. In the event the Executive's employment is terminated by the Company without Cause or by the Executive for Good Reason, or as the result of the Executive's death or Disability, the Executive shall receive, in addition to any other payments to which he is entitled pursuant to ***Sections 9(a)*** and ***(b)*** above, any accrued but unpaid bonus in respect of the fiscal year preceding the year in which such termination of employment occurred.

(d) ***Acknowledgement***. The Executive acknowledges and agrees that in the event of termination of the Term of Employment pursuant to ***Section 8(d)*** hereof, and except for any vested benefits in tax-qualified pension plans maintained by the Company, the Severance provided in this ***Section 9*** shall be the only obligation that the Company or any of its Affiliates shall have to the Executive.

10. ***Noncompetition***.

(a) ***During Term***. Except with the prior written consent of the Company, during the Executive's employment with the Company, the Executive shall not, individually or jointly with others, directly or indirectly, whether for the Executive's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a full service restaurant business, and the Executive shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person or entity.

(b) ***Post Term***. For a continuous period of one (1) year commencing on termination of the Executive's employment with the Company, regardless of any termination pursuant to ***Section 8*** hereof or any voluntary termination or resignation by the Executive, the Executive shall not, individually or jointly with others, directly or indirectly, whether for the Executive's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a full service restaurant business that is located or intended to be located anywhere within a radius of thirty (30) miles of any restaurant owned or operated by the Company or any of its Affiliates, or any proposed full service restaurant to be owned or operated by any of the foregoing, and the Executive shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person or entity. For purposes of this ***Section 10(b)***, full service restaurants owned or operated by the Company or any of its Affiliates shall include any entity in which the Company or any of its Affiliates has an interest, including, but not limited to, an interest as a franchisor, but shall not include any entities to whose exclusion the Company consents. The term "proposed full service restaurant" shall include all locations for which the Company or any of its franchisees or Affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing a full service restaurant thereon.

(c) ***Limitation***. Notwithstanding ***subsections (a)*** and ***(b)*** immediately above, it shall not be a violation of this ***Section 10*** for the Executive to own a three percent (3%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

11. ***Nondisclosure; Nonsolicitation; Nonpiracy***. Except in the performance of the Executive's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall the Executive, individually or jointly with others, for the benefit of the Executive or any third party, publish, disclose, use or authorize anyone else to publish, disclose or use any secret or confidential material or information relating to any aspect of the business or operations of the Company or any of its Affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures, financial data, processes, vendors and other information or know-how of the Company or any of its Affiliates, except (i) to the extent required by law, regulation or valid subpoena, or (ii) to the extent that such information or material becomes publicly known or available through no fault of the Executive or his affiliates. Moreover, during the Executive's employment with the Company and for one (1) year thereafter, except as is the result of a broad solicitation that is not targeting employees of the Company or any of its franchisees or Affiliates, the Executive shall not offer employment to, or hire, any employee of the Company or any of its franchisees or Affiliates, or otherwise directly or indirectly solicit or induce any employee of the Company or any of its franchisees or Affiliates to terminate his or her employment with the Company or any of its franchisees or Affiliates; nor shall the Executive act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, of or for any person or entity that solicits or otherwise induces any employee of the Company or any of its franchisees or Affiliates to terminate his or her employment with the Company or any of its franchisees or Affiliates.

12. ***Company Property: Executive Duty to Return***. All Company property and assets, including products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks and all other like information or products, including all copies, duplications, replications and derivatives of such information or products, now in the possession of the Executive or acquired by the Executive while in the employ of the Company, shall be the exclusive property of the Company, and shall be returned to the Company no later than the date of the Executive's last day of work with the Company.

13. ***Inventions, Ideas, Processes and Designs***. All inventions, ideas, recipes, processes, programs, software and designs (including all improvements) related to the business of the Company shall be disclosed in writing promptly to the Company, and shall be the sole and

exclusive property of the Company, if either (i) conceived, made or used by the Executive during the course of the Executive's employment with the Company (whether or not actually conceived during regular business hours) or (ii) made or used by the Executive for a period of six (6) months subsequent to the termination or expiration of such employment. Any invention, idea, recipe, process, program, software or design (including an improvement) shall be deemed "related to the business of the Company" if (i) it was made with equipment, facilities or confidential information of the Company, (ii) results from work performed by the Executive for the Company or (iii) pertains to the current business or demonstrably anticipated research or development work of the Company. The Executive shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly assign all such inventions, ideas, recipes, processes and designs to the Company. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Company, and the Executive shall be bound by such decision. The Executive shall provide, on the back of this Agreement, a complete list of all inventions, ideas, recipes, processes and designs if any, patented or unpatented, copyrighted or non-copyrighted, including a brief description, that the Executive made or conceived prior to the Executive's employment with the Company, and that, therefore, are excluded from the scope of this Agreement.

14. ***Restrictive Covenants: Consideration; Non–Estoppel; Independent Agreements; and Non-Executory Agreements*** . The restrictive covenants of ***Section 10***, ***Section 11*** and ***Section 13*** of this Agreement are given and made by the Executive to induce the Company to continue to employ the Executive and to enter into this Agreement with the Executive, and the Executive hereby acknowledges that employment with the Company is sufficient consideration for these restrictive covenants.

The restrictive covenants of ***Section 10***, ***Section 11*** and ***Section 13*** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of the Executive against the Company, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant.

The refusal or failure of the Company to enforce any restrictive covenant of ***Section 10***, ***Section 11*** and ***Section 13*** of this Agreement (or any similar agreement) against any other employee, agent or independent contractor, for any reason, shall neither constitute a defense to the enforcement by the Company of any such restrictive covenant, nor give rise to any claim or cause of action by the Executive against the Company.

15. ***Reasonableness of Restrictions; Reformation; Enforcement*** . The parties hereto recognize and acknowledge that the geographical and time limitations contained in ***Section 10***, ***Section 11*** and ***Section 13*** hereof are reasonable and properly required for the adequate protection of the Company's interests. The Executive acknowledges that the Company is the owner or the licensee of various trademarks, and the owner or the licensee of various restaurant operating systems, and has provided and will continue to provide to the Executive training in and confidential information concerning such restaurant operating systems in reliance on the covenants contained in ***Section 10***, ***Section 11*** and ***Section 13*** hereof. It is agreed by the parties hereto that if any portion of the restrictions contained in ***Section 10***, ***Section 11*** and ***Section 13***

hereof are held to be unreasonable, arbitrary or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary or against public policy, a lesser time period or geographical area that is determined to be reasonable, nonarbitrary and not against public policy may be enforced against the Executive. If the Executive shall violate any of the covenants contained herein and if any court action is instituted by the Company to prevent or enjoin such violation, then the period of time during which the Executive's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Executive's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Company to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in ***Section 10***, ***Section 11*** or ***Section 13*** hereof, each party shall pay its own legal fees, and the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs of such proceedings, including appellate proceedings.

16. ***Specific Performance.*** The Executive agrees that a breach of any of the covenants contained in ***Section 10***, ***Section 11*** or ***Section 13*** hereof will cause irreparable injury to the Company for which the remedy at law will be inadequate and would be difficult to ascertain, and, therefore, in the event of the breach or threatened breach of any such covenants, the Company shall be entitled, in addition to any other rights and remedies that it may have at law or in equity, to obtain an injunction to restrain the Executive from any threatened or actual activities in violation of any such covenants. The Executive hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Company does apply for such an injunction, the Executive shall not raise as a defense thereto that the Company has an adequate remedy at law.

17. ***Certain Covenants***. For the avoidance of doubt, the termination of this Agreement or expiration of the Term of Employment, for any reason, shall not extinguish those obligations of the Executive specified in ***Section 10***, ***Section 11***, ***Section 13*** and ***Section 27*** hereof, those obligations of the Company specified in ***Section 9*** hereof, or the obligation of the Company to provide the Executive with gross-up payments referenced in the second paragraph of ***Section 6*** and, with respect to the merger of Acquisition and OSI, as specified in ***Section 30*** hereof.

18. ***Captions; Terms***. The captions of this Agreement are for convenience only, and shall not be construed to limit, define or modify the substantive terms hereof.

19. ***Acknowledgments***. The Executive hereby acknowledges that the Executive has been provided with a copy of this Agreement for review prior to signing it, that the Executive has been given the opportunity to have this Agreement reviewed by Executive's attorney prior to signing it, that the Executive understands the purposes and effects of this Agreement and that the Executive has been given a signed copy of this Agreement for the Executive's own records.

20. ***Notices***. All notices or other communications provided for herein to be given or sent to a party by another party shall be deemed validly given or sent if in writing and mailed, postage prepaid, by certified United States mail, return receipt requested (with effect two (2) business days after sent), delivered by hand (with effect upon delivery) or by nationally recognized overnight courier (with effect one (1) business day after sent) addressed to the parties at their addresses set forth on the records of the company. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed (which shall be effective upon receipt).

21. ***Severability***. Each section and subsection of this Agreement constitutes a separate and distinct undertaking, covenant or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

22. ***Waiver***. The failure of a party to enforce any term, provision or condition of this Agreement at any time or times shall not be deemed a waiver of that term, provision or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such term, provision, or condition for any future time or times.

23. ***Assignment; Parties***. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their legal representatives, executors, administrators, heirs and proper successors or permitted assigns, as the case may be. This Agreement and the rights and duties created hereunder shall not be assignable or delegable by the Executive. The Company shall have the right, without the Executive's knowledge or the Executive's consent, to assign this Agreement, in whole or in part, and any or all of the rights and duties hereunder, to any Affiliate of the Company, or any successor to the Company, and the Executive shall be bound by such assignment.

24. ***Governing Law***. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

25. ***Consent to Personal Jurisdiction and Venue***. The Executive hereby consents to personal jurisdiction and venue, for any action brought by the Company arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida and, if applicable, the federal and state courts in any jurisdiction where the Executive is employed or resides; the

Executive hereby agrees that any action brought by the Executive, alone or in combination with others, against the Company, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

26. ***Affiliate***. Whenever used in this Agreement, the term "Affiliate" shall mean, with respect to any entity, all persons or entities directly or indirectly controlled by Kangaroo Holdings, Inc., where control may be by management authority, contract or equity interest.

27. ***Cooperation***. The Executive shall cooperate fully with all reasonable requests for information and participation by the Company, its agents or its attorneys in prosecuting or defending claims, suits and disputes brought on behalf of or against the Company and in which Executive is involved or about which Executive has knowledge.

28. ***Fees and Expenses***. The Company will pay, or cause to be paid, all reasonable legal fees incurred by the Executive arising out of the negotiation and drafting of this Agreement, the Executive's rollover stock agreement, the option agreement and any other agreements or arrangements ancillary thereto.

29. ***Amendments***. No change, modification or termination of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

30. ***280G***. With respect to the merger of Acquisition and OSI as contemplated by the Merger Agreement, the Company shall provide the Executive with the gross-up payments provided for under Section 33 of the Executive's employment agreement dated as of March 8, 2006, as amended November 5, 2006. If, after the date hereof, there occurs a transaction that constitutes a "change of control" under Regulation 1.280G of the Internal Revenue Code of 1986, as amended (the "Code"), the Company and the Executive shall use commercially reasonable best efforts to take such actions as may be necessary to avoid the imposition of any the excise tax imposed by Section 4999 of the Code on the Executive, including seeking to obtain stockholder approval in accordance with the terms of Section 280G(b)(5).

31. *WAIVER OF JURY TRIAL.* THE PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED –FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY

PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THAT THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

32. ***Entire Agreement; Counterparts***. This Agreement and the agreements referred to herein constitute the entire agreement between the parties hereto concerning the subject matter hereof, and supersede all prior memoranda, correspondence, conversations, negotiations and agreements. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

33. ***Definitions***.

"Good Reason" means any of the following: (i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as in effect immediately prior to the date hereof, or any diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and that is remedied by the Company promptly after receipt of notice thereof given by the Executive, (ii) a reduction by the Company in the Executive's Base Salary or benefits as in effect immediately prior to the date hereof, (iii) the Company requiring the Executive to be based at or generally work from any location more than fifty (50) miles from the location at which the Executive was based or generally worked immediately prior to the effective date hereof or (iv) without limiting the generality of clause (ii) above, failure by the Company to comply with the proviso of ***Section 6*** hereof.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EXECUTIVE"

/s/ Joseph J. Kadow
Joseph J. Kadow

"THE COMPANY"

OSI RESTAURANT PARTNERS, LLC

By: /s/ A. William Allen, III
Name: A. William Allen, III
Title: Authorized Representative

AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment") is made effective as of January 1, 2009, by and between **OSI Restaurant Partners, LLC** (the "Company"), and **Joseph J. Kadow** (the "Executive").

Background Information

The parties to this Amendment (the "Parties") entered into an Officer Employment Agreement as of June 14, 2007 (the "Employment Agreement"), regarding the Executive's employment relationship with the Company. The Parties desire to amend the Employment Agreement in order to comply with the final Treasury Regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The Employment Agreement, as amended by this Amendment, is hereinafter collectively referred to as the "Agreement."

Amendment of the Employment Agreement

The Parties hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. ***Definitions.*** All capitalized terms used in this Agreement but which are not otherwise defined herein, shall have the respective meanings given those terms in the Employment Agreement, as applicable.

2. ***Bonus.*** Section 4(b) of the Agreement is hereby amended by adding the following to the end thereof:

"Unless otherwise specified in the Company policies or other governing documents regarding executive compensation and bonus plans, any bonus awarded to Executive by Company shall be paid in a single lump sum payment within 90 days after the end of the performance period."

3. ***Fringe Benefits.*** Section 6 of the Agreement is hereby amended by adding the following to the end thereof:

"Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 6 that are not 'disability pay' or 'death benefits' within the meaning of Treasury Regulations Section 1.409A-1(a)(5) (collectively, the 'Applicable Benefits') shall be subject to the following requirements in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to

reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

4. ***Expenses***. Section 7 of the Agreement is hereby amended by adding the following to the end thereof:

"If any reimbursements under this provision are taxable to the Executive, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. Further, Executive may not liquidate or exchange the right to reimbursement of such expenses for any other benefits."

5. ***Termination.*** Section 8 of the Agreement is hereby amended by adding the following sub-section (g) to the end thereof:

"(g) Termination of Employment for all purposes under this Agreement will be determined to have occurred in accordance with the 'separation from service' requirements of Code Section 409A and the Treasury Regulations and other guidance issued thereunder, and based on whether the facts and circumstances indicate that Company and Executive reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services Executive would perform after such date (as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period (or actual period of service, if less)."

6. ***Severance.*** Section 9(b) of the Agreement is hereby amended by adding the following to the end thereof:

"Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 9 that are not Applicable Benefits shall be subject to the following requirements in order to comply with Code Section 409A. The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

7. ***Accrued Bonus.*** Section 9(c) of the Agreement is hereby amended by adding the following to the end thereof:

"Such bonus payments shall be paid in a single lump sum payment within 90 days after the end of the fiscal year in which such termination of employment occurred."

8. ***Fees and Expenses.*** Section 28 of the Agreement is hereby amended by adding the following to the end thereof:

"If any reimbursements under this provision are taxable to the Executive, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. In addition, Executive may not liquidate or exchange the right to reimbursement of such expenses for any other benefits."

9. ***280G.*** Section 30 of the Agreement is hereby amended by adding the following to the end thereof:

"Any such gross-up payment provided for under this Section shall be made as soon as feasible and in all cases no later than the end of the calendar year following the year in which the applicable taxes were remitted to the applicable taxing authority."

10. ***Section 409A***. Section 34 is hereby added to the end of the Agreement to read as follows:

"34. Code Section 409A. The Company makes no representation as to whether any such payment or any part thereof constitutes or may constitute non-qualified deferred compensation. Neither the Company nor any of its directors, officers, employees, agents or professional advisors shall have any liability to the Executive or any other person or any amounts incurred by Executive or any other such person by reason of the determination made by the Board of Managers pursuant to this paragraph or any action taken or omitted by the Board, the Company, or any of the Company's managers, officers, employees, agents or professional advisors in the course of, or as a result of, making such determination. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A."

11. The terms and conditions of the Agreement between Company and Executive that are unaffected by this Amendment remain in full force and effect.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment on the 31 st day of December, 2008.

JOSEPH J. KADOW

/s/ Joseph J. Kadow_____

OSI RESTAURANT PARTNERS, LLC

By: /s/ A. William Allen, III_____

A. William Allen, III

Its: Chief Executive Officer_____

AMENDMENT
TO
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amendment is made and entered into this 12th day of June, 2009 by and between JOSEPH J. KADOW (the "Executive") and OSI RESTAURANT PARTNERS, LLC (the "Company").

RECITALS

1. The Executive and the Company entered into that certain Amended and Restated Employment Agreement dated June 14, 2007 (the "Agreement").
2. The Executive and the Company entered into an amendment to the Agreement effective as of January 1, 2009.
3. The Executive and the Company desire to further amend the Agreement as provided herein.

NOW THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

A. Section 8 of the Agreement is amended by deleting clause (c) thereof in its entirety and substituting in its place the following:

"(c) The existence of Cause. For purposes of this Agreement, " Cause" means any of the following: the Executive's (i) conviction or a plea of guilty or *nolo contendere* with respect to commission of a felony under federal law or under the law of the state in which such action occurred, or (ii) the willful engaging in illegal misconduct or gross misconduct that is materially and demonstrably injurious to the Company."

B. Section 34 of the Agreement is amended by adding the following at the end of such Section:

"I£ as of the date of the 'separation from service,' Executive is a 'specified employee' (within the meaning of that term under Section 409A(a)(2)(B) of the Code, or any successor provision thereto), then with regard to any payment or the provision of any benefit that is subject to this section (whether under this Agreement, or pursuant to any other agreement with or plan, program, payroll practice of the Company) and is due upon or as a result of Executive's separation from service, such payment or benefit shall not be made or provided, to the extent making or providing such payment or benefit would result in additional taxes or interest under Section 409A of the Code, until the date which is the earlier of (A) the expiration of the six (6)-month

period measured from the date of such 'separation from service,' and (B) the date of Executive's death (the 'Delay Period') and this Agreement and each such agreement, plan, program, or payroll practice shall hereby be deemed amended accordingly. Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to Executive in a lump sum with interest at the prime rate as published in the Wall Street Journal on the first business day of the Delay Period (provided that any payment measured by a change in value that continues during the Delay Period shall not be credited with interest for the Delay Period), and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein."

In Witness Whereof, the undersigned have executed this Amendment as of the date first above written.

"EXECUTIVE"	"THE COMPANY"
	OSI RESTAURANT PARTNERS, LLC
/s/ Joseph J. Kadow	By: /s/ A. William Allen, III_____
Joseph J. Kadow	
	Name: A. William Allen, III
	Title: Chief Executive Officer

THIRD AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment") is made effective as of December 30, 2010, by and between **OSI Restaurant Partners, LLC** (the "Company"), and **Joseph J. Kadow** (the "Executive").

Background Information

The parties to this Amendment (the "Parties") entered into an Amended and Restated Officer Employment Agreement as of June 14, 2007 (the "Original Employment Agreement"), regarding the Executive's employment relationship with the Company. The Original Employment Agreement was amended on January 1, 2009 (the "First Amendment") and on June 12, 2009 (the "Second Amendment'). The Original Employment Agreement, the First Amendment and the Second Amendment are hereinafter collectively referred to as the "Employment Agreement." The Parties desire to further amend the Employment Agreement in order to comply with IRS Notice 2010-6 and Section 409A of the Internal Revenue Code of 1986, as amended. The Employment Agreement, as amended by this Amendment, is hereinafter collectively referred to as the "Agreement."

Amendment of the Employment Agreement

The Parties hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. ***Definitions.*** All capitalized terms used in this Agreement but which are not otherwise defined herein, shall have the respective meanings given those terms in the Employment Agreement, as applicable.

2. ***Severance.*** Section 9(b)(ii)(x) of the Agreement is hereby amended by adding the following to the end thereof:

"if such release is not delivered to the Company within thirty (30) days of the date of such termination, Executive's rights to Severance under this section 9(b) are forfeited."

3. ***Reaffirmation***. The terms and conditions of the Agreement between Company and Executive that are unaffected by this Amendment remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment.

JOSEPH J. KADOW **OSI RESTAURANT PARTNERS, LLC**

/s/ Joseph J. Kadow By: /s/ Kelly Lefferts
Kelly Lefferts

Its: Vice President and Assistant General Counsel

December 16, 2011

Dave Pace
Chief Resource Officer
OSI Restaurant Partners, LLC

Dear Dave:

This will evidence my agreement to hereby amend my employment agreement to provide that my bonus target will be reduced from 100% of base salary to 85% of base salary for fiscal year 2012 and all years thereafter.

Very Truly Yours,
/s/ Joseph J. Kadow
Joseph J. Kadow

Exhibit 10.30

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "Agreement") dated as of June 14, 2007 between OSI Restaurant Partners, LLC (the " Company") and Robert D. Basham (the "Employee").

WHEREAS, the Employee is possessed of certain experience and expertise that qualify him to provide certain services required by the Company and its Affiliates; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the Company hereby agrees to employ the Employee, and the Employee hereby accepts such employment.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, terms, provisions and conditions set forth in this Agreement, the parties hereby agree:

1. Employment. Subject to the terms and conditions set forth in this Agreement, the Company desires to continue to employ the Employee, and the Employee hereby accepts such continued employment.

2. Term. Subject to earlier termination as hereinafter provided, the Employee's employment hereunder shall be for a term of five years, commencing on the date hereof, and shall renew automatically thereafter for successive terms of one year each. The term of this Agreement, as from time to time extended or renewed, is hereafter referred to as "the term of this Agreement" or "the term hereof."

3. Capacity and Performance.

(a) During the term hereof, the Employee shall be employed by the Company, and shall perform only those duties and responsibilities as may be mutually agreed by the Employee and the Board of Directors of the Company (the " Board") or its designee.

(b) During the term hereof, the Employee shall devote such of his time and his efforts to the Company as shall be necessary to perform the duties and responsibilities to which reference is made in Section 3(a) above. It is understood that the Employee will not be devoting his full business time and efforts exclusively to the advancement of the business and interests of the Company and its Affiliates and to the discharge of his duties and responsibilities hereunder. Subject to the provisions of Section 8 hereof, nothing herein shall prevent the Employee from having other employment.

4. Compensation and Benefits. As compensation for all services performed by the Employee under this Agreement during the term hereof, and subject to performance of the Employee's duties and of the obligations of the Employee to the Company and its Affiliates, pursuant to this Agreement, the Company shall pay to the Employee:

(a) Salary. During the term hereof, the Company shall pay the Employee a base salary (" Base Salary") at the rate of $300,000 per annum, payable in accordance with the payroll practices of the Company for its employees.

(b) Incentive and Bonus Compensation. The Employee shall not be eligible to be considered for a bonus annually during the term hereof.

(c) Business Expenses. The Company shall pay or reimburse the Employee for all reasonable, customary and necessary business expenses incurred or paid by the Employee in the performance of his duties and responsibilities hereunder, subject to any maximum annual limit and other restrictions on such expenses set by the Board, and to such reasonable substantiation and documentation as may be specified by the Company from time to time, in each case by advance written notice to the Employee of such restrictions or requirements.

(d) Benefits. The Employee shall be entitled to participate in such health, disability, life insurance and other benefit plans and retirement plans of the Company and its subsidiaries for which management employees of the Company or its subsidiaries are generally eligible.

5. Termination of Employment and Severance Benefits. Notwithstanding the provisions of Section 2 hereof, the Employee's employment hereunder shall terminate prior to the expiration of the term hereof under the following circumstances:

(a) Death. In the event of the Employee's death during the term hereof, the Employee's employment hereunder shall immediately and automatically terminate. In such event, the Company shall pay to the Employee's designated beneficiary, or, if no beneficiary has been designated by the Employee in writing, to his estate, (i) any Base Salary earned but not paid through the date of termination, and (ii) any business expenses incurred by the Employee but un-reimbursed as of the date of termination, provided that such expenses and required substantiation and documentation are submitted within 90 days following termination and that such expenses are reimbursable under Section 4(c) above (all of the foregoing, " Final Compensation"). In addition to Final Compensation, until the later of (x) the conclusion of the initial term of this Agreement and (y) a period of 24 months following the date of termination, the Company shall continue to pay the Employee (or his designated beneficiary or his estate) the Base Salary (" Severance"). Severance to which the Employee is entitled hereunder shall be payable in accordance with the normal payroll practices of the Company and will begin at the Company's next regular payroll period which is at least five business days following the later of the effective date of the "Release of Claims" or the date upon which the "Release of Claims," signed by the Employee, is received by the Company, but the first payment shall be retroactive to next business day following the date of termination. The Company shall have no further obligation to the Employee hereunder.

(b) Disability. The Company may terminate the Employee's employment hereunder, upon notice to the Employee, in the event that the Employee becomes disabled during his employment hereunder through any illness, injury, accident or condition of either a physical or psychological nature and, as a result, is unable to perform substantially all of his duties and responsibilities hereunder, notwithstanding the provision of any reasonable accommodation, for 270 days during any period of 365 consecutive calendar days. In the event of such termination,

the Company shall have no further obligation to the Employee hereunder, other than for payment of Final Compensation and Severance, which payment is conditioned upon the Employee signing and returning to the Company a timely and mutually acceptable effective release of claims relating to the Employee's employment hereunder (a "Release of Claims").

(c) By the Company for Cause. The Company may terminate the Employee's employment hereunder for Cause at any time upon notice to the Employee setting forth in reasonable detail the nature of such Cause. The following shall constitute Cause for termination:

(i) willful and continued failure to perform (other than due to any mental or physical impairment) the Employee's material duties and responsibilities to the Company and its Affiliates as agreed under Section 3(a) hereof after written notice specifying such failure and the manner in which the Employee may rectify such failure in the future, if rectifiable;

(ii) willful and material breach by the Employee of Section 8 of this Agreement that is not cured within 30 days of written notice from the Company; or

(iii) Employee having engaged during the term in fraud, embezzlement or another intentional act of dishonesty in connection with his duties hereunder, which act has a detrimental effect on the Company's reputation or business, with respect to the Company or any of its Affiliates; or

(iv) a conviction of or plea of *nolo contendere* to a felony;

provided, that no such conduct described in Sections 5(c)(i) or 5(c)(ii) above will be deemed "willful" unless it is engaged in by the Employee not in good faith and without reasonable belief that the Employee's conduct was in the best interests of the Company.

Upon the giving of notice of termination of the Employee's employment hereunder for Cause, the Company shall have no further obligation to the Employee hereunder, other than for payment of Final Compensation.

(d) By the Company Other than for Cause. The Company may terminate the Employee's employment hereunder other than for Cause at any time upon notice to the Employee. In the event of such termination, the Company shall have no further obligation to the Employee, other than for payment of Final Compensation and Severance provided the Employee executes an effective Release of Claims.

(e) By the Employee for Good Reason. The Employee may terminate his employment hereunder for Good Reason, upon notice to the Company setting forth in reasonable detail the nature of such Good Reason. The following shall constitute Good Reason for termination by the Employee: failure of the Company to provide the Employee the Base Salary and benefits in accordance with the terms of Section 4 hereof, excluding an inadvertent failure which is cured within ten business days following notice by the Employee specifying in

reasonable detail the nature of such failure. In the event of such termination, the Company shall have no further obligation to the Employee, other than for payment of Final Compensation and Severance provided that the Employee executes an effective Release of Claims.

(f) By the Employee Other than for Good Reason. The Employee may terminate his employment hereunder at any time upon three days' notice to the Company. In the event of such termination, the Company shall have no further obligation to the Employee hereunder, other than for any Final Compensation.

(g) Timing of Payments. If at the time of the Employee's separation from service, the Employee is a "specified employee," as hereinafter defined, any and all amounts payable under this Section 5 in connection with such separation from service that constitute deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, (" Section 409A"), as determined by the Company in its reasonable discretion, and that would (but for this sentence) be payable within six months following such separation from service, shall instead be paid on the date that follows the date of such separation from service by six months. For purposes of the preceding sentence, " separation from service" shall be determined in a manner consistent with subsection (a)(2)(A)(i) of Section 409A, and the term " specified employee" shall mean an individual determined by the Company to be a specified employee as defined in subsection (a)(2)(B)(i) of Section 409A.

(h) Post-Agreement Employment. In the event the Employee remains in the employ of the Company or any of its Affiliates following termination of this Agreement, then such employment shall be at will.

6. Effect of Termination. The provisions of this Section 6 shall apply to any termination of the Employee's employment.

(a) Except as otherwise provided herein, all of the Employee's right to salary and any other form of compensation in respect of his employment shall cease on the date of termination, and the obligations of the Company under the applicable termination provision of Section 5 hereof shall constitute the entire obligation of the Company to the Employee in respect of such rights.

(b) Except for any right of the Employee to continue medical and dental plan participation in accordance with applicable law, benefits shall terminate pursuant to the terms of the applicable benefit plans based on the date of termination of the Employee's employment without regard to any continuation of Base Salary or other payment to the Employee following such date of termination.

(c) Provisions of this Agreement shall survive any termination if so provided herein, or if necessary or desirable to accomplish the purposes of other surviving provisions, including, without limitation, the obligations of the Employee under Sections 7 and 8 hereof. The obligation of the Company to pay Severance to or on behalf of the Employee under Section 5(b), 5(d) or 5(e) hereof is expressly conditioned upon the Employee's continued full performance of obligations under Sections 7 and 8 hereof. The Employee recognizes that, except as expressly provided in Section 5(a), 5(b), 5(d) or 5(e) hereof, no compensation is earned after termination of employment.

7. Confidential Information.

(a) The Employee acknowledges that the Company and its Affiliates continually develop Confidential Information, that the Employee may develop Confidential Information for the Company or its Affiliates and that the Employee may learn of Confidential Information during the course of employment. The Employee will comply with the policies and procedures of the Company and its Affiliates for protecting Confidential Information, and shall not disclose to any Person or use, other than (i) as required by applicable law, or by any court, arbitrator, mediator or administrative or legislative body (including any committee thereof) with actual jurisdiction to order the Employee to disclose or make accessible, (ii) for the proper performance of his duties and responsibilities to the Company and its Affiliates, (iii) at the request of the Company or (iv) to the extent required in connection with any litigation, arbitration or mediation involving this Agreement, including, but not limited to, the enforcement of this Agreement, any Confidential Information obtained by the Employee incident to his employment or other association with the Company or any of its Affiliates. The Employee understands that this restriction shall continue to apply after his employment terminates, regardless of the reason for such termination. The confidentiality obligation under this Section 7 shall not apply to information which is generally known or readily available to the public at the time of disclosure, or which becomes generally known through no wrongful act on the part of the Employee.

(b) All documents, records, tapes and other media of every kind and description relating to the business, present or otherwise, of the Company or its Affiliates, and any copies, in whole or in part, thereof (the "Documents"), whether or not prepared by the Employee, shall be the sole and exclusive property of the Company and its Affiliates. The Employee shall safeguard all Documents, and shall surrender to the Company at the time his employment terminates, or at such earlier time or times as the Board or its designee may specify, all Documents then in the Employee's possession or control.

8. Restricted Activities. The Employee agrees that some restrictions on his activities during and after his employment are necessary to protect the goodwill, Confidential Information and other legitimate interests of the Company and its Affiliates:

(a) While the Employee is employed by the Company and for 24 months immediately following termination of his employment, the Employee shall not own, manage, control, participate in or render services for (directly or indirectly, whether as owner, partner, investor, consultant, agent, employee, co-venturer or otherwise) any enterprise that is engaged, as its primary business or as a material portion of its business, in owning, operating or franchising full-service restaurant concepts (the "Business"), anywhere in the world (except by way of portfolio investment in shares quoted on a recognized stock exchange whereby the Employee owns less than 5% of the outstanding stock of such entity).

(b) The Employee agrees that, during his employment and for 24 months immediately following termination of his employment, the Employee will not, and will not assist any other Person to, (i) hire or solicit for hiring any management level employee of the Company or any of its Affiliates or seek to persuade any such employee to discontinue employment, or (ii) solicit or encourage any independent contractor providing services to the Company or any of its Affiliates to terminate or diminish its relationship with them. For the purposes of this Agreement, an "employee" of the Company or any of its Affiliates is any person who was such at any time within the preceding 12 months.

9. Enforcement of Covenants. The Employee acknowledges that he has carefully read and considered all the terms and conditions of this Agreement, including the restraints imposed upon him pursuant to Sections 7 and 8 hereof. The Employee agrees without reservation that each of the restraints contained herein is necessary for the reasonable and proper protection of the goodwill, Confidential Information and other legitimate interests of the Company and its Affiliates; that each and every one of those restraints is reasonable in respect to subject matter, length of time and geographic area; and that these restraints, individually or in the aggregate, will not prevent him from obtaining other suitable employment during the period in which the Employee is bound by these restraints. The Employee further agrees that he will never assert, or permit to be asserted on his behalf, in any forum, any position contrary to the foregoing. The Employee further acknowledges that, were he to breach any of the covenants contained in Sections 7 or 8 hereof, the damage to the Company would be irreparable. The Employee, therefore, agrees that the Company, in addition to any other remedies available to it, shall be entitled to preliminary and permanent injunctive relief against any breach or threatened breach by the Employee of any of said covenants, without having to post bond. The parties further agree that, in the event that any provision of Section 7 or 8 hereof shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law.

10. Definitions. Words or phrases which are initially capitalized or are within quotation marks shall have the meanings provided in this Section and as provided elsewhere herein. For purposes of this Agreement, the following definitions apply:

(a) "Affiliates" means all persons and entities directly or indirectly controlled by Kangaroo Holdings, Inc., where control may be by management authority, contract or equity interest.

(b) "Confidential Information" means any and all information of the Company and its Affiliates that is not generally known by those with whom the Company or any of its Affiliates competes or does business, or with whom the Company or any of its Affiliates plans to compete or do business, and any and all information, publicly known in whole or in part

or not, which, if disclosed by the Company or any of its Affiliates would assist in competition against them. Confidential Information includes without limitation such information relating to (i) the development, research, testing, manufacturing, marketing and financial activities of the Company and its Affiliates, (ii) the costs, sources of supply, financial performance and strategic plans of the Company and its Affiliates, (iii) the identity and special needs of the customers of the Company and its Affiliates and (iv) the people and organizations with whom the Company and its Affiliates have business relationships, and the nature and substance of those relationships. Confidential Information also includes any information that the Company or any of its Affiliates has received, or may receive hereafter, belonging to customers or others with any understanding, express or implied, that the information would not be disclosed.

(c) "Person" means an individual, a corporation, a limited liability company, an association, a partnership, an estate, a trust and any other entity or organization, other than the Company or any of its Affiliates.

11. Withholding. All payments made by the Company under this Agreement shall be reduced by any tax or other amounts required to be withheld by the Company under applicable law.

12. Assignment. Neither the Company nor the Employee may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other; provided, however, that the Company may assign its rights and obligations under this Agreement without the consent of the Employee in the event that the Company shall hereafter effect a reorganization, consolidate with, or merge into, any Person or transfer all or substantially all of its properties or assets to any Person, provided, that the Company is still liable to the Employee for the obligations described herein. This Agreement shall inure to the benefit of and be binding upon the Company and the Employee, and their respective successors, executors, administrators, heirs and permitted assigns.

13. Severability. If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

15. Notice. Any and all notices, requests, demands and other communications provided for by this Agreement shall be in writing and shall be effective when delivered in person, consigned to a reputable national courier service or deposited in the United States mail, postage prepaid, registered or certified, and addressed to the Employee at his last known address on the books of the Company, or, in the case of the Company, at its principal place of business, attention of the CEO, or to such other address as either party may specify by notice to the other actually received.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior communications, agreements and understandings, written or oral, with respect to the terms and conditions of the Employee's employment.

17. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Employee and by an expressly authorized representative of the Company.

18. Headings. The headings and captions in this Agreement are for convenience only, and in no way define or describe the scope or content of any provision of this Agreement.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

20. Governing Law. This is a Florida contract and shall be construed and enforced under and be governed in all respects by the laws of the State of Florida.

[Signature page follows immediately.]

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by the Company, by its duly authorized representative, and by the Employee, as of the date first above written.

"EMPLOYEE"

By: /s/ Robert D. Basham
Robert D. Basham

"COMPANY"

OSI RESTAURANT PARTNERS, LLC

By: /s/ A. William Allen, III
Name: A. William Allen, III
Title: Authorized Representative

AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment") is made effective as of January 1, 2009, by and between **OSI Restaurant Partners, LLC** (the "Company"), and **Robert D. Basham** (the "Executive").

Background Information

The parties to this Amendment (the "Parties") entered into an Officer Employment Agreement as of June 14, 2007 (the "Employment Agreement"), regarding the Executive's employment relationship with the Company. The Parties desire to amend the Employment Agreement in order to comply with the final Treasury Regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The Employment Agreement, as amended by this Amendment, is hereinafter collectively referred to as the "Agreement."

Amendment of the Employment Agreement

The Parties hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. ***Definitions.*** All capitalized terms used in this Agreement but which are not otherwise defined herein, shall have the respective meanings given those terms in the Employment Agreement, as applicable.

2. ***Business Expenses***. Section 4 (c) of the Agreement is hereby amended by adding the following to the end thereof:

"If any reimbursements under this provision are taxable to the Executive, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. Further, Executive may not liquidate or exchange the right to reimbursement of such expenses for any other benefits."

3. ***Benefits.*** Section 4(d) of the Agreement is hereby amended by adding the following to the end thereof:

"Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 4 that are not 'disability pay' or 'death benefits' within the meaning of Treasury Regulations Section 1.409A-1(a)(5) (collectively, the 'Applicable Benefits') shall be subject to the following requirements in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The amount of any Applicable Benefits provided during one taxable

year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

4. ***Termination of Employment and Severance Benefits.*** Section 5 of the Agreement is hereby amended by adding the following new sub-sections (i) and (j) to the end thereof:

"(i) Termination of Employment for all purposes under this Agreement will be determined to have occurred in accordance with the 'separation from service' requirements of Code Section 409A and the Treasury Regulations and other guidance issued thereunder, and based on whether the facts and circumstances indicate that Company and Executive reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services Executive would perform after such date (as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period (or actual period of service, if less).

(j) Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 5 that are not Applicable Benefits shall be subject to the following requirements in order to comply with Code Section 409A. The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

5. ***Section 409A***. Section 21 is hereby added to the end of the Agreement to read as follows:

"21. Code Section 409A. The Company makes no representation as to whether any such payment or any part thereof constitutes or may constitute non-qualified deferred compensation. Neither the Company nor any of its directors, officers, employees, agents or professional advisors shall have any liability to the Executive or any other person or any amounts incurred by Executive or any other such person by reason of the determination made by the Board of Managers pursuant to this paragraph or any action taken or omitted by the Board, the Company, or any of the Company's managers, officers, employees, agents or

professional advisors in the course of, or as a result of, making such determination. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A."

6. The terms and conditions of the Agreement between Company and Executive that are unaffected by this Amendment remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment on the 31st day of December, 2008.

ROBERT D. BASHAM

/s/ Robert D. Basham

OSI RESTAURANT PARTNERS, LLC

By: /s/ Joseph J. Kadow
Joseph J. Kadow

Its: Executive Vice President

Exhibit 10.31

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "Agreement") dated as of June 14, 2007 between OSI Restaurant Partners, LLC (the " Company") and Chris T. Sullivan (the "Employee").

WHEREAS, the Employee is possessed of certain experience and expertise that qualify him to provide certain services required by the Company and its Affiliates; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the Company hereby agrees to employ the Employee, and the Employee hereby accepts such employment.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, terms, provisions and conditions set forth in this Agreement, the parties hereby agree:

1. Employment. Subject to the terms and conditions set forth in this Agreement, the Company desires to continue to employ the Employee, and the Employee hereby accepts such continued employment.

2. Term. Subject to earlier termination as hereinafter provided, the Employee's employment hereunder shall be for a term of five years, commencing on the date hereof, and shall renew automatically thereafter for successive terms of one year each. The term of this Agreement, as from time to time extended or renewed, is hereafter referred to as "the term of this Agreement" or "the term hereof."

3. Capacity and Performance.

(a) During the term hereof, the Employee shall be employed by the Company, and shall perform only those duties and responsibilities as may be mutually agreed by the Employee and the Board of Directors of the Company (the " Board") or its designee.

(b) During the term hereof, the Employee shall devote such of his time and his efforts to the Company as shall be necessary to perform the duties and responsibilities to which reference is made in Section 3(a) above. It is understood that the Employee will not be devoting his full business time and efforts exclusively to the advancement of the business and interests of the Company and its Affiliates and to the discharge of his duties and responsibilities hereunder. Subject to the provisions of Section 8 hereof, nothing herein shall prevent the Employee from having other employment.

4. Compensation and Benefits. As compensation for all services performed by the Employee under this Agreement during the term hereof, and subject to performance of the Employee's duties and of the obligations of the Employee to the Company and its Affiliates, pursuant to this Agreement, the Company shall pay to the Employee:

(a) Salary. During the term hereof, the Company shall pay the Employee a base salary (" Base Salary") at the rate of $300,000 per annum, payable in accordance with the payroll practices of the Company for its employees.

(b) Incentive and Bonus Compensation. The Employee shall not be eligible to be considered for a bonus annually during the term hereof.

(c) Business Expenses. The Company shall pay or reimburse the Employee for all reasonable, customary and necessary business expenses incurred or paid by the Employee in the performance of his duties and responsibilities hereunder, subject to any maximum annual limit and other restrictions on such expenses set by the Board, and to such reasonable substantiation and documentation as may be specified by the Company from time to time, in each case by advance written notice to the Employee of such restrictions or requirements.

(d) Benefits. The Employee shall be entitled to participate in such health, disability, life insurance and other benefit plans and retirement plans of the Company and its subsidiaries for which management employees of the Company or its subsidiaries are generally eligible.

5. Termination of Employment and Severance Benefits. Notwithstanding the provisions of Section 2 hereof, the Employee's employment hereunder shall terminate prior to the expiration of the term hereof under the following circumstances:

(a) Death. In the event of the Employee's death during the term hereof, the Employee's employment hereunder shall immediately and automatically terminate. In such event, the Company shall pay to the Employee's designated beneficiary, or, if no beneficiary has been designated by the Employee in writing, to his estate, (i) any Base Salary earned but not paid through the date of termination, and (ii) any business expenses incurred by the Employee but un-reimbursed as of the date of termination, provided that such expenses and required substantiation and documentation are submitted within 90 days following termination and that such expenses are reimbursable under Section 4(c) above (all of the foregoing, " Final Compensation"). In addition to Final Compensation, until the later of (x) the conclusion of the initial term of this Agreement and (y) a period of 24 months following the date of termination, the Company shall continue to pay the Employee (or his designated beneficiary or his estate) the Base Salary (" Severance"). Severance to which the Employee is entitled hereunder shall be payable in accordance with the normal payroll practices of the Company and will begin at the Company's next regular payroll period which is at least five business days following the later of the effective date of the "Release of Claims" or the date upon which the "Release of Claims," signed by the Employee, is received by the Company, but the first payment shall be retroactive to next business day following the date of termination. The Company shall have no further obligation to the Employee hereunder.

(b) Disability. The Company may terminate the Employee's employment hereunder, upon notice to the Employee, in the event that the Employee becomes disabled during his employment hereunder through any illness, injury, accident or condition of either a physical or psychological nature and, as a result, is unable to perform substantially all of his duties and responsibilities hereunder, notwithstanding the provision of any reasonable accommodation, for 270 days during any period of 365 consecutive calendar days. In the event of such termination,

the Company shall have no further obligation to the Employee hereunder, other than for payment of Final Compensation and Severance, which payment is conditioned upon the Employee signing and returning to the Company a timely and mutually acceptable effective release of claims relating to the Employee's employment hereunder (a "Release of Claims").

(c) By the Company for Cause. The Company may terminate the Employee's employment hereunder for Cause at any time upon notice to the Employee setting forth in reasonable detail the nature of such Cause. The following shall constitute Cause for termination:

(i) willful and continued failure to perform (other than due to any mental or physical impairment) the Employee's material duties and responsibilities to the Company and its Affiliates as agreed under Section 3(a) hereof after written notice specifying such failure and the manner in which the Employee may rectify such failure in the future, if rectifiable;

(ii) willful and material breach by the Employee of Section 8 of this Agreement that is not cured within 30 days of written notice from the Company; or

(iii) Employee having engaged during the term in fraud, embezzlement or another intentional act of dishonesty in connection with his duties hereunder, which act has a detrimental effect on the Company's reputation or business, with respect to the Company or any of its Affiliates; or

(iv) a conviction of or plea of *nolo contendere* to a felony;

provided, that no such conduct described in Sections 5(c)(i) or 5(c)(ii) above will be deemed "willful" unless it is engaged in by the Employee not in good faith and without reasonable belief that the Employee's conduct was in the best interests of the Company.

Upon the giving of notice of termination of the Employee's employment hereunder for Cause, the Company shall have no further obligation to the Employee hereunder, other than for payment of Final Compensation.

(d) By the Company Other than for Cause. The Company may terminate the Employee's employment hereunder other than for Cause at any time upon notice to the Employee. In the event of such termination, the Company shall have no further obligation to the Employee, other than for payment of Final Compensation and Severance provided the Employee executes an effective Release of Claims.

(e) By the Employee for Good Reason. The Employee may terminate his employment hereunder for Good Reason, upon notice to the Company setting forth in reasonable detail the nature of such Good Reason. The following shall constitute Good Reason for termination by the Employee: failure of the Company to provide the Employee the Base Salary and benefits in accordance with the terms of Section 4 hereof, excluding an inadvertent failure which is cured within ten business days following notice by the Employee specifying in

reasonable detail the nature of such failure. In the event of such termination, the Company shall have no further obligation to the Employee, other than for payment of Final Compensation and Severance provided that the Employee executes an effective Release of Claims.

(f) By the Employee Other than for Good Reason. The Employee may terminate his employment hereunder at any time upon three days' notice to the Company. In the event of such termination, the Company shall have no further obligation to the Employee hereunder, other than for any Final Compensation.

(g) Timing of Payments. If at the time of the Employee's separation from service, the Employee is a "specified employee," as hereinafter defined, any and all amounts payable under this Section 5 in connection with such separation from service that constitute deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, (" Section 409A"), as determined by the Company in its reasonable discretion, and that would (but for this sentence) be payable within six months following such separation from service, shall instead be paid on the date that follows the date of such separation from service by six months. For purposes of the preceding sentence, " separation from service" shall be determined in a manner consistent with subsection (a)(2)(A)(i) of Section 409A, and the term " specified employee" shall mean an individual determined by the Company to be a specified employee as defined in subsection (a)(2)(B)(i) of Section 409A.

(h) Post-Agreement Employment. In the event the Employee remains in the employ of the Company or any of its Affiliates following termination of this Agreement, then such employment shall be at will.

6. Effect of Termination. The provisions of this Section 6 shall apply to any termination of the Employee's employment.

(a) Except as otherwise provided herein, all of the Employee's right to salary and any other form of compensation in respect of his employment shall cease on the date of termination, and the obligations of the Company under the applicable termination provision of Section 5 hereof shall constitute the entire obligation of the Company to the Employee in respect of such rights.

(b) Except for any right of the Employee to continue medical and dental plan participation in accordance with applicable law, benefits shall terminate pursuant to the terms of the applicable benefit plans based on the date of termination of the Employee's employment without regard to any continuation of Base Salary or other payment to the Employee following such date of termination.

(c) Provisions of this Agreement shall survive any termination if so provided herein, or if necessary or desirable to accomplish the purposes of other surviving provisions, including, without limitation, the obligations of the Employee under Sections 7 and 8 hereof. The obligation of the Company to pay Severance to or on behalf of the Employee under Section 5(b), 5(d) or 5(e) hereof is expressly conditioned upon the Employee's continued full performance of obligations under Sections 7 and 8 hereof. The Employee recognizes that, except as expressly provided in Section 5(a), 5(b), 5(d) or 5(e) hereof, no compensation is earned after termination of employment.

7. Confidential Information.

(a) The Employee acknowledges that the Company and its Affiliates continually develop Confidential Information, that the Employee may develop Confidential Information for the Company or its Affiliates and that the Employee may learn of Confidential Information during the course of employment. The Employee will comply with the policies and procedures of the Company and its Affiliates for protecting Confidential Information, and shall not disclose to any Person or use, other than (i) as required by applicable law, or by any court, arbitrator, mediator or administrative or legislative body (including any committee thereof) with actual jurisdiction to order the Employee to disclose or make accessible, (ii) for the proper performance of his duties and responsibilities to the Company and its Affiliates, (iii) at the request of the Company or (iv) to the extent required in connection with any litigation, arbitration or mediation involving this Agreement, including, but not limited to, the enforcement of this Agreement, any Confidential Information obtained by the Employee incident to his employment or other association with the Company or any of its Affiliates. The Employee understands that this restriction shall continue to apply after his employment terminates, regardless of the reason for such termination. The confidentiality obligation under this Section 7 shall not apply to information which is generally known or readily available to the public at the time of disclosure, or which becomes generally known through no wrongful act on the part of the Employee.

(b) All documents, records, tapes and other media of every kind and description relating to the business, present or otherwise, of the Company or its Affiliates, and any copies, in whole or in part, thereof (the "Documents"), whether or not prepared by the Employee, shall be the sole and exclusive property of the Company and its Affiliates. The Employee shall safeguard all Documents, and shall surrender to the Company at the time his employment terminates, or at such earlier time or times as the Board or its designee may specify, all Documents then in the Employee's possession or control.

8. Restricted Activities. The Employee agrees that some restrictions on his activities during and after his employment are necessary to protect the goodwill, Confidential Information and other legitimate interests of the Company and its Affiliates:

(a) While the Employee is employed by the Company and for 24 months immediately following termination of his employment, the Employee shall not own, manage, control, participate in or render services for (directly or indirectly, whether as owner, partner, investor, consultant, agent, employee, co-venturer or otherwise) any enterprise that is engaged, as its primary business or as a material portion of its business, in owning, operating or franchising full-service restaurant concepts (the "Business"), anywhere in the world (except by way of portfolio investment in shares quoted on a recognized stock exchange whereby the Employee owns less than 5% of the outstanding stock of such entity).

(b) The Employee agrees that, during his employment and for 24 months immediately following termination of his employment, the Employee will not, and will not assist any other Person to, (i) hire or solicit for hiring any management level employee of the Company or any of its Affiliates or seek to persuade any such employee to discontinue employment, or (ii) solicit or encourage any independent contractor providing services to the Company or any of its Affiliates to terminate or diminish its relationship with them. For the purposes of this Agreement, an "employee" of the Company or any of its Affiliates is any person who was such at any time within the preceding 12 months.

9. Enforcement of Covenants. The Employee acknowledges that he has carefully read and considered all the terms and conditions of this Agreement, including the restraints imposed upon him pursuant to Sections 7 and 8 hereof. The Employee agrees without reservation that each of the restraints contained herein is necessary for the reasonable and proper protection of the goodwill, Confidential Information and other legitimate interests of the Company and its Affiliates; that each and every one of those restraints is reasonable in respect to subject matter, length of time and geographic area; and that these restraints, individually or in the aggregate, will not prevent him from obtaining other suitable employment during the period in which the Employee is bound by these restraints. The Employee further agrees that he will never assert, or permit to be asserted on his behalf, in any forum, any position contrary to the foregoing. The Employee further acknowledges that, were he to breach any of the covenants contained in Sections 7 or 8 hereof, the damage to the Company would be irreparable. The Employee, therefore, agrees that the Company, in addition to any other remedies available to it, shall be entitled to preliminary and permanent injunctive relief against any breach or threatened breach by the Employee of any of said covenants, without having to post bond. The parties further agree that, in the event that any provision of Section 7 or 8 hereof shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law.

10. Definitions. Words or phrases which are initially capitalized or are within quotation marks shall have the meanings provided in this Section and as provided elsewhere herein. For purposes of this Agreement, the following definitions apply:

(a) "Affiliates" means all persons and entities directly or indirectly controlled by Kangaroo Holdings, Inc., where control may be by management authority, contract or equity interest.

(b) "Confidential Information" means any and all information of the Company and its Affiliates that is not generally known by those with whom the Company or any of its Affiliates competes or does business, or with whom the Company or any of its Affiliates plans to compete or do business, and any and all information, publicly known in whole or in part

or not, which, if disclosed by the Company or any of its Affiliates would assist in competition against them. Confidential Information includes without limitation such information relating to (i) the development, research, testing, manufacturing, marketing and financial activities of the Company and its Affiliates, (ii) the costs, sources of supply, financial performance and strategic plans of the Company and its Affiliates, (iii) the identity and special needs of the customers of the Company and its Affiliates and (iv) the people and organizations with whom the Company and its Affiliates have business relationships, and the nature and substance of those relationships. Confidential Information also includes any information that the Company or any of its Affiliates has received, or may receive hereafter, belonging to customers or others with any understanding, express or implied, that the information would not be disclosed.

(c) "Person" means an individual, a corporation, a limited liability company, an association, a partnership, an estate, a trust and any other entity or organization, other than the Company or any of its Affiliates.

11. Withholding. All payments made by the Company under this Agreement shall be reduced by any tax or other amounts required to be withheld by the Company under applicable law.

12. Assignment. Neither the Company nor the Employee may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other; provided, however, that the Company may assign its rights and obligations under this Agreement without the consent of the Employee in the event that the Company shall hereafter effect a reorganization, consolidate with, or merge into, any Person or transfer all or substantially all of its properties or assets to any Person, provided, that the Company is still liable to the Employee for the obligations described herein. This Agreement shall inure to the benefit of and be binding upon the Company and the Employee, and their respective successors, executors, administrators, heirs and permitted assigns.

13. Severability. If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

15. Notice. Any and all notices, requests, demands and other communications provided for by this Agreement shall be in writing and shall be effective when delivered in person, consigned to a reputable national courier service or deposited in the United States mail, postage prepaid, registered or certified, and addressed to the Employee at his last known address on the books of the Company, or, in the case of the Company, at its principal place of business, attention of the CEO, or to such other address as either party may specify by notice to the other actually received.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior communications, agreements and understandings, written or oral, with respect to the terms and conditions of the Employee's employment.

17. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Employee and by an expressly authorized representative of the Company.

18. Headings. The headings and captions in this Agreement are for convenience only, and in no way define or describe the scope or content of any provision of this Agreement.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

20. Governing Law. This is a Florida contract and shall be construed and enforced under and be governed in all respects by the laws of the State of Florida.

[Signature page follows immediately.]

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by the Company, by its duly authorized representative, and by the Employee, as of the date first above written.

"EMPLOYEE"

By: /s/ Chris T. Sullivan
Chris T. Sullivan

"COMPANY"

OSI RESTAURANT PARTNERS, LLC

By: /s/ A. William Allen, III
Name: A. William Allen, III
Title: Authorized Representative

AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment") is made effective as of January 1, 2009, by and between **OSI Restaurant Partners, LLC** (the "Company"), and **Chris T. Sullivan** (the "Executive").

Background Information

The parties to this Amendment (the "Parties") entered into an Officer Employment Agreement as of June 14, 2007 (the "Employment Agreement"), regarding the Executive's employment relationship with the Company. The Parties desire to amend the Employment Agreement in order to comply with the final Treasury Regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The Employment Agreement, as amended by this Amendment, is hereinafter collectively referred to as the "Agreement."

Amendment of the Employment Agreement

The Parties hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. ***Definitions.*** All capitalized terms used in this Agreement but which are not otherwise defined herein, shall have the respective meanings given those terms in the Employment Agreement, as applicable.

2. ***Business Expenses.*** Section 4 (c) of the Agreement is hereby amended by adding the following to the end thereof:

"If any reimbursements under this provision are taxable to the Executive, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. Further, Executive may not liquidate or exchange the right to reimbursement of such expenses for any other benefits."

3. ***Benefits.*** Section 4(d) of the Agreement is hereby amended by adding the following to the end thereof:

"Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 4 that are not 'disability pay' or 'death benefits' within the meaning of Treasury Regulations Section 1.409A-1(a)(5) (collectively, the 'Applicable Benefits') shall be subject to the following requirements in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The amount of any Applicable Benefits provided during one taxable

year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

4. ***Termination of Employment and Severance Benefits.*** Section 5 of the Agreement is hereby amended by adding the following new sub-sections (h) and (i) to the end thereof:

"(h) Termination of Employment for all purposes under this Agreement will be determined to have occurred in accordance with the 'separation from service' requirements of Code Section 409A and the Treasury Regulations and other guidance issued thereunder, and based on whether the facts and circumstances indicate that Company and Executive reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services Executive would perform after such date (as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period (or actual period of service, if less).

(i) Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 5 that are not Applicable Benefits shall be subject to the following requirements in order to comply with Code Section 409A. The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

5. ***Section 409A.*** Section 21 is hereby added to the end of the Agreement to read as follows:

"21. Code Section 409A. The Company makes no representation as to whether any such payment or any part thereof constitutes or may constitute non-qualified deferred compensation. Neither the Company nor any of its directors, officers, employees, agents or professional advisors shall have any liability to the Executive or any other person or any amounts incurred by Executive or any other such person by reason of the determination made by the Board of Managers pursuant to this paragraph or any action taken or omitted by the Board, the Company, or any of the Company's managers, officers, employees, agents or

professional advisors in the course of, or as a result of, making such determination. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A."

6. The terms and conditions of the Agreement between Company and Executive that are unaffected by this Amendment remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment on the 31st day of December, 2008.

CHRIS T. SULLIVAN

/s/ Chris T. Sullivan

OSI RESTAURANT PARTNERS, LLC

By: /s/ Joseph J. Kadow
Joseph J. Kadow

Its: Executive Vice President

Exhibit 10.32

Jeffrey S. Smith

OUTBACK STEAKHOUSE®
Officer Employment Agreement

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this 23 day of January 2008, to be effective for all purposes as of April 12, 2007, by and among JEFFREY S. SMITH (hereinafter referred to as "Employee"), and OUTBACK STEAKHOUSE OF FLORIDA, LLC, a Florida limited liability company having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (hereinafter referred to as the "Employer").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

A. WHEREAS, the Employer is an affiliate of OSI Restaurant Partners, LLC ("OSI"); and

B. WHEREAS, the Employer is engaged in the business of owning and operating restaurants known as "Outback Steakhouse®" utilizing a restaurant operating system and trademarks owned by or licensed to the Employer; and

C. WHEREAS, the Employer desires, on the terms and conditions stated herein, to employ Employee as President of the Employer; and

D. WHEREAS, the Employee desires, on the terms and conditions stated herein, to be employed by the Employer as President.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. **Employment and Term.** Subject to earlier termination as provided for in **Section 8** hereof, the Employer hereby employs the Employee, and the Employee hereby accepts employment with the Employer as President of the Employer for a term commencing on April 12, 2007 and expiring April 12, 2012 ("Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. **Representations and Warranties.** The Employee hereby represents and warrants to the Employer that the Employee (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Employee's employment with the Employer (other than any prior agreement with the Employer, OSI or either of their affiliates), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Employee's employment with the Employer (other than any prior agreement with the Employer, OSI or either of their affiliates), and (iii) has brought to the Employer no trade secrets, confidential business information, documents, or other personal property of a prior employer.

3. **Duties.** As President of the Employer, the Employee shall:

(a) have such management, supervisory and operational functions as are customary to such position, and such other powers, functions and duties as may be assigned to the Employee by the Board of Directors of the Employer or the Chief Executive Officer or Chief Operating Officer of the Employer; and

(b) diligently, competently, and faithfully perform all of the duties and functions hereunder; and

(c) not create a situation that results in termination for Cause (as that term is defined in **Section 8** hereof); and

(d) devote one hundred percent (100%) of the Employee's full business time, attention, energies and effort to the business affairs of the Employer; and

(e) conduct all of his activities in a manner so as to maintain and promote the business and reputation of the Employer.

The Employee shall not, during the term of this Agreement, engage in any other business activity; ***provided, however,*** that the Employee shall be permitted to invest the Employee's personal assets and manage the Employee's personal investment portfolio in such a form and manner as will not require any business services on Employee's part to any third party or conflict with the provisions of **Section 9**, **Section 10** or **Section 14** hereof, or conflict with any published policy of the Employer or its affiliates, including but not limited to the insider trading policy of the Employer or its affiliates.

The Employee shall be responsible for directly reporting to the Chief Executive Officer or Chief Operating Officer of the Employer on all matters for which the Employee is responsible.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Employee shall, during the term of this Agreement and at the request of the Employer, also serve as an officer of any subsidiary or affiliate of the Employer or OSI, as the Employer shall request. In such capacity, Employee shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to Employee while serving in such office as though Employee and such subsidiary or affiliate of the Employer or OSI had separately entered into this Agreement, except that the Employee shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such subsidiary or affiliate of the Employer or OSI.

4. **Compensation.** During the Term of Employment, the Employee shall be entitled to an annual base salary equal to at least the annual salary of Employee on the effective date hereof, payable in equal biweekly installments by the Employer, to be reviewed annually by the Employer.

5. **Vacation.** Employee shall be entitled to four (4) weeks paid vacation (selected by Employee, but subject to the reasonable business requirements of the Employer as determined by the Chief Executive Officer of the Employer) during each full year during the Term of Employment. Vacation granted but not used in any year shall be forfeited at the end of such one-year period and may not be carried over to any subsequent year.

6. **Fringe Benefits.** In addition to any other rights the Employee may have hereunder, the Employee shall also be entitled to receive those fringe benefits, including, but not limited to, complimentary food, life insurance, medical benefits, *etc.*, if any, as may be provided by the Employer to similar employees of the Employer.

7. **Automobile Allowance; Expenses.**

(a) During the Term of Employment, the Employer shall pay to Employee a monthly automobile allowance in the amount of FOUR HUNDRED AND 00/100 DOLLARS ($400.00). Such automobile allowance shall be in lieu of reimbursement by the Employer of the costs to Employee of purchasing and maintaining an automobile, and all operational expenses, including, without limitation, mileage, repairs, insurance, etc., in connection therewith; provided, however, that the Employer shall reimburse Employee for the cost of gasoline used in conducting the Employer's business. Employee shall, at all times during the Term of Employment, maintain an automobile for use in connection with the performance of Employee's duties and shall maintain in full force and effect, at all times, with the

Employer as additional loss payees, at least TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($250,000.00) in property damage and FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($500,000.00) in personal liability automobile insurance, with an additional ONE MILLION DOLLARS ($1,000,000.00) personal liability umbrella. Such insurance shall be written with an insurance carrier reasonably acceptable to the Employer and shall provide that such insurance cannot be changed, cancelled or permitted to expire without at least ten (10) days prior written notice to the Employer.

(b) Subject to approval by the Chief Financial Officer of the Employer and compliance with the Employer's policies, the Employee may incur reasonable expenses on behalf of and in furtherance of the business of the Employer. Upon approval of such expenses by the Chief Financial Officer, the Employer shall promptly reimburse the Employee for all such expenses upon presentation by the Employee, from time to time, of appropriate receipts or vouchers for such expenses that are sufficient in form and substance to satisfy all federal tax requirements for the deductibility of such expenses by the Employer.

8. **Termination.** Notwithstanding the provisions of **Section 1** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in **Section 1**, immediately upon:

(a) The death of the Employee; or

(b) The Employee's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Employee, arising out of any medically determinable physical or mental impairment, to perform the services required of the Employee hereunder for a period of ninety (90) consecutive days; or

(c) The existence of Cause. For purposes of this Agreement, the term "Cause" shall be defined as:

(i) Any dishonesty by the Employee in the Employee's dealings with the Employer, the commission of fraud by the Employee, negligence in the performance of the duties of the Employee, insubordination, willful misconduct, or the conviction (or plea of guilty or nolo contendere) of the Employee of any felony, or any other crime involving dishonesty or moral turpitude; or

(ii) Any violation of any covenant or restriction contained in **Section 9, Section 10, Section 12** or **Section 14** hereof; or

(iii) Any violation of any material published policy of the Employer or its affiliates (material published policies include, but are not limited to, the Employer's discrimination and harassment policy, management duty policy, responsible alcohol policy and insider trading policy);

or

(d) At the election of the Employer, upon the sale of a majority ownership interest in the Employer or substantially all of the assets of the Employer; or

(e) At the election of the Employer, upon the determination by the Employer to cease the Employer's business operations; or

(f) At the election of the Employer in its sole discretion, for any reason or no reason. In the event of termination of this Agreement pursuant to this **Section 8(f)**, the Employee shall be entitled to receive as full and complete severance compensation, the base salary provided for herein for a period of one (1) year from the effective date of such termination (the "Severance"). Severance shall be payable in bi-weekly installments. The Employee acknowledges and agrees that in the event of termination of this Agreement pursuant to this **Section 8(f)** the Severance provided in this **Section 8(f)** shall be the only obligation that the Employer, OSI or any of their affiliates shall have to the Employee. Employee acknowledges that in the event of termination of Employee's employment as President of the Employer, whether pursuant to this **Section 8(f)** or otherwise, any Long Term Incentive Agreement ("LTIA") with the Employer or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA.

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred in the event of the Employee's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Except as otherwise provided in **Section 8(f)**, in the event of termination of this Agreement pursuant to this **Section 8**, the Employee or the Employee's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Employee's death) the base salary provided for herein up to and including the effective date of termination, prorated on a daily basis.

The Employee acknowledges and agrees that in the event of termination of Employee's employment as President of the Employer, with or without Cause, any LTIA between the Employee and the Employer or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA.

9. **Noncompetition.**

(a) During Term. During the Employee's employment with the Employer, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to any such person or entity.

(b) Post Term. For a continuous period of two (2) years commencing on termination of the Employee's employment with the Employer, regardless of any termination pursuant to **Section 8** or any voluntary termination or resignation by the Employee, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in, have any interest in or lend any assistance to, any casual steakhouse restaurant or any person or entity engaged in a business owning, operating, franchising or controlling an casual steakhouse business, and that is located or intended to be located anywhere within a radius of thirty (30) miles of any Outback Steakhouse® restaurant owned or operated by the Employer, OSI or their affiliates or any proposed Outback Steakhouse® restaurant to be owned or operated by any of the foregoing, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, chef, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person, or entity. For purposes of this **Section 9(b)**, Outback Steakhouse® restaurants owned or operated by OSI shall include Outback Steakhouse® restaurants operated or owned by an affiliate of OSI, any successor entity to OSI, and any

entity in which OSI has an interest, including but not limited to, an interest as a franchisor. The term "proposed Outback Steakhouse® restaurant" shall include all locations for which OSI, its franchisees or affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing one or more Outback Steakhouse® restaurants thereon. For purposes of this **Section 9(b)**, the term "casual steakhouse" shall mean any restaurant for which the check average is equal to or less than of $30.00 per person, and: (i) the words "steak" or "beef" or any item of steak or beef or any word that connotes steak or beef is used in its name; or (ii) the sale of steak or beef is regularly featured in its advertising or marketing efforts, or (iii) the sale of steak and beef in the aggregate constitute thirty percent (30%) or more of its entrée sales, computed on a dollar basis.

(c) Limitation. Notwithstanding **subsections (a)** and **(b)**, it shall not be a violation of this **Section 9** for Employee to own a one percent (1%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

10. **Nondisclosure; Nonsolicitation; Nonpiracy.** Except in the performance of Employee's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall Employee, individually or jointly with others, for the benefit of Employee or any third party, publish, disclose, use, or authorize anyone else to publish, disclose, or use, any secret or confidential material or information relating to any aspect of the business or operations of the Employer, OSI or their affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes or know-how of any of the Employer, OSI or their affiliates. Moreover, during the Employee's employment with the Employer and for two (2) years thereafter, Employee shall not offer employment to any employee of the Employer, OSI, their franchisees or affiliates, or otherwise solicit or induce any employee of the Employer, OSI, their franchisees or affiliates to terminate their employment, nor shall Employee act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, for any person or entity that solicits or otherwise induces any employee of the Employer, OSI, their franchisees or affiliates to terminate their employment.

11. **Employer Property: Employee Duty to Return**. All Employer products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks, and all other like information or products, including all copies, duplications, replications, and derivatives of such information or products, now in the possession of Employee or acquired by Employee while in the employ of the Employer, shall be the exclusive property of the Employer and shall be returned to the Employer no later than the date of Employee's last day of work with the Employer.

12. **Inventions, Ideas, Processes, and Designs**. All inventions, ideas, recipes, processes, programs, software, and designs (including all improvements) (i) conceived or made by Employee during the course of Employee's employment with the Employer (whether or not actually conceived during regular business hours) and for a period of six (6) months subsequent to the termination or expiration of such employment and (ii) related to the business of the Employer, shall be disclosed in writing promptly to the Employer and shall be the sole and exclusive property of the Employer. An invention, idea, recipe, process, program, software or design (including an improvement) shall be deemed "related to the business of the Employer" if (a) it was made with equipment, supplies, facilities, or confidential information of the Employer, (b) results from work performed by Employee for the Employer, or (c) pertains to the current business or demonstrably anticipated research or development work of the Employer. Employee shall cooperate with the Employer and their attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly assign all such inventions, ideas,

recipes, processes, and designs to the Employer. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Employer, and Employee shall be bound by such decision. Employee shall provide, on the back of this Employment Agreement, a complete list of all inventions, ideas, recipes, processes, and designs if any, patented or unpatented, copyrighted or non-copyrighted, including a brief description, that the Employee made or conceived prior to Employee's employment with the Employer and that therefore are excluded from the scope of this Agreement.

13. **Employer's Promise to Give Employee Trade Secrets and Training.** In return for Employee's agreement not to use or disclose Employer's trade secrets, training, systems and confidential proprietary business methods, Employer unconditionally promises to give Employee within ninety (90) days of the signing of this contract trade secrets, specialized training and other confidential proprietary business methods.

Specifically, Employer unconditionally promises to give Employee one-on-one training from executives, trainers and senior employees of Employer or its affiliates. Further, the training will include training and information concerning procedures and confidential proprietary methods Employer uses to obtain and retain business from their customer base, operations in Employer's home office, marketing and sales techniques, and information regarding the confidential information listed in **Section 12(b)** of this Agreement. Further, after the ninety (90) days, as Employer develops (during Employee's employment with Employer) additional trade secrets, employee surveys and analyses, financial data and other confidential proprietary business methods and overall marketing plans and strategies, Employer promises to continue to provide, on a periodic basis, said confidential information and additional training and analysis from their executives, trainers and/or senior employees to Employee for so long as Employee is employed by Employer as President.

14. **Employee's Promise Not to Disclose Trade Secrets and Confidential Information.** Employee understands and agrees that Employer will provide unique and specialized training and confidential information concerning Employer's business operations, including, but not limited to, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures, financial data, processes, vendors and other information that was developed and maintained at considerable effort and expense to Employer, for the Employer's sole and exclusive use, and which if used by the Employer's competitors would give them an unfair business advantage. Employee believes the unconditional promise to provide said information is sufficient consideration for Employee's promise to adhere to the restrictive covenants of **Section 9, Section 10**, **Section 12** and **Section 14** of this Agreement.

15. **Restrictive Covenants: Consideration; Non-Estoppel; Independent Agreements; and Non-Executory Agreements .** The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement are given and made by Employee to induce the Employer to employ the Employee and to enter into this Agreement with the Employee, and Employee hereby acknowledges that employment with the Employer is sufficient consideration for these restrictive covenants.

The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of Employee against the Employer, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant. The Employer has fully performed all obligations entitling them to the restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement, and those restrictive covenants therefore are not executory or otherwise subject to rejection under the Bankruptcy Code.

The refusal or failure of the Employer to enforce any restrictive covenant of **Section 9, Section 10, Section 12** or **Section 14** of this Agreement (or any similar agreement) against any other employee, agent, or independent contractor, for any reason, shall not constitute a defense to the enforcement by the Employer of any such restrictive covenant, nor shall it give rise to any claim or cause of action by Employee against the Employer.

16. **Reasonableness of Restrictions; Reformation; Enforcement .** The parties hereto recognize and acknowledge that the geographical and time limitations contained in **Section 9, Section 10, Section 12** and **Section 14** hereof are reasonable and properly required for the adequate protection of the Employer's interests. Employee acknowledges that the Employer is the owner or the licensee of the Outback Steakhouse® trademarks, and the owner or the licensee of the Outback Steakhouse® restaurant operating system and will provide to Employee training in and confidential information concerning the Outback Steakhouse® restaurant operating system in reliance on the covenants contained in **Section 9, Section 10, Section 12** and **Section 14** hereof. It is agreed by the parties hereto that if any portion of the restrictions contained in **Section 9, Section 10, Section 12** or **Section 14** are held to be unreasonable, arbitrary, or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time period or geographical area that is determined to be reasonable, nonarbitrary, and not against public policy may be enforced against Employee. If Employee shall violate any of the covenants contained herein and if any court action is instituted by the Employer to prevent or enjoin such violation, then the period of time during which the Employee's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Employee's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Employer to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof, the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs, including reasonable attorneys' fees, of such proceedings including appellate proceedings.

17. **Specific Performance.** Employee agrees that a breach of any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof will cause irreparable injury to the Employer for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or threatened breach of any such covenants, the Employer shall be entitled, in addition to any other rights and remedies they may have at law or in equity, to obtain an injunction to restrain Employee from any threatened or actual activities in violation of any such covenants. Employee hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Employer does apply for such an injunction, Employee shall not raise as a defense thereto that the Employer has an adequate remedy at law.

18. **Assignability.** This Agreement and the rights and duties created hereunder, shall not be assignable or delegable by Employee. The Employer shall have the right, without Employee's knowledge or consent, to assign this Agreement, in whole or in part and any or all of the rights and duties hereunder, including but not limited to the restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** hereof to any person, including but not limited to any affiliate of the Employer, or any successor to the Employer's interest in the Outback Steakhouse® restaurants, and Employee shall be bound by such assignment. Any assignee or successor may enforce any restrictive covenant of this Agreement.

19. **Effect of Termination.** The termination of this Agreement, for whatever reason or no reason, or the expiration of this Agreement shall not extinguish those obligations of Employee specified in **Section 9**, **Section 10**, **Section 11, Section 12** and **Section 14** hereof. The restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** shall survive the termination or expiration of this Agreement. The termination or expiration of this Agreement shall extinguish the right of any party to bring an action, either in law or in equity, for breach of this Agreement by any other party.

20. **Captions; Terms.** The captions of this Agreement are for convenience only, and shall not be construed to limit, define, or modify the substantive terms hereof.

21. **Acknowledgments.** Employee hereby acknowledges that the Employee has been provided with a copy of this Agreement for review prior to signing it, that the Employee has been given the opportunity to have this Agreement reviewed by Employee's attorney prior to signing it, that the Employee understands the purposes and effects of this Agreement, and that the Employee has been given a signed copy of this Agreement for Employee's own records.

22. **Notices.** All notices or other communications provided for herein to be given or sent to a party by the other party shall be deemed validly given or sent if in writing and mailed, postage prepaid, by certified United States mail, return receipt requested, addressed to the parties at their addresses hereinabove set forth or at their last known address. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed.

23. **Severability.** Each section, subsection, and lesser Section of this Agreement constitutes a separate and distinct undertaking, covenant, or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

24. **Waiver.** The failure of a party to enforce any term, provision, or condition of this Agreement at any time or times shall not be deemed a waiver of that term, provision, or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such term, provision, or condition for any future time or times.

25. **Parties.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their legal representatives, and proper successors or assigns, as the case may be.

26. **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

27. **Consent to Personal Jurisdiction and Venue.** Employee hereby consents to personal jurisdiction and venue, for any action brought by the Employer arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida; Employee hereby agrees that any action brought by Employee, alone or in combination with others, against the Employer, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

28. **Affiliate.** Whenever used in this Agreement, the term "affiliate" shall mean, with respect to any entity, all persons or entities (i) controlled by the entity, (ii) that control the entity, or (iii) that are under common control with the entity.

29. **Cooperation.** Employee shall cooperate fully with all reasonable requests for information and participation by the Employer, its agents, or its attorneys, in prosecuting or defending claims, suits, and disputes brought on behalf of or against one or both of them and in which Employee is involved or about which Employee has knowledge.

30. **Amendments.** No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

31. **WAIVER OF JURY TRIAL. ALL PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.**

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

32. **Entire Agreement; Counterparts.** This Agreement and the agreements referred to herein constitute the entire agreement between the parties hereto concerning the subject matter hereof, and supersede any prior employment agreement with the Employer, OSI or any of their affiliates and supersedes all prior memoranda, correspondence, conversations, negotiations and other agreements. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EMPLOYEE"

/s/ Jessica L. Lovell
Witness

/s/ Norma P. DeGuenther
Witness

/s/ Jeffrey S. Smith
JEFFREY S. SMITH

"EMPLOYER"

OUTBACK STEAKHOUSE OF FLORIDA, LLC,
Florida limited liability company

By: /s/ Joseph J. Kadow
JOSEPH J. KADOW, Executive Vice President

AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment") is made effective as of January 1, 2009, by and between **OSI Restaurant Partners, LLC** (the "Company"), and **Jeffrey S. Smith** (the "Executive").

Background Information

The parties to this Amendment (the "Parties") entered into an Officer Employment Agreement as of June 14, 2007 (the "Employment Agreement"), regarding the Executive's employment relationship with the Company. The Parties desire to amend the Employment Agreement in order to comply with the final Treasury Regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The Employment Agreement, as amended by this Amendment, is hereinafter collectively referred to as the "Agreement."

Amendment of the Employment Agreement

The Parties hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. ***Definitions.*** All capitalized terms used in this Agreement but which are not otherwise defined herein, shall have the respective meanings given those terms in the Employment Agreement, as applicable.

2. ***Fringe Benefits.*** Section 6 of the Agreement is hereby amended by adding the following to the end thereof:

"Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Executive pursuant to this Section 6 that are not 'disability pay' or 'death benefits' within the meaning of Treasury Regulations Section 1.409A-1(a)(5) (collectively, the 'Applicable Benefits') shall be subject to the following requirements in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit."

3. ***Automobile Allowance; Expenses***. Section 7 of the Agreement is hereby amended by adding the following to the end thereof:

"If any reimbursements under this provision are taxable to the Executive, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Executive fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. Further, Executive may not liquidate or exchange the right to reimbursement of such expenses for any other benefits."

4. ***Termination.*** Section 8 of the Agreement is hereby amended by adding the following sub-section (g) to the end thereof:

"(g) Termination of Employment for all purposes under this Agreement will be determined to have occurred in accordance with the 'separation from service' requirements of Code Section 409A and the Treasury Regulations and other guidance issued thereunder, and based on whether the facts and circumstances indicate that Company and Executive reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services Executive would perform after such date (as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period (or actual period of service, if less)."

5. ***Section 409A***. Section 33 is hereby added to the end of the Agreement to read as follows:

"33. Code Section 409A. The Company makes no representation as to whether any such payment or any part thereof constitutes or may constitute non-qualified deferred compensation. Neither the Company nor any of its directors, officers, employees, agents or professional advisors shall have any liability to the Executive or any other person or any amounts incurred by Executive or any other such person by reason of the determination made by the Board of Managers pursuant to this paragraph or any action taken or omitted by the Board, the Company, or any of the Company's managers, officers, employees, agents or professional advisors in the course of, or as a result of, making such determination. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A."

6. The terms and conditions of the Agreement between Company and Executive that are unaffected by this Amendment remain in full force and effect.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment effective on the 31st day of December, 2008.

JEFFREY S. SMITH

/s/ Jeffrey S. Smith

OSI RESTAURANT PARTNERS, LLC

By: /s/ Joseph J. Kadow
Joseph J. Kadow

Its: Executive Vice President

OUTBACK STEAKHOUSE®
Amendment To
Officer Employment Agreement

THIS AMENDMENT TO OFFICER EMPLOYMENT AGREEMENT ("Amendment") is entered into by and among OUTBACK STEAKHOUSE OF FLORIDA, LLC, a Florida limited liability company formerly known as OUTBACK STEAKHOUSE OF FLORIDA, INC., a Florida corporation (the "Employer") and JEFFREY S. SMITH (the "Employee") to be effective for all purposes as of January 1, 2012.

WHEREAS, Employer employs Employee as President of the Employer pursuant to that certain Officer Employment Agreement dated effective January 23, 2008, as amended by that certain Amendment to Employment Agreement dated January 1, 2009 (collectively the "Employment Agreement"); and

WHEREAS, the parties hereto desire to enter into this Amendment in order to change the Employment Agreement to reflect that the Employee has been promoted to Executive Vice President and President of the Employer.

NOW, THEREFORE, intending to be legally bound, for good consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. **Recitals**. The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

2. **Change of Employee's Title**. The parties acknowledge and agree that all references in the Employment Agreement to the Employee being employed as President of the Employer are hereby amended to state that the Employee is employed as Executive Vice President and President of the Employer effective January 1, 2012.

3. **Ratification**. All other terms of the Employment Agreement as amended hereby are hereby ratified and confirmed by each party.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as set forth above.

"EMPLOYEE"

/s/ Jeffrey S. Smith
JEFFREY S. SMITH

"EMPLOYER"

Attest:

OUTBACK STEAKHOUSE OF FLORIDA, LLC,
a Florida limited liability company

By: OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company and its managing member

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

CARRABBA'S ITALIAN GRILL, INC.
Officer Employment Agreement

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into effective April 27, 2000, by and among STEVEN T. SHLEMON (hereinafter referred to as "Employee"), and CARRABBA'S ITALIAN GRILL, INC., a Florida corporation having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (hereinafter referred to as the "Employer").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

A. WHEREAS, the Employer is an affiliate of OSI Restaurant Partners, Inc. ("OSI"); and

B. WHEREAS, the Employer is engaged in the business of owning and operating restaurants known as "Carrabba's Italian Grill®" utilizing a restaurant operating system and trademarks owned by or licensed to the Employer; and

C. WHEREAS, the Employer desires, on the terms and conditions stated herein, to employ Employee as President of the Employer; and

D. WHEREAS, the Employee desires, on the terms and conditions stated herein, to be employed by the Employer as President.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. **Employment and Term.** Subject to earlier termination as provided for in **Section 8** hereof, the Employer hereby employs the Employee, and the Employee hereby accepts employment with the Employer as President of the Employer for a term commencing on April 27, 2000 and expiring April 27, 2007 ("Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. **Representations and Warranties.** The Employee hereby represents and warrants to the Employer that the Employee (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Employee's employment with the Employer (other than any prior agreement with the Employer, OSI or either of their affiliates), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Employee's employment with the Employer (other than any prior agreement with the Employer, OSI or either of their affiliates), and (iii) has brought to the Employer no trade secrets, confidential business information, documents, or other personal property of a prior employer.

3. **Duties.** As President of the Employer, the Employee shall:

(a) have such management, supervisory and operational functions as are customary to such position, and such other powers, functions and duties may be assigned to the Employee by the Board of Directors of the Employer or the Chief Executive Officer or Chief Operating Officer of the Employer; and

(b) diligently, competently, and faithfully perform all of the duties and functions hereunder; and

(c) not create a situation that results in termination for Cause (as that term is defined in **Section 8** hereof); and

(d) devote one hundred percent (100%) of the Employee's full business time, attention, energies and effort to the business affairs of the Employer; and

(e) conduct all of his activities in a manner so as to maintain and promote the business and reputation of the Employer.

The Employee shall not, during the term of this Agreement, engage in any other business activity; ***provided, however,*** that the Employee shall be permitted to invest the Employee's personal assets and manage the Employee's personal investment portfolio in such a form and manner as will not require any business services on Employee's part to any third party or conflict with the provisions of **Section 9, Section 10** or **Section 14** hereof, or conflict with any published policy of the Employer or its affiliates, including but not limited to the insider trading policy of the Employer or its affiliates.

The Employee shall be responsible for directly reporting to the Chief Executive Officer or Chief Operating Officer of the Employer on all matters for which the Employee is responsible.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Employee shall, during the term of this Agreement and at the request of the Employer, also serve as an officer of any subsidiary or affiliate of the Employer or OSI, as the Employer shall request. In such capacity, Employee shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to Employee while serving in such office as though Employee and such subsidiary or affiliate of the Employer or OSI had separately entered into this Agreement, except that the Employee shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such subsidiary or affiliate of the Employer or OSI.

4. **Compensation.** During the Term of Employment, the Employee shall be entitled to an annual base salary equal to at least the annual salary of Employee on the effective date hereof, payable in equal biweekly installments by the Employer, to be reviewed annually by the Employer.

5. **Vacation.** Employee shall be entitled to three (3) weeks paid vacation (selected by Employee, but subject to the reasonable business requirements of the Employer as determined by the Chief Executive Officer of the Employer) during each full year during the Term of Employment. Vacation granted but not used in any year shall be forfeited at the end of such one-year period and may not be carried over to any subsequent year.

6. **Fringe Benefits.** In addition to any other rights the Employee may have hereunder, the Employee shall also be entitled to receive those fringe benefits, including, but not limited to, complimentary food, life insurance, medical benefits, *etc*., if any, as may be provided by the Employer to similar employees of the Employer.

7. **Automobile Allowance; Expenses.**

(a) During the Term of Employment, the Employer shall pay to Employee a monthly automobile allowance in the amount of FOUR HUNDRED AND 00/100 DOLLARS ($400.00). Such automobile allowance shall be in lieu of reimbursement by the Employer of the costs to Employee of purchasing and maintaining an automobile, and all operational expenses, including, without limitation, mileage, repairs, insurance, etc., in connection therewith; provided, however, that the Employer shall reimburse Employee for the cost of gasoline used in conducting the Employer's business. Employee shall, at all times during the Term of Employment, maintain an automobile for use in connection with the performance of Employee's duties and shall maintain in full force and effect, at all times, with the Employer as additional loss payees, at least TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($250,000.00) in property damage and FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($500,000.00) in personal liability automobile insurance, with an additional ONE

MILLION DOLLARS ($1,000,000.00) personal liability umbrella. Such insurance shall be written with an insurance carrier reasonably acceptable to the Employer and shall provide that such insurance cannot be changed, cancelled or permitted to expire without at least ten (10) days prior written notice to the Employer.

(b) Subject to approval by the Chief Financial Officer of the Employer and compliance with the Employer's policies, the Employee may incur reasonable expenses on behalf of and in furtherance of the business of the Employer. Upon approval of such expenses by the Chief Financial Officer, the Employer shall promptly reimburse the Employee for all such expenses upon presentation by the Employee, from time to time, of appropriate receipts or vouchers for such expenses that are sufficient in form and substance to satisfy all federal tax requirements for the deductibility of such expenses by the Employer.

8. **Termination.** Notwithstanding the provisions of **Section 1** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in **Section 1,** immediately upon:

(a) The death of the Employee; or

(b) The Employee's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Employee, arising out of any medically determinable physical or mental impairment, to perform the services required of the Employee hereunder for a period of ninety (90) consecutive days; or

(c) The existence of Cause. For purposes of this Agreement, the term "Cause" shall be defined as:

(i) Any dishonesty by the Employee in the Employee's dealings with the Employer, the commission of fraud by the Employee, negligence in the performance of the duties of the Employee, insubordination, willful misconduct, or the conviction (or plea of guilty or nolo contendere) of the Employee of any felony, or any other crime involving dishonesty or moral turpitude; or

(ii) Any violation of any covenant or restriction contained in **Section 9, Section 10, Section 12** or **Section 14** hereof; or

(iii) Any violation of any material published policy of the Employer or its affiliates (material published policies include, but are not limited to, the Employer's discrimination and harassment policy, management duty policy, responsible alcohol policy and insider trading policy);

or

(d) At the election of the Employer, upon the sale of a majority ownership interest in the Employer or substantially all of the assets of the Employer; or

(e) At the election of the Employer, upon the determination by the Employer to cease the Employer's business operations; or

(f) At the election of the Employer in its sole discretion, for any reason or no reason. In the event of termination of this Agreement pursuant to this **Section 8(f)**, the Employee shall be entitled to receive as full and complete severance compensation, the base salary provided for herein for a period of

one (1) year from the effective date of such termination (the "Severance"). Severance shall be payable in bi-weekly installments. The Employee acknowledges and agrees that in the event of termination of this Agreement pursuant to this **Section 8(f)** the Severance provided in this **Section 8(f)** shall be the only obligation that the Employer, OSI or any of their affiliates shall have to the Employee. Employee acknowledges that in the event of termination of Employee's employment as President of the Employer, whether pursuant to this **Section 8(f)** or otherwise, any Long Term Incentive Agreement ("LTIA") with the Employer or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA.

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred in the event of the Employee's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Except as otherwise provided in **Section 8(f),** in the event of termination of this Agreement pursuant to this **Section 8,** the Employee or the Employee's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Employee's death) the base salary provided for herein up to and including the effective date of termination, prorated on a daily basis.

The Employee acknowledges and agrees that in the event of termination of Employee's employment as President of the Employer, with or without Cause, any LTIA between the Employee and the Employer or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA.

9. **Noncompetition.**

(a) During Term. During the Employee's employment with the Employer, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to any such person or entity.

(b) Post Term. For a continuous period of two (2) years commencing on termination of the Employee's employment with the Employer, regardless of any termination pursuant to **Section 8** or any voluntary termination or resignation by the Employee, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in, have any interest in or lend any assistance to, any Italian restaurant or any person or entity engaged in a business owning, operating, franchising or controlling an Italian restaurant business, and that is located or intended to be located anywhere within a radius of thirty (30) miles of any Carrabba's® restaurant owned or operated by the Employer, the Company or their affiliates or any proposed Carrabba's® restaurant to be owned or operated by any of the foregoing, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, chef, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person, or entity. For purposes of this **Section 9(b),** Carrabba's® restaurants owned or operated by the Company shall include Carrabba's® restaurants operated or owned by an affiliate of the Company, any successor entity to the Company, and any entity in which the Company has an interest, including but not limited to, an interest as a franchisor. The term "proposed Carrabba's® restaurant" shall include all locations for which the Company, its franchisees or affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing one or more Carrabba's® restaurants thereon. For purposes of this **Section 9(b),** the term "Italian" shall mean any restaurant for which: (i) the word "Italian" or any item of

Italian cuisine or any word that connotes Italian cuisine is used in its name; or (ii) the sale of Italian cuisine is regularly featured in its advertising or marketing efforts, or (iii) the sale of Italian cuisine constitutes thirty percent (30%) or more of its entrée sales, computed on a dollar basis.

(c) Limitation. Notwithstanding **subsections (a)** and **(b),** it shall not be a violation of this **Section 9** for Employee to own a one percent (1%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

10. **Nondisclosure; Nonsolicitation; Nonpiracy.** Except in the performance of Employee's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall Employee, individually or jointly with others, for the benefit of Employee or any third party, publish, disclose, use, or authorize anyone else to publish, disclose, or use, any secret or confidential material or information relating to any aspect of the business or operations of the Employer, OSI or their affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes or know-how of any of the Employer, OSI or their affiliates. Moreover, during the Employee's employment with the Employer and for two (2) years thereafter, Employee shall not offer employment to any employee of the Employer, OSI, their franchisees or affiliates, or otherwise solicit or induce any employee of the Employer, OSI, their franchisees or affiliates to terminate their employment, nor shall Employee act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, for any person or entity that solicits or otherwise induces any employee of the Employer, OSI, their franchisees or affiliates to terminate their employment.

11. **Employer Property: Employee Duty to Return.** All Employer products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks, and all other like information or products, including all copies, duplications, replications, and derivatives of such information or products, now in the possession of Employee or acquired by Employee while in the employ of the Employer, shall be the exclusive property of the Employer and shall be returned to the Employer no later than the date of Employee's last day of work with the Employer.

12. **Inventions, Ideas, Processes, and Designs.** All inventions, ideas, recipes, processes, programs, software, and designs (including all improvements) (i) conceived or made by Employee during the course of Employee's employment with the Employer (whether or not actually conceived during regular business hours) and for a period of six (6) months subsequent to the termination or expiration of such employment and (ii) related to the business of the Employer, shall be disclosed in writing promptly to the Employer and shall be the sole and exclusive property of the Employer. An invention, idea, recipe, process, program, software or design (including an improvement) shall be deemed "related to the business of the Employer" if (a) it was made with equipment, supplies, facilities, or confidential information of the Employer, (b) results from work performed by Employee for the Employer, or (c) pertains to the current business or demonstrably anticipated research or development work of the Employer. Employee shall cooperate with the Employer and their attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly assign all such inventions, ideas, recipes, processes, and designs to the Employer. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Employer, and Employee shall be bound by such decision. Employee shall provide, on the back of this Employment Agreement, a complete list of all inventions, ideas, recipes, processes, and designs if any, patented or unpatented, copyrighted or non-copyrighted, including a brief description, that the Employee made or conceived prior to Employee's employment with the Employer and that therefore are excluded from the scope of this Agreement.

13. **Employer's Promise to Give Employee Trade Secrets and Training.** In return for Employee's agreement not to use or disclose Employer's trade secrets, training, systems and confidential proprietary business methods, Employer unconditionally promises to give Employee within ninety (90) days of the signing of this contract trade secrets, specialized training and other confidential proprietary business methods.

Specifically, Employer unconditionally promises to give Employee one-on-one training from executives, trainers and senior employees of Employer or its affiliates. Further, the training will include training and information concerning procedures and confidential proprietary methods Employer uses to obtain and retain business from their customer base, operations in Employer's home office, marketing and sales techniques, and information regarding the confidential information listed in **Section 12(b)** of this Agreement. Further, after the ninety (90) days, as Employer develops (during Employee's employment with Employer) additional trade secrets, employee surveys and analyses, financial data and other confidential proprietary business methods and overall marketing plans and strategies, Employer promises to continue to provide, on a periodic basis, said confidential information and additional training and analysis from their executives, trainers and/or senior employees to Employee for so long as Employee is employed by Employer as President.

14. **Employee's Promise Not to Disclose Trade Secrets and Confidential Information.** Employee understands and agrees that Employer will provide unique and specialized training and confidential information concerning Employer's business operations, including, but not limited to, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures, financial data, processes, vendors and other information that was developed and maintained at considerable effort and expense to Employer, for the Employer's sole and exclusive use, and which if used by the Employer's competitors would give them an unfair business advantage. Employee believes the unconditional promise to provide said information is sufficient consideration for Employee's promise to adhere to the restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement.

15. **Restrictive Covenants: Consideration; Non-Estoppel; Independent Agreements; and Non-Executory Agreements.** The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement are given and made by Employee to induce the Employer to employ the Employee and to enter into this Agreement with the Employee, and Employee hereby acknowledges that employment with the Employer is sufficient consideration for these restrictive covenants.

The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of Employee against the Employer, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant. The Employer have fully performed all obligations entitling them to the restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement, and those restrictive covenants therefore are not executory or otherwise subject to rejection under the Bankruptcy Code.

The refusal or failure of the Employer to enforce any restrictive covenant of **Section 9, Section 10, Section 12** or **Section 14** of this Agreement (or any similar agreement) against any other employee, agent, or independent contractor, for any reason, shall not constitute a defense to the enforcement by the Employer of any such restrictive covenant, nor shall it give rise to any claim or cause of action by Employee against the Employer.

16. **Reasonableness of Restrictions; Reformation; Enforcement.** The parties hereto recognize and acknowledge that the geographical and time limitations contained in **Section 9, Section 10, Section 12** and **Section 14** hereof are reasonable and properly required for the adequate protection of the Employer's interests. Employee acknowledges that the Employer is the owner or the licensee of the Carrabba's Italian Grill® trademarks, and the owner or the licensee of the Carrabba's Italian Grill® restaurant operating system and will provide to Employee training in and confidential information concerning the Carrabba's Italian Grill® restaurant

operating system in reliance on the covenants contained in **Section 9, Section 10, Section 12** and **Section 14** hereof. It is agreed by the parties hereto that if any portion of the restrictions contained in **Section 9, Section 10, Section 12** or **Section 14** are held to be unreasonable, arbitrary, or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time period or geographical area that is determined to be reasonable, nonarbitrary, and not against public policy may be enforced against Employee. If Employee shall violate any of the covenants contained herein and if any court action is instituted by the Employer to prevent or enjoin such violation, then the period of time during which the Employee's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Employee's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Employer to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof, the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs, including reasonable attorneys' fees, of such proceedings including appellate proceedings.

17. **Specific Performance.** Employee agrees that a breach of any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof will cause irreparable injury to the Employer for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or threatened breach of any such covenants, the Employer shall be entitled, in addition to any other rights and remedies they may have at law or in equity, to obtain an injunction to restrain Employee from any threatened or actual activities in violation of any such covenants. Employee hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Employer does apply for such an injunction, Employee shall not raise as a defense thereto that the Employer has an adequate remedy at law.

18. **Assignability.** This Agreement and the rights and duties created hereunder, shall not be assignable or delegable by Employee. The Employer shall have the right, without Employee's knowledge or consent, to assign this Agreement, in whole or in part and any or all of the rights and duties hereunder, including but not limited to the restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** hereof to any person, including but not limited to any affiliate of the Employer, or any successor to the Employer's interest in the Carrabba's Italian Grill® restaurants, and Employee shall be bound by such assignment. Any assignee or successor may enforce any restrictive covenant of this Agreement.

19. **Effect of Termination.** The termination of this Agreement, for whatever reason or no reason, or the expiration of this Agreement shall not extinguish those obligations of Employee specified in **Section 9, Section 10, Section 11, Section 12** and **Section 14** hereof. The restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** shall survive the termination or expiration of this Agreement. The termination or expiration of this Agreement shall extinguish the right of any party to bring an action, either in law or in equity, for breach of this Agreement by any other party.

20. **Captions; Terms.** The captions of this Agreement are for convenience only, and shall not be construed to limit, define, or modify the substantive terms hereof.

21. **Acknowledgments.** Employee hereby acknowledges that the Employee has been provided with a copy of this Agreement for review prior to signing it, that the Employee has been given the opportunity to have this

Agreement reviewed by Employee's attorney prior to signing it, that the Employee understands the purposes and effects of this Agreement, and that the Employee has been given a signed copy of this Agreement for Employee's own records.

22. **Notices.** All notices or other communications provided for herein to be given or sent to a party by the other party shall be deemed validly given or sent if in writing and mailed, postage prepaid, by certified United States mail, return receipt requested, addressed to the parties at their addresses hereinabove set forth or at their last known address. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed.

23. **Severability.** Each section, subsection, and lesser Section of this Agreement constitutes a separate and distinct undertaking, covenant, or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

24. **Waiver.** The failure of a party to enforce any term, provision, or condition of this Agreement at any time or times shall not be deemed a waiver of that term, provision, or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such term, provision, or condition for any future time or times.

25. **Parties.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their legal representatives, and proper successors or assigns, as the case may be.

26. **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

27. **Consent to Personal Jurisdiction and Venue.** Employee hereby consents to personal jurisdiction and venue, for any action brought by the Employer arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida; Employee hereby agrees that any action brought by Employee, alone or in combination with others, against the Employer, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

28. **Affiliate.** Whenever used in this Agreement, the term "affiliate" shall mean, with respect to any entity, all persons or entities (i) controlled by the entity, (ii) that control the entity, or (iii) that are under common control with the entity.

29. **Cooperation.** Employee shall cooperate fully with all reasonable requests for information and participation by the Employer, its agents, or its attorneys, in prosecuting or defending claims, suits, and disputes brought on behalf of or against one or both of them and in which Employee is involved or about which Employee has knowledge.

30. **Amendments.** No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

Carrabba's Italian Grill, Inc.

President EA with renewal and allowance 2006a

31. **WAIVER OF JURY TRIAL. ALL PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.**

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

32. **Entire Agreement; Counterparts.** This Agreement and the agreements referred to herein constitute the entire agreement between the parties hereto concerning the subject matter hereof, and supersede any prior employment agreement with the Employer, OSI or any of their affiliates and supersedes all prior memoranda, correspondence, conversations, negotiations and other agreements. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EMPLOYEE"

/s/ Steven T. Shlemon
STEVEN T. SHLEMON

Witness

Witness

"EMPLOYER"

Attest:

CARRABBA'S ITALIAN GRILL, INC.,
Florida corporation

By: /s/ Joseph J. Kadow
JOSEPH J. KADOW, Secretary

By: /s/ A. William Allen, III
A. WILLIAM ALLEN, III, Chief Executive Officer

Carrabba's Italian Grill, Inc.

President EA with renewal and allowance 2006a

CARRABBA'S ITALIAN GRILL®
Amendment To
Officer Employment Agreement

THIS AMENDMENT TO OFFICER EMPLOYMENT AGREEMENT ("Amendment") is entered into by and among CARRABBA'S ITALIAN GRILL, LLC, a Florida limited liability company formerly known as CARRABBA'S ITALIAN GRILL, INC., a Florida corporation (the "Employer") and STEVEN T. SHLEMON (the "Employee") to be effective for all purposes as of January 1, 2012.

WHEREAS, Employer employs Employee as President of the Employer pursuant to that certain Officer Employment Agreement dated effective April 27, 2000 (the "Employment Agreement"); and

WHEREAS, the parties hereto desire to enter into this Amendment in order to change the Employment Agreement to reflect that the Employee has been promoted to Executive Vice President and President of the Employer.

NOW, THEREFORE, intending to be legally bound, for good consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. **Recitals.** The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

2. **Change of Employee's Title.** The parties acknowledge and agree that all references in the Employment Agreement to the Employee being employed as President of the Employer are hereby amended to state that the Employee is employed as Executive Vice President and President of the Employer effective January 1, 2012.

3. **Ratification.** All other terms of the Employment Agreement as amended hereby are hereby ratified and confirmed by each party.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as set forth above.

"EMPLOYEE"

/s/ Steven T. Shlemon
STEVEN T. SHLEMON

"EMPLOYER"

Attest:

CARRABBA'S ITALIAN GRILL, LLC,
a Florida limited liability company

By: OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company and its managing member

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

Exhibit 10.34

John W. Cooper

BONEFISH GRILL, INC.
Officer Employment Agreement

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into effective August 1, 2001, by and among JOHN W. COOPER (hereinafter referred to as "Employee"), and BONEFISH GRILL, INC., a Florida corporation having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (hereinafter referred to as the "Employer").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

A. WHEREAS, the Employer is an affiliate of OSI Restaurant Partners, Inc. ("OSI"); and

B. WHEREAS, the Employer is engaged in the business of owning and operating restaurants known as "Bonefish Grill®" utilizing a restaurant operating system and trademarks owned by or licensed to the Employer; and

C. WHEREAS, the Employer desires, on the terms and conditions stated herein, to employ Employee as President of the Employer; and

D. WHEREAS, the Employee desires, on the terms and conditions stated herein, to be employed by the Employer as President.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. **Employment and Term.** Subject to earlier termination as provided for in **Section 8** hereof, the Employer hereby employs the Employee, and the Employee hereby accepts employment with the Employer as President of the Employer for a term commencing on August 20, 2001 and expiring August 20, 2007 ("Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. Representations and Warranties. The Employee hereby represents and warrants to the Employer that the Employee (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Employee's employment with the Employer (other than any prior agreement with the Employer, OSI or either of their affiliates), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Employee's employment with the Employer (other than any prior agreement with the Employer, OSI or either of their affiliates), and (iii) has brought to the Employer no trade secrets, confidential business information, documents, or other personal property of a prior employer.

3. Duties. As President of the Employer, the Employee shall:

(a) have such management, supervisory and operational functions as are customary to such position, and such other powers, functions and duties may be assigned to the Employee by the Board of Directors of the Employer or the Chief Executive Officer or Chief Operating Officer of the Employer; and

(b) diligently, competently, and faithfully perform all of the duties and functions hereunder; and

(c) not create a situation that results in termination for Cause (as that term is defined in **Section 8** hereof); and

(d) devote one hundred percent (100%) of the Employee's full business time, attention, energies and effort to the business affairs of the Employer; and

(e) conduct all of his activities in a manner so as to maintain and promote the business and reputation of the Employer.

The Employee shall not, during the term of this Agreement, engage in any other business activity; ***provided, however,*** that the Employee shall be permitted to invest the Employee's personal assets and manage the Employee's personal investment portfolio in such a form and manner as will not require any business services on Employee's part to any third party or conflict with the provisions of **Section 9**, **Section 10** or **Section 14** hereof, or conflict with any published policy of the Employer or its affiliates, including but not limited to the insider trading policy of the Employer or its affiliates.

The Employee shall be responsible for directly reporting to the Chief Executive Officer or Chief Operating Officer of the Employer on all matters for which the Employee is responsible.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Employee shall, during the term of this Agreement and at the request of the Employer, also serve as an officer of any subsidiary or affiliate of the Employer or OSI, as the Employer shall request. In such capacity, Employee shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to Employee while serving in such office as though Employee and such subsidiary or affiliate of the Employer or OSI had separately entered into this Agreement, except that the Employee shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such subsidiary or affiliate of the Employer or OSI.

4. Compensation. During the Term of Employment, the Employee shall be entitled to an annual base salary equal to at least the annual salary of Employee on the effective date hereof, payable in equal biweekly installments by the Employer, to be reviewed annually by the Employer.

5. Vacation. Employee shall be entitled to three (3) weeks paid vacation (selected by Employee, but subject to the reasonable business requirements of the Employer as determined by the Chief Executive Officer of the Employer) during each full year during the Term of Employment. Vacation granted but not used in any year shall be forfeited at the end of such one-year period and may not be carried over to any subsequent year.

6. Fringe Benefits. In addition to any other rights the Employee may have hereunder, the Employee shall also be entitled to receive those fringe benefits, including, but not limited to, complimentary food, life insurance, medical benefits, *etc.*, if any, as may be provided by the Employer to similar employees of the Employer.

7. Automobile Allowance; Expenses.

(a) During the Term of Employment, the Employer shall pay to Employee a monthly automobile allowance in the amount of FOUR HUNDRED AND 00/100 DOLLARS ($400.00). Such automobile allowance shall be in lieu of reimbursement by the Employer of the costs to Employee of purchasing and maintaining an automobile, and all operational expenses, including, without limitation, mileage, repairs, insurance, etc., in connection therewith; provided, however, that the Employer shall reimburse Employee for the cost of gasoline used in conducting the Employer's business. Employee shall, at all times during the Term of Employment, maintain an automobile for use in connection with the performance of Employee's duties and shall maintain in full force and effect, at all times, with the Employer as additional loss payees, at least TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($250,000.00) in property damage and FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($500,000.00) in personal liability automobile insurance, with an additional ONE

MILLION DOLLARS ($1,000,000.00) personal liability umbrella. Such insurance shall be written with an insurance carrier reasonably acceptable to the Employer and shall provide that such insurance cannot be changed, cancelled or permitted to expire without at least ten (10) days prior written notice to the Employer.

(b) Subject to approval by the Chief Financial Officer of the Employer and compliance with the Employer's policies, the Employee may incur reasonable expenses on behalf of and in furtherance of the business of the Employer. Upon approval of such expenses by the Chief Financial Officer, the Employer shall promptly reimburse the Employee for all such expenses upon presentation by the Employee, from time to time, of appropriate receipts or vouchers for such expenses that are sufficient in form and substance to satisfy all federal tax requirements for the deductibility of such expenses by the Employer.

8. **Termination.** Notwithstanding the provisions of **Section 1** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in **Section 1**, immediately upon:

(a) The death of the Employee; or

(b) The Employee's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Employee, arising out of any medically determinable physical or mental impairment, to perform the services required of the Employee hereunder for a period of ninety (90) consecutive days; or

(c) The existence of Cause. For purposes of this Agreement, the term "Cause" shall be defined as:

(i) Any dishonesty by the Employee in the Employee's dealings with the Employer, the commission of fraud by the Employee, negligence in the performance of the duties of the Employee, insubordination, willful misconduct, or the conviction (or plea of guilty or nolo contendere) of the Employee of any felony, or any other crime involving dishonesty or moral turpitude; or

(ii) Any violation of any covenant or restriction contained in **Section 9, Section 10, Section 12** or **Section 14** hereof; or

(iii) Any violation of any material published policy of the Employer or its affiliates (material published policies include, but are not limited to, the Employer's discrimination and harassment policy, management duty policy, responsible alcohol policy and insider trading policy);

or

(d) At the election of the Employer, upon the sale of a majority ownership interest in the Employer or substantially all of the assets of the Employer; or

(e) At the election of the Employer, upon the determination by the Employer to cease the Employer's business operations; or

(f) At the election of the Employer in its sole discretion, for any reason or no reason. In the event of termination of this Agreement pursuant to this **Section 8(f)**, the Employee shall be entitled to receive as full and complete severance compensation, the base salary provided for herein for a period of

one (1) year from the effective date of such termination (the "Severance"). Severance shall be payable in bi-weekly installments. The Employee acknowledges and agrees that in the event of termination of this Agreement pursuant to this **Section 8(f)** the Severance provided in this **Section 8(f)** shall be the only obligation that the Employer, OSI or any of their affiliates shall have to the Employee. Employee acknowledges that in the event of termination of Employee's employment as President of the Employer, whether pursuant to this **Section 8(f)** or otherwise, any Long Term Incentive Agreement ("LTIA") with the Employer or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA.

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred in the event of the Employee's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Except as otherwise provided in **Section 8(f)**, in the event of termination of this Agreement pursuant to this **Section 8**, the Employee or the Employee's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Employee's death) the base salary provided for herein up to and including the effective date of termination, prorated on a daily basis.

The Employee acknowledges and agrees that in the event of termination of Employee's employment as President of the Employer, with or without Cause, any LTIA between the Employee and the Employer or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA.

9. **Noncompetition.**

(a) During Term. During the Employee's employment with the Employer, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to any such person or entity.

(b) Post Term. For a continuous period of two (2) years commencing on termination of the Employee's employment with the Employer, regardless of any termination pursuant to **Section 8** or any voluntary termination or resignation by the Employee, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in, have any interest in or lend any assistance to, any seafood restaurant or any person or entity engaged in a business owning, operating, franchising or controlling a seafood restaurant business, and that is located or intended to be located anywhere within a radius of thirty (30) miles of any Bonefish Grill® restaurant owned or operated by the Employer, the Company or their affiliates or any proposed Bonefish Grill® restaurant to be owned or operated by any of the foregoing, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, chef, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person, or entity. For purposes of this **Section 9(b)**, Bonefish Grill® restaurants owned or operated by the Company shall include Bonefish Grill® restaurants operated or owned by an affiliate of the Company, any successor entity to the Company, and any entity in which the Company has an interest, including but not limited to, an interest as a franchisor. The term "proposed Bonefish Grill® restaurant" shall include all locations for which the Company, its franchisees or affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing one or more Bonefish Grill® restaurants thereon. For purposes of this **Section 9(b)**, the term "seafood restaurant" shall mean any restaurant for which: (i) the

word "seafood" or any item of seafood or any word that connotes seafood is used in its name; or (ii) the sale of seafood is regularly featured in its advertising or marketing efforts, or (iii) the sale of seafood constitutes thirty percent (30%) or more of its entrée sales, computed on a dollar basis.

(c) Limitation. Notwithstanding **subsections (a)** and **(b)**, it shall not be a violation of this **Section 9** for Employee to own a one percent (1%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

10. **Nondisclosure; Nonsolicitation; Nonpiracy.** Except in the performance of Employee's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall Employee, individually or jointly with others, for the benefit of Employee or any third party, publish, disclose, use, or authorize anyone else to publish, disclose, or use, any secret or confidential material or information relating to any aspect of the business or operations of the Employer, OSI or their affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes or know-how of any of the Employer, OSI or their affiliates. Moreover, during the Employee's employment with the Employer and for two (2) years thereafter, Employee shall not offer employment to any employee of the Employer, OSI, their franchisees or affiliates, or otherwise solicit or induce any employee of the Employer, OSI, their franchisees or affiliates to terminate their employment, nor shall Employee act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, for any person or entity that solicits or otherwise induces any employee of the Employer, OSI, their franchisees or affiliates to terminate their employment.

11. **Employer Property: Employee Duty to Return.** All Employer products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks, and all other like information or products, including all copies, duplications, replications, and derivatives of such information or products, now in the possession of Employee or acquired by Employee while in the employ of the Employer, shall be the exclusive property of the Employer and shall be returned to the Employer no later than the date of Employee's last day of work with the Employer.

12. **Inventions, Ideas, Processes, and Designs.** All inventions, ideas, recipes, processes, programs, software, and designs (including all improvements) (i) conceived or made by Employee during the course of Employee's employment with the Employer (whether or not actually conceived during regular business hours) and for a period of six (6) months subsequent to the termination or expiration of such employment and (ii) related to the business of the Employer, shall be disclosed in writing promptly to the Employer and shall be the sole and exclusive property of the Employer. An invention, idea, recipe, process, program, software or design (including an improvement) shall be deemed "related to the business of the Employer" if (a) it was made with equipment, supplies, facilities, or confidential information of the Employer, (b) results from work performed by Employee for the Employer, or (c) pertains to the current business or demonstrably anticipated research or development work of the Employer. Employee shall cooperate with the Employer and their attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly assign all such inventions, ideas, recipes, processes, and designs to the Employer. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Employer, and Employee shall be bound by such decision. Employee shall provide, on the back of this Employment Agreement, a complete list of all inventions, ideas, recipes, processes, and designs if any, patented or unpatented, copyrighted or non-copyrighted, including a brief description, that the Employee made or conceived prior to Employee's employment with the Employer and that therefore are excluded from the scope of this Agreement.

13. **Employer's Promise to Give Employee Trade Secrets and Training.** In return for Employee's agreement not to use or disclose Employer's trade secrets, training, systems and confidential proprietary business methods, Employer unconditionally promises to give Employee within ninety (90) days of the signing of this contract trade secrets, specialized training and other confidential proprietary business methods.

Specifically, Employer unconditionally promises to give Employee one-on-one training from executives, trainers and senior employees of Employer or its affiliates. Further, the training will include training and information concerning procedures and confidential proprietary methods Employer uses to obtain and retain business from their customer base, operations in Employer's home office, marketing and sales techniques, and information regarding the confidential information listed in **Section 12(b)** of this Agreement. Further, after the ninety (90) days, as Employer develops (during Employee's employment with Employer) additional trade secrets, employee surveys and analyses, financial data and other confidential proprietary business methods and overall marketing plans and strategies, Employer promises to continue to provide, on a periodic basis, said confidential information and additional training and analysis from their executives, trainers and/or senior employees to Employee for so long as Employee is employed by Employer as President.

14. **Employee's Promise Not to Disclose Trade Secrets and Confidential Information.** Employee understands and agrees that Employer will provide unique and specialized training and confidential information concerning Employer's business operations, including, but not limited to, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures, financial data, processes, vendors and other information that was developed and maintained at considerable effort and expense to Employer, for the Employer's sole and exclusive use, and which if used by the Employer's competitors would give them an unfair business advantage. Employee believes the unconditional promise to provide said information is sufficient consideration for Employee's promise to adhere to the restrictive covenants of **Section 9, Section 10**, **Section 12** and **Section 14** of this Agreement.

15. **Restrictive Covenants: Consideration; Non-Estoppel; Independent Agreements; and Non-Executory Agreements .** The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement are given and made by Employee to induce the Employer to employ the Employee and to enter into this Agreement with the Employee, and Employee hereby acknowledges that employment with the Employer is sufficient consideration for these restrictive covenants.

The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of Employee against the Employer, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant. The Employer have fully performed all obligations entitling them to the restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement, and those restrictive covenants therefore are not executory or otherwise subject to rejection under the Bankruptcy Code.

The refusal or failure of the Employer to enforce any restrictive covenant of **Section 9, Section 10, Section 12** or **Section 14** of this Agreement (or any similar agreement) against any other employee, agent, or independent contractor, for any reason, shall not constitute a defense to the enforcement by the Employer of any such restrictive covenant, nor shall it give rise to any claim or cause of action by Employee against the Employer.

16. **Reasonableness of Restrictions; Reformation; Enforcement .** The parties hereto recognize and acknowledge that the geographical and time limitations contained in **Section 9, Section 10, Section 12** and **Section 14** hereof are reasonable and properly required for the adequate protection of the Employer's interests. Employee acknowledges that the Employer is the owner or the licensee of the Bonefish Grill® trademarks, and the owner or the licensee of the Bonefish Grill® restaurant operating system and will provide to Employee training in and confidential information concerning the Bonefish Grill® restaurant operating system in reliance on the

covenants contained in **Section 9, Section 10, Section 12** and **Section 14** hereof. It is agreed by the parties hereto that if any portion of the restrictions contained in **Section 9, Section 10, Section 12** or **Section 14** are held to be unreasonable, arbitrary, or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time period or geographical area that is determined to be reasonable, nonarbitrary, and not against public policy may be enforced against Employee. If Employee shall violate any of the covenants contained herein and if any court action is instituted by the Employer to prevent or enjoin such violation, then the period of time during which the Employee's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Employee's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Employer to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof, the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs, including reasonable attorneys' fees, of such proceedings including appellate proceedings.

17. **Specific Performance.** Employee agrees that a breach of any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof will cause irreparable injury to the Employer for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or threatened breach of any such covenants, the Employer shall be entitled, in addition to any other rights and remedies they may have at law or in equity, to obtain an injunction to restrain Employee from any threatened or actual activities in violation of any such covenants. Employee hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Employer does apply for such an injunction, Employee shall not raise as a defense thereto that the Employer has an adequate remedy at law.

18. **Assignability.** This Agreement and the rights and duties created hereunder, shall not be assignable or delegable by Employee. The Employer shall have the right, without Employee's knowledge or consent, to assign this Agreement, in whole or in part and any or all of the rights and duties hereunder, including but not limited to the restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** hereof to any person, including but not limited to any affiliate of the Employer, or any successor to the Employer's interest in the Bonefish Grill® restaurants, and Employee shall be bound by such assignment. Any assignee or successor may enforce any restrictive covenant of this Agreement.

19. **Effect of Termination.** The termination of this Agreement, for whatever reason or no reason, or the expiration of this Agreement shall not extinguish those obligations of Employee specified in **Section 9**, **Section 10**, **Section 11, Section 12** and **Section 14** hereof. The restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** shall survive the termination or expiration of this Agreement. The termination or expiration of this Agreement shall extinguish the right of any party to bring an action, either in law or in equity, for breach of this Agreement by any other party.

20. **Captions; Terms.** The captions of this Agreement are for convenience only, and shall not be construed to limit, define, or modify the substantive terms hereof.

21. **Acknowledgments.** Employee hereby acknowledges that the Employee has been provided with a copy of this Agreement for review prior to signing it, that the Employee has been given the opportunity to have this

Agreement reviewed by Employee's attorney prior to signing it, that the Employee understands the purposes and effects of this Agreement, and that the Employee has been given a signed copy of this Agreement for Employee's own records.

22. **Notices.** All notices or other communications provided for herein to be given or sent to a party by the other party shall be deemed validly given or sent if in writing and mailed, postage prepaid, by certified United States mail, return receipt requested, addressed to the parties at their addresses hereinabove set forth or at their last known address. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed.

23. **Severability.** Each section, subsection, and lesser Section of this Agreement constitutes a separate and distinct undertaking, covenant, or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

24. **Waiver.** The failure of a party to enforce any term, provision, or condition of this Agreement at any time or times shall not be deemed a waiver of that term, provision, or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such term, provision, or condition for any future time or times.

25. **Parties.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their legal representatives, and proper successors or assigns, as the case may be.

26. **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

27. **Consent to Personal Jurisdiction and Venue.** Employee hereby consents to personal jurisdiction and venue, for any action brought by the Employer arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida; Employee hereby agrees that any action brought by Employee, alone or in combination with others, against the Employer, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

28. **Affiliate.** Whenever used in this Agreement, the term "affiliate" shall mean, with respect to any entity, all persons or entities (i) controlled by the entity, (ii) that control the entity, or (iii) that are under common control with the entity.

29. **Cooperation.** Employee shall cooperate fully with all reasonable requests for information and participation by the Employer, its agents, or its attorneys, in prosecuting or defending claims, suits, and disputes brought on behalf of or against one or both of them and in which Employee is involved or about which Employee has knowledge.

30. **Amendments.** No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

Bonefish Grill, Inc.

President EA with renewal and allowance 2006a

31. **WAIVER OF JURY TRIAL. ALL PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.**

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

32. **Entire Agreement; Counterparts.** This Agreement and the agreements referred to herein constitute the entire agreement between the parties hereto concerning the subject matter hereof, and supersede any prior employment agreement with the Employer, OSI or any of their affiliates and supersedes all prior memoranda, correspondence, conversations, negotiations and other agreements. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EMPLOYEE"

/s/ Kelly B. Lefferts
Kelly B. Lefferts
Witness

/s/ John W. Cooper
JOHN W. COOPER

/s/ Julie Skukalek
Julie Skukalek
Witness

"EMPLOYER"

Attest:

BONEFISH GRILL, INC., Florida corporation

By: /s/ Joseph J. Kadow
JOSEPH J. KADOW, Secretary

By: /s/ A. William Allen, III
A. WILLIAM ALLEN, III, Chief Executive Officer

BONEFISH GRILL®
Amendment To
Officer Employment Agreement

THIS AMENDMENT TO OFFICER EMPLOYMENT AGREEMENT ("Amendment") is entered into by and among BONEFISH GRILL, LLC, a Florida limited liability company formerly known as BONEFISH GRILL, INC., a Florida corporation (the "Employer") and JOHN W. COOPER (the "Employee") to be effective for all purposes as of January 1, 2012.

WHEREAS, Employer employs Employee as President of the Employer pursuant to that certain Officer Employment Agreement dated effective August 1, 2001 (the "Employment Agreement"); and

WHEREAS, the parties hereto desire to enter into this Amendment in order to change the Employment Agreement to reflect that the Employee has been promoted to Executive Vice President and President of the Company.

NOW, THEREFORE, intending to be legally bound, for good consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. **Recitals.** The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

2. **Change of Employee's Title.** The parties acknowledge and agree that all references in the Employment Agreement to the Employee being employed as President of the Employer are hereby amended to state that the Employee is employed as Executive Vice President and President of the Employer effective January 1, 2012.

3. **Ratification.** All other terms of the Employment Agreement as amended hereby are hereby ratified and confirmed by each party.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as set forth above.

"EMPLOYEE"

/s/ John W. Cooper
JOHN W. COOPER

"EMPLOYER"

Attest:

BONEFISH GRILL, LLC,
a Florida limited liability company

By: OSI RESTAURANT PARTNERS, LLC,
a Delaware limited liability company and its managing member

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

Exhibit 10.35

Jody Bilney

OSI RESTAURANT PARTNERS, LLC
Assignment and Amendment and Restatement of
Officer Employment Agreement

THIS ASSIGNMENT and AMENDMENT AND RESTATEMENT OF EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this 26th day of March 2009, to be effective for all purposes as of February 5, 2008, by and among JODY BILNEY (hereinafter referred to as "Employee") and OUTBACK STEAKHOUSE OF FLORIDA, LLC, a Florida limited liability company formerly known as OUTBACK STEAKHOUSE OF FLORIDA, INC., having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (the "Former Employer") and OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company, having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (the "Company").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

A. WHEREAS, the Company is engaged in the business of owning and operating, through its subsidiaries and their affiliates, various restaurant concepts utilizing restaurant operating systems and trademarks owned by or licensed to the Company; and

B. WHEREAS, the Company is the sole manager and member of the Former Employer; and

C. WHEREAS, the Former Employer and the Employee are parties to that certain Officer Employment Agreement dated effective October 1, 2006 (the "Original Agreement"), pursuant to which, the Company employed Employee as Chief Brand Officer of the Former Employer; and

D. WHEREAS, the Former Employer desires, on the terms and conditions stated herein, to assign the Employee's Employment to the Company; and

E. WHEREAS, the Company desires, on the terms and conditions stated herein, to accept the assignment of the Employee's Original Agreement from the Former Employer and to amend and restate the Original Agreement as a result of Employee's promotion to Chief Brand Officer of the Company; and

F. WHEREAS, the Employee desires, on the terms and conditions stated herein, to be employed by the Company as Chief Brand Officer of the Company.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. **Employment and Term**. Subject to earlier termination as provided for in **Section 8** hereof, the Company hereby employs the Employee, and the Employee hereby accepts employment with the Company as Chief Brand Officer of the Company for a term commencing on February 5, 2008 and expiring on October 1, 2011 ("Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. **Representations and Warranties**. The Employee hereby represents and warrants to the Company that the Employee (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Employee's employment with the Company (other than any prior agreement with the Company), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Employee's employment with the Company (other than any prior agreement with the Company), and (iii) has brought to the Company no trade secrets, confidential business information, documents, or other personal property of a prior employer.

3. **Duties**. As Chief Brand Officer of the Company, the Employee shall:

(a) diligently, competently and faithfully perform all of the duties and functions as are customary to such position and as may be assigned to the Employee in such capacity by the Board of Directors, Chief Executive Officer or President of the Company;

(b) not create a situation that results in termination for Cause (as that term is defined in **Section 8** hereof);

(c) be responsible for directly reporting to the President or Chief Executive Officer of the Company on all matters for which the Employee is responsible;

(d) conduct all of her activities in a manner so as to maintain and promote the business and reputation of the Company; and

(e) devote one hundred percent (100%) of the Employee's full business time, attention, energies and effort to the business affairs of the Company. The Employee shall not, during the term of this Agreement, engage in any other business activity; ***provided, however,*** that the Employee shall be permitted to invest the Employee's personal assets and manage the Employee's personal investment portfolio in such a form and manner as will not require any business services on Employee's part to any third party or conflict with the provisions of **Section 9**, **Section 10** or **Section 14** hereof, or conflict with any published policy of the Company or its affiliates, including but not limited to the insider trading policy of the Company or its affiliates.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Employee shall, during the term of this Agreement and at the request of the Company, also serve as an officer of any subsidiary or affiliate of the Company as the Company shall request. In such capacity, Employee shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to Employee while serving in such office as though Employee and such subsidiary or affiliate of the Company had separately entered into this Agreement, except that the Employee shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such subsidiary or affiliate of the Company.

4. **Compensation**.

a. Salary. During the Term of Employment, the Employee shall be entitled to an annual base salary equal to the annual salary of Employee on the effective date hereof, payable in equal biweekly installments by the Company, to be reviewed for increase or decrease annually by the Company.

b. Bonus. During the Term of Employment, the Employee shall be entitled to discretionary bonuses pursuant to a bonus plan as may be provided by the Company to similar employees of the Company.

5. **Vacation**. Employee shall be entitled to three (3) weeks paid vacation (selected by Employee, but subject to the reasonable business requirements of the Company as determined by the Chief Executive Officer of the Company) during each full year during the Term of Employment. Vacation granted but not used in any year shall be forfeited at the end of such one-year period and may not be carried over to any subsequent year.

6. **Fringe Benefits**. In addition to any other rights the Employee may have hereunder, the Employee shall also be entitled to receive those fringe benefits, including, but not limited to, complimentary food, life insurance, medical benefits, *etc.*, if any, as may be provided by the Company to similar employees of the Company. Such benefits shall be provided in accordance with any applicable policy, program or plan provisions. Any taxable welfare benefits provided to the Employee pursuant to this **Section 6** that are not 'disability pay' or 'death benefits' within the meaning of Treasury Regulations Section 1.409A-1(a)(5) (collectively, the 'Applicable Benefits') shall be subject to the following requirements in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and Company shall not be obligated to reimburse any expense for which the Employee fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit.

7. **Expenses**. Subject to approval by the Chief Financial Officer of the Company and compliance with the Company's policies, the Employee may incur reasonable expenses on behalf of and in furtherance of the business of the Company. Upon approval of such expenses by the Chief Financial Officer, the Company shall promptly reimburse the Employee for all such expenses upon presentation by the Employee, from time to time, of appropriate receipts or vouchers for such expenses that are sufficient in form and substance to satisfy all federal tax requirements for the deductibility of such expenses by the Company. If any reimbursements under this provision or under **Section 6** are taxable to the Employee, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Company shall not be obligated to pay any such reimbursement amount for which Employee fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses, under this provision or under **Section 6,** shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements under this provision or under **Section 6** that the Company is obligated to pay in any given calendar year shall not affect the amount the Company is obligated to pay in any other calendar year. Further, Employee may not liquidate or exchange the right to reimbursement of such expenses, under this provision or under **Section 6**, for any other benefits.

8. **Termination**. Notwithstanding the provisions of **Section 1** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in **Section 1**, immediately upon:

(a) The death of the Employee; or

(b) The Employee's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Employee, arising out of any medically determinable physical or mental impairment, to perform the services required of the Employee hereunder for a period of ninety (90) consecutive days; or

(c) The existence of Cause. For purposes of this Agreement, the term "Cause" shall be defined as:

(i) Failure of the Employee to perform the duties assigned to the Employee in a manner satisfactory to the Company, in its sole discretion; provided, however, that the Term of Employment shall not be terminated pursuant to this subparagraph (i) unless the Company first

gives the Employee a written notice ("Notice of Deficiency"). The Notice of Deficiency shall specify the deficiencies in the Employee's performance of the Employee's duties. The Employee shall have a period of thirty (30) days, commencing on receipt of the Notice of Deficiency, in which to cure the deficiencies contained in the Notice of Deficiency. In the event the Employee does not cure the deficiencies to the satisfaction of the Company, in its sole discretion, within such thirty (30) day period (or if during such thirty (30) day period the Company determines that the Employee is not making reasonable, good faith efforts to cure the deficiencies to the satisfaction of the Company), the Company shall have the right to immediately terminate the Term of Employment. The provisions of this subparagraph (i) may be invoked by the Company any number of times and cure of deficiencies contained in any Notice of Deficiency shall not be construed as a waiver of this subparagraph (i) nor prevent the Company from issuing any subsequent Notices of Deficiency; or

(ii) Any dishonesty by the Employee in the Employee's dealings with the Company or the Company, the commission of fraud by the Employee, negligence in the performance of the duties of the Employee, insubordination, willful misconduct, or the conviction (or plea of guilty or nolo contendere) of the Employee of any felony, or any other crime involving dishonesty or moral turpitude; or

(iii) Any violation of any covenant or restriction contained in **Section 9, Section 10, Section 12** or **Section 14** hereof; or

(iv) Any violation of any material published policy of the Company or its affiliates (material published policies include, but are not limited to, the Company's discrimination and harassment policy, responsible alcohol policy and insider trading policy).

(d) At the election of the Company, upon the sale of a majority ownership interest in the Company or substantially all of the assets of the Company; or

(e) At the election of the Company, upon the determination by the Company to cease the Company's business operations.

(f) At the election of the Company in its sole discretion, for any reason or no reason. In the event of termination of this Agreement pursuant to this **Section 8(f)**, the Employee shall be entitled to receive as full and complete severance compensation, the base salary provided for herein for a period of one (1) year from the effective date of such termination (the "Severance"). Severance shall be payable in bi-weekly installments. The Employee acknowledges and agrees that in the event of termination of this Agreement pursuant to this **Section 8(f)** the Severance provided in this **Section 8(f)** shall be the only obligation that the Company, or any of its affiliates shall have to the Employee.

(g) Termination of Employment for all purposes under this Agreement will be determined to have occurred in accordance with the 'separation from service' requirements of Code Section 409A and the Treasury Regulations and other guidance issued thereunder, and based on whether the facts and circumstances indicate that Company and Employee reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services Employee would perform after such date (as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period (or actual period of service, if less).

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred in the event of the Employee's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

OSI Restaurant Partners, LLC

Except as otherwise provided in **Section 8(f)**, in the event of termination of this Agreement pursuant to this **Section 8**, the Employee or the Employee's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Employee's death) the base salary provided for herein up to and including the effective date of termination, prorated on a daily basis.

9. **Noncompetition**.

(a) During Term. During the Employee's employment with the Company, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to any such person or entity.

(b) Post Term. For a continuous period of two (2) years commencing on termination of the Employee's employment with the Company, regardless of any termination pursuant to **Section 8** or any voluntary termination or resignation by the Employee, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business with a theme, décor, menu or style of or featured cuisine the same as or substantially similar to that of any restaurant owned or operated by the Company, or any of its affiliates, and that is located or intended to be located anywhere within a radius of thirty (30) miles of any restaurant owned or operated by the Company, or any of its affiliates, or any proposed restaurant to be owned or operated by any of the foregoing, and Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person, or entity. For purposes of this **Section 9(b)**, Restaurants owned or operated by the Company shall include restaurants operated or owned by an affiliate of the Company, any successor entity to the Company, and any entity in which the Company, or any of its affiliates has an interest, including, but not limited to, an interest as a franchisor. The term "proposed restaurant" shall include all locations for which the Company, or its franchisees or affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing a restaurant thereon.

(c) Limitation. Notwithstanding **subsections (a)** and **(b)**, it shall not be a violation of this **Section 9** for Employee to own a one percent (1%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

10. **Nondisclosure; Nonsolicitation; Nonpiracy**. Except in the performance of Employee's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall Employee, individually or jointly with others, for the benefit of Employee or any third party, publish, disclose, use, or authorize anyone else to publish, disclose, or use, any secret or confidential material or information relating to any aspect of the business or operations of the Company, or its affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes or know-how of any of the Company, or its affiliates. Moreover, during the Employee's employment with the Company and for two (2) years thereafter, Employee shall not offer employment to any employee of the Company, its franchisees or affiliates, or otherwise solicit or induce any employee of the Company, its franchisees or affiliates to terminate their employment, nor shall Employee act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, for any person or entity that solicits or otherwise induces any employee of the Company, its franchisees or affiliates to terminate their employment.

11. **Company Property: Employee Duty to Return**. All Company products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks, and all other like information or products, including all copies, duplications, replications, and derivatives of such information or products, now in the possession of Employee or acquired by Employee while in the employ of the Company, shall be the exclusive property of the Company and shall be returned to the Company no later than the date of Employee's last day of work with the Company.

12. **Inventions, Ideas, Processes, and Designs**. All inventions, ideas, recipes, processes, programs, software, and designs (including all improvements) (i) conceived or made by Employee during the course of Employee's employment with the Company (whether or not actually conceived during regular business hours) and for a period of six (6) months subsequent to the termination or expiration of such employment and (ii) related to the business of the Company, shall be disclosed in writing promptly to the Company and shall be the sole and exclusive property of the Company. An invention, idea, recipe, process, program, software or design (including an improvement) shall be deemed "related to the business of the Company" if (a) it was made with equipment, supplies, facilities, or confidential information of the Company, (b) results from work performed by Employee for the Company, or (c) pertains to the current business or demonstrably anticipated research or development work of the Company. Employee shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly assign all such inventions, ideas, recipes, processes, and designs to the Company. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Company, and Employee shall be bound by such decision. Employee shall provide, on the back of this Employment Agreement, a complete list of all inventions, ideas, recipes, processes, and designs if any, patented or unpatented, copyrighted or non-copyrighted, including a brief description, that the Employee made or conceived prior to Employee's employment with the Company and that therefore are excluded from the scope of this Agreement.

13. **Company's Promise to Give Employee Trade Secrets and Training**. In return for Employee's agreement not to use or disclose the Company's trade secrets, training, systems and confidential proprietary business methods, the Company unconditionally promises to give Employee within ninety (90) days of the signing of this contract trade secrets, specialized training and other confidential proprietary business methods.

Specifically, the Company unconditionally promises to give Employee one-on-one training from executives, trainers and senior employees of the Company or its affiliates. Further, the training will include training and information concerning procedures and confidential proprietary methods the Company uses to obtain and retain business from their customer base, operations in the Company's home office, marketing and sales techniques, and information regarding the confidential information listed in **Section 12(b)** of this Agreement. Further, after the ninety (90) days, as the Company develops (during Employee's employment with the Company) additional trade secrets, employee surveys and analyses, financial data and other confidential proprietary business methods and overall marketing plans and strategies, the Company promises to continue to provide, on a periodic basis, said confidential information and additional training and analysis from its executives, trainers and/or senior employees to Employee for so long as Employee is employed by Company as Chief Brand Officer.

14. **Employee's Promise Not to Disclose Trade Secrets and Confidential Information**. Employee understands and agrees that the Company will provide unique and specialized training and confidential information concerning the Company's business operations, including, but not limited to, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures, financial data, processes, vendors and other information that was developed and maintained at considerable effort and expense to the Company, for the Company's sole and exclusive use, and which if used by the Company's competitors would give them an unfair business advantage. Employee believes the unconditional promise to provide said information is sufficient consideration for Employee's promise to adhere to the restrictive covenants of **Section 9, Section 10**, **Section 12** and **Section 14** of this Agreement.

15. **Restrictive Covenants: Consideration; Non-Estoppel; Independent Agreements; and Non-Executory Agreements** . The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement are given and made by Employee to induce the Company to employ the Employee and to enter into this Agreement with the Employee, and Employee hereby acknowledges that employment with the Company is sufficient consideration for these restrictive covenants.

The restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of Employee against the Company, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant. The Company has fully performed all obligations entitling them to the restrictive covenants of **Section 9, Section 10, Section 12** and **Section 14** of this Agreement, and those restrictive covenants therefore are not executory or otherwise subject to rejection under the Bankruptcy Code.

The refusal or failure of the Company to enforce any restrictive covenant of **Section 9, Section 10, Section 12** or **Section 14** of this Agreement (or any similar agreement) against any other employee, agent, or independent contractor, for any reason, shall not constitute a defense to the enforcement by the Company of any such restrictive covenant, nor shall it give rise to any claim or cause of action by Employee against the Company.

16. **Reasonableness of Restrictions; Reformation; Enforcement** . The parties hereto recognize and acknowledge that the geographical and time limitations contained in **Section 9, Section 10, Section 12,** and **Section 14** hereof are reasonable and properly required for the adequate protection of the Company's interests. Employee acknowledges that the Company or its affiliate is the owner or the licensee of the Trademarks, and the owner or the licensee of the related restaurant operating systems and will provide to Employee training in and confidential information concerning the restaurant operating systems in reliance on the covenants contained in **Section 9, Section 10, Section 12** and **Section 14** hereof. It is agreed by the parties hereto that if any portion of the restrictions contained in **Section 9, Section 10, Section 12** or **Section 14** are held to be unreasonable, arbitrary, or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time or geographical area that is determined to be reasonable, nonarbitrary, and not against public policy may be enforced against Employee. If Employee shall violate any of the covenants contained herein and if any court action is instituted by the Company to prevent or enjoin such violation, then the period of time during which the Employee's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Employee's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Company to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof, the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs, including reasonable attorneys' fees, of such proceedings including appellate proceedings.

17. **Specific Performance**. Employee agrees that a breach of any of the covenants contained in **Section 9, Section 10, Section 12** or **Section 14** hereof will cause irreparable injury to the Company for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or

threatened breach of any such covenants, the Company shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to obtain an injunction to restrain Employee from any threatened or actual activities in violation of any such covenants. Employee hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Company does apply for such an injunction, Employee shall not raise as a defense thereto that the Company has an adequate remedy at law.

18. **Assignability**. This Agreement and the rights and duties created hereunder, shall not be assignable or delegable by Employee. The Company shall have the right, without Employee's knowledge or consent, to assign this Agreement, in whole or in part and any or all of the rights and duties hereunder, including but not limited to the restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** hereof to any person, including but not limited to any affiliate of the Company, any affiliate of the Company, or any successor to the Company's interest, and Employee shall be bound by such assignment. Any assignee or successor may enforce any restrictive covenant of this Agreement.

19. **Effect of Termination**. The termination of this Agreement, for whatever reason, or the expiration of this Agreement shall not extinguish those obligations of Employee specified in **Section 9**, **Section 10**, **Section 11, Section 12** and **Section 14** hereof. The restrictive covenants of **Section 9, Section 10, Section 11, Section 12** and **Section 14** shall survive the termination or expiration of this Agreement. The termination or expiration of this Agreement shall extinguish the right of any party to bring an action, either in law or in equity, for breach of this Agreement by any other party.

20. **Captions; Terms**. The captions of this Agreement are for convenience only, and shall not be construed to limit, define, or modify the substantive terms hereof.

21. **Acknowledgments**. Employee hereby acknowledges that the Employee has been provided with a copy of this Agreement for review prior to signing it, that the Employee has been given the opportunity to have this Agreement reviewed by Employee's attorney prior to signing it, that the Employee understands the purposes and effects of this Agreement, and that the Employee has been given a signed copy of this Agreement for Employee's own records.

22. **Notices**. All notices or other communications provided for herein to be given or sent to a party by the other party shall be deemed validly given or sent if in writing and mailed, postage prepaid, by certified United States mail, return receipt requested, addressed to the parties at their addresses hereinabove set forth. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed.

23. **Severability**. Each section, subsection, and lesser Section of this Agreement constitutes a separate and distinct undertaking, covenant, or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

24. **Waiver**. The failure of a party to enforce any term, provision, or condition of this Agreement at any time or times shall not be deemed a waiver of that term, provision, or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such term, provision, or condition for any future time or times.

25. **Parties**. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their legal representatives, and proper successors or assigns, as the case may be.

OSI Restaurant Partners, LLC

26. **Governing Law**. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

27. **Consent to Personal Jurisdiction and Venue**. Employee hereby consents to personal jurisdiction and venue, for any action brought by the Company arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida; Employee hereby agrees that any action brought by Employee, alone or in combination with others, against the Company, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

28. **Affiliate**. Whenever used in this Agreement, the term "affiliate" shall mean, with respect to any entity, all persons or entities (i) controlled by the entity, (ii) that control the entity, or (iii) that are under common control with the entity.

29. **Cooperation**. Employee shall cooperate fully with all reasonable requests for information and participation by the Company, its agents, or its attorneys, in prosecuting or defending claims, suits, and disputes brought on behalf of or against one or both of them and in which Employee is involved or about which Employee has knowledge.

30. **Amendments**. No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

31. **WAIVER OF JURY TRIAL. ALL PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.**

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

32. **Code Section 409A**. The Company makes no representation as to whether any payment made pursuant to this Agreement, or any part thereof constitutes or may constitute non-qualified deferred compensation. Neither the Company nor any of its managers, officers, employees, agents or professional advisors shall have any

liability to the Employee or any other person or any amounts incurred by Employee or any other such person by reason of the determination made by the Board of Managers of the Company pursuant to this paragraph or any action taken or omitted by the Board, the Company, or any of the Company's managers, officers, employees, agents or professional advisors in the course of, or as a result of, making such determination. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A.

33. **Entire Agreement; Counterparts**. This Agreement supersedes the Original Agreement in its entirety. This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, and supersedes all prior memoranda, correspondence, conversations, negotiations and agreements. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EMPLOYEE"

/s/ Amanda Allie
Amanda Allie
Witness

/s/ Tanita Brooks
Tanita Brooks
Witness

/s/ Jody Bilney
JODY BILNEY

"COMPANY"

Attest:

By: /s/ Joseph J. Kadow
JOSEPH J. KADOW, Secretary

OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company

By: /s/ Matthew Halme
MATTHEW HALME, Vice President

"FORMER EMPLOYER"

Attest:

By: /s/ Joseph J. Kadow
JOSEPH J. KADOW, Secretary

OUTBACK STEAKHOUSE OF FLORIDA, LLC, a Florida limited liability company

By: OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company

By: /s/ Matthew Halme
MATTHEW HALME, Vice President

OSI RESTAURANT PARTNERS, LLC
Amendment To
Amended and Restated
Officer Employment Agreement

THIS AMENDMENT TO AMENDED AND RESTATED OFFICER EMPLOYMENT AGREEMENT ("Amendment") is entered into by and among OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company (the "Employer") and JODY BILNEY (the "Employee") to be effective for all purposes as of January 1, 2012.

WHEREAS, Employer employs Employee as Chief Brand Officer of the Employer pursuant to that certain Assignment and Amendment and Restatement of Officer Employment Agreement dated effective February 5, 2008 (the "Employment Agreement"); and

WHEREAS, the parties hereto desire to enter into this Amendment in order to change the Employment Agreement to reflect that the Employee has been promoted to Executive Vice President and Chief Brand Officer of the Employer.

NOW, THEREFORE, intending to be legally bound, for good consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1.**Recitals**. The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

2.**Change of Employee's Title**. The parties acknowledge and agree that all references in the Employment Agreement to the Employee being employed as Chief Brand Officer of the Employer are hereby amended to state that the Employee is employed as Executive Vice President and Chief Brand Officer of the Employer effective January 1, 2012.

3.**Ratification**. All other terms of the Employment Agreement as amended hereby are hereby ratified and confirmed by each party.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as set forth above.

"EMPLOYEE"

/s/ Jody Bilney
JODY BILNEY

"EMPLOYER"

Attest:

OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

Exhibit 10.36

Execution Copy

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made and entered into this 2nd day of November, 2009 by and between Elizabeth A. Smith (the "Executive"), OSI Restaurant Partners, LLC, a Delaware corporation (the " Company"), and Kangaroo Holdings, Inc., a Delaware corporation (" KHI") (with respect to Sections 3(a) and 4(d) only) and amended and restated as of the 31st day of December, 2009. This Agreement shall be effective as of the 16th day of November, 2009 (the "Effective Date").

WHEREAS, the Company desires to employ the Executive and the Executive desires to be employed on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, terms, provisions and conditions set forth in this Agreement, the parties hereby agree:

1. Employment. Subject to the terms and conditions set forth in this Agreement, the Company hereby offers and the Executive hereby accepts employment.

2. Term. Subject to earlier termination as hereinafter provided, the Executive's employment shall be for an initial term of five (5) years commencing on the Effective Date. Commencing on the fifth anniversary of the Effective Date and on each succeeding anniversary of the Effective Date thereafter (each such anniversary date shall hereinafter be referred to as the " Renewal Date"), unless previously terminated, the term of this Agreement shall be automatically extended for one additional year, unless at least sixty (60) days prior to any Renewal Date, the Company or the Executive shall give notice to the other party that this Agreement and the Executive's employment hereunder shall not be so extended. The term of this Agreement as from time to time extended or renewed is hereafter referred to as "the term of this Agreement" or "the term hereof".

3. Capacity and Performance.

(a) During the term hereof, the Executive shall serve as President and Chief Executive Officer of the Company. The Executive shall also serve as a member of the Board of Directors of KHI (the " KHI Board") and as a member of the Board of Managers of the Company (the " Board"); provided, however, that if the Executive's employment with the Company terminates for any reason, Executive's membership on the KHI Board and the Board shall also terminate, unless otherwise agreed in writing by KHI or the Company, as applicable, and the Executive. In addition, and without further compensation, the Executive shall serve as a director and/or officer of one or more of the Company's Affiliates if so elected or appointed from time to time. The Executive's reappointment as a member of each of the KHI Board and the Board shall be subject to the requirements of applicable law (including, without limitation, any rules or regulations of any exchange on which the common stock of KHI or the Company is listed, if applicable). If, after the Effective Date the Executive is appointed Chair of the Board and/or the KHI Board and, at any time after the common stock of KHI or its Affiliates

becomes publicly traded, the Board of Directors of the then public company, in its reasonable judgment, determines that the Chair position should not be held by the Chief Executive Officer of such company, the Executive shall cease to be Chair. In no event shall failure to reappoint the Executive as Chair of the KHI Board or the Board constitute "Good Reason" for purposes of this Agreement.

(b) During the term hereof, the Executive shall be employed by the Company on a full-time basis and shall perform the duties and responsibilities of her position and such other duties and responsibilities on behalf of the Company and its Affiliates, consistent with her position as President and Chief Executive Officer, as reasonably may be designated from time to time by the Board or by its designees. During the term hereof, the Executive's services shall be performed primarily at the Company's office located in Tampa, Florida, subject to travel requirements in connection with the Executive's duties under this Agreement.

(c) During the term hereof, the Executive shall devote her full business time and efforts to the discharge of her duties and responsibilities hereunder. The Executive shall not engage in any other business activity or serve in any industry, trade, professional, governmental or academic position during the term of this Agreement, except as may be expressly approved in advance by the Board in writing; provided, however, that the Executive may without advance consent participate in charitable activities and personal investment activities, provided that such activities do not, individually or in the aggregate, interfere with the performance of Executive's duties under this Agreement and are not in conflict with the business interests of the Company or its Affiliates or otherwise violative of Sections 7, 8 or 9 of this Agreement. Notwithstanding the foregoing, the restrictions set forth in this paragraph shall not apply to any position held by the Executive and listed on Exhibit A attached hereto.

4. Compensation and Benefits. As compensation for all services performed by the Executive hereunder during the term hereof, and subject to performance of the Executive's duties and of the obligations of the Executive to the Company and its Affiliates, pursuant to this Agreement or otherwise:

(a) Base Salary. During the term of this Agreement, the Company shall pay the Executive an annualized base salary of One Million Dollars ($1,000,000), subject to annual review for increase, but not decrease, in the discretion of the Board, payable in accordance with the normal payroll practices of the Company for its executives ("Base Salary").

(b) Annual Bonus Compensation. For each fiscal year completed during the term hereof, the Executive shall be entitled to receive an annual bonus (the "Annual Bonus") on the following terms and conditions. The Annual Bonus shall be determined under, and subject to, the terms of the Company's annual bonus plan or program for its executives generally, as in effect from time to time (the " Bonus Plan"). The Executive's target Annual Bonus ("Target Bonus") shall be equal to eighty-five percent (85%) of the Base Salary, with the actual amount of the Annual Bonus, if any, to be based on the attainment of performance goals and determined by the Board. For the year ending

December 31, 2009, the Executive's Annual Bonus shall be an amount equal to the Target Bonus, pro-rated based on the number of calendar days the Executive is employed during such year. Any bonus due to the Executive hereunder shall be paid in the time and manner set forth in the Bonus Plan.

(c) [Intentionally Omitted].

(d) Stock Options.

(i) Promptly following the Effective Date, KHI shall grant to the Executive an option to purchase Four Million Three Hundred Fifty Thousand (4,350,000) shares of common stock of KHI (" KHI Common Stock") (the "Option"). The Option shall be granted under the KHI 2007 Equity Incentive Plan (the "EIP"). The terms and conditions of the Option shall be set forth in the stock option award agreement attached hereto as Exhibit B (the "Option Award"), which is incorporated herein by reference. The Option shall be subject to (A) the terms of the EIP, the Option Award, and any applicable shareholder, registration rights and/or option holder agreements (collectively, the " Equity Agreements"), provided that whenever the EIP or a related Equity Agreement permits the use of conflicting or special terms or conditions under an employment agreement, as, for example but not by way of limitation, with respect to the definitions of Cause and Good Reason, the terms of this Agreement shall be applied, and (B) other restrictions and limitations generally applicable to equity held by KHI or Company executives (which shall not be inconsistent with the terms of the Equity Agreements) or otherwise required by law.

(ii) Promptly after the first time the fair market value of a share of KHI Common Stock is $10 or more (less the per share amount of any previous dividends or other distributions on shares of KHI Common Stock and as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure and as determined as provided for below) during the term of this Agreement, subject to the receipt of any required shareholder or KHI Board or compensation committee approvals, KHI shall make a one-time grant to the Executive of an option to purchase an additional Five Hundred Fifty Thousand (550,000) shares of KHI Common Stock with an exercise price equal to the fair market value of a share of KHI Common Stock on the date of the grant (the " Additional Option"), subject to the Executive remaining continuously employed by the Company through such grant date; it being understood that for so long as the KHI Common Stock is not listed or admitted to trade on a national securities exchange (including Nasdaq), fair market value shall be determined based on the annual valuation of KHI Common Stock performed in the ordinary course by independent appraisers engaged by KHI to value such common stock for purposes of compensatory equity award grants. The Additional Option shall be granted under the EIP or such other equity incentive plan that may be adopted by KHI. The Additional Option shall vest in equal installments on each of the first five anniversaries of its date of grant, subject to the Executive remaining continuously employed by the Company on each such date. The Additional Option shall be

subject to (A) the terms of the EIP (or such other equity incentive plan that may be adopted by KHI), the award agreement evidencing such option, and any applicable shareholder, registration rights and/or option holder agreements (collectively, the " Additional Equity Agreements "), provided that whenever the EIP (or such other equity incentive plan that may be adopted by KHI) or a related Additional Equity Agreement permits the use of conflicting or special terms or conditions under an employment agreement, as, for example, with respect to the definitions of Cause and Good Reason, the terms of this Agreement shall govern, and (B) other restrictions and limitations generally applicable to equity held by KHI or Company executives (which shall not be inconsistent with the terms of the Additional Equity Agreements) or otherwise required by law.

(e) Vacations. During the term hereof, the Executive shall be entitled to four (4) weeks of vacation per annum, to be taken at such times and intervals as shall be determined by the Executive, subject to the reasonable business needs of the Company. Vacation shall otherwise be governed by the policies of the Company, as in effect from time to time.

(f) Other Benefits. During the term hereof and subject to any contribution therefor generally required of employees of the Company, the Executive shall be entitled to participate in any and all employee benefit plans from time to time in effect for senior executive officers of the Company, except to the extent such plans are in a category of benefit otherwise provided to the Executive (e.g., a severance pay plan). Such participation shall be subject to (i) the terms of the applicable plan documents, (ii) generally applicable Company policies and (iii) the discretion of the Board or any administrative or other committee provided for in or contemplated by such plan (the " Employee Benefit Plans "). The Company may prospectively alter, modify, add to or terminate its Employee Benefit Plans at any time as it, in its sole judgment, determines to be appropriate, without recourse by the Executive.

(g) Relocation Expenses. During the period commencing on the Effective Date and ending on the first anniversary of the Effective Date, the Executive, or the Executive's immediate family, shall be entitled to use of the Company's aircraft for purposes of travelling between New York, New York or an airport in the Stockbridge, Massachusetts vicinity (either a "Current Residence") and Tampa, Florida. The Executive, or the Executive's immediate family and mother, shall be entitled to one-round trip flight each week to or from the Current Residence to Tampa, Florida, as applicable. In lieu of providing the Executive with use of the Company's aircraft, the Company may satisfy its obligations under this subsection (g) through the use by the Executive of a charter or other leased airplane (e.g., NetJets) or, at the Executive's election, by reimbursing the Executive for the reasonable cost of first-class commercial air travel for the Executive or members of her immediate family, as applicable. The Company shall pay or reimburse the Executive for her reasonable costs incurred in relocating from her New York Current Residence to a location that is a reasonable commuting distance from the Company's principal executive offices in Tampa, Florida, including, without limitation, reasonable costs for brokerage fees and other closing costs (which shall include attorney's fees and applicable filing fees but shall exclude loan costs), temporary

housing through August 31, 2010, travel associated with locating a residence and transportation and storage of household goods. The Company shall also provide the Executive with a tax gross-up for applicable federal, state and local taxes paid by the Executive in connection with (i) the airplane use or reimbursement provided under this subsection (g), and (ii) the tax gross-up payment itself. This gross-up payment shall be paid no later than April 15th of the year following the year to which such taxable income relates.

(h) Business Expenses. The Company shall pay or reimburse the Executive for reasonable, customary and necessary business expenses incurred or paid by the Executive in the performance of her duties and responsibilities hereunder, subject to applicable Company policies and such reasonable substantiation and documentation as may be specified by the Board or Company policy from time to time. Any reimbursement provided for under this Agreement that would constitute nonqualified deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), shall be subject to the following additional rules: (i) no reimbursement of any such expense shall affect the Executive's right to reimbursement of any such expense in any other taxable year; (ii) reimbursement of the expense shall be made, if at all, promptly, but not later than the end of the calendar year following the calendar year in which the expense was incurred; and (iii) the right to reimbursement shall not be subject to liquidation or exchange for any other benefit. The Company shall reimburse the Executive for her reasonable legal fees incurred in respect of the negotiation and preparation of this Agreement and the Option Agreement, up to a maximum of $100,000, subject to the presentation of appropriate documentation.

5. Termination of Employment and Severance Benefits. The Executive's employment hereunder shall terminate under the following circumstances:

(a) Death. In the event of the Executive's death during the term hereof, the date of death shall be the date of termination, and the Company shall pay or provide to the Executive's Designated Beneficiary: (i) any Base Salary earned but not paid through the date of termination, (ii) subject to the timing rules of Section 4(b) above, any Annual Bonus earned for the fiscal year preceding that in which termination occurs, but unpaid on the date of termination, (iii) any tax gross-up payment owed under Section 4(g) above with respect to the period prior to the date of termination that is unpaid on such date, (iv) any amounts accrued and payable under any Employee Benefit Plan pursuant to Section 4(f) above or under Section 4(g) above with respect to any unreimbursed travel expenses, but unpaid or unreimbursed, as applicable, on the date of termination and (v) any business expenses incurred by the Executive but unreimbursed on the date of termination, provided that such expenses and required substantiation and documentation are submitted within sixty (60) days following termination, that such expenses are reimbursable under Company policy, and that any such expenses subject to the penultimate sentence of Section 4(h) shall be paid not later than the deadline specified therein (all of the foregoing, payable subject to the timing limitations described herein, "Final Compensation"). The Company shall also pay to the Executive's Designated Beneficiary a pro-rata Annual Bonus for the year in which such termination of employment occurs, calculated by multiplying the Target Bonus by a fraction, the numerator of which is the

number of days the Executive was employed during such year and the denominator of which is 365 (the " Pro-Rata Bonus"). Other than for the Final Compensation and the Pro-Rata Bonus, the Company shall have no further obligation to the Executive hereunder upon a termination due to her death. Other than the tax gross-up payment described in Section 5(a)(iii), which shall be paid at the time provided in Section 4(g) above, and business expenses described in Section 5(a)(iv), Final Compensation and the Pro-Rata Bonus shall be paid to the Executive's Designated Beneficiary within sixty (60) days following the date of death.

(b) Disability.

(i) The Company may terminate the Executive's employment hereunder, upon notice to the Executive, in the event that the Executive becomes disabled during her employment hereunder through any illness, injury, accident or condition of either a physical or psychological nature and, as a result, is unable to perform substantially all of her duties and responsibilities hereunder (notwithstanding the provision of any reasonable accommodation) for one hundred eighty (180) days during any period of three hundred and sixty-five (365) consecutive calendar days. A termination on account of disability shall be treated in the same manner as a termination due to the Executive's death, provided that references to Designated Beneficiary shall refer to the Executive or her personal representative, as applicable.

(ii) If any question shall arise as to whether during any period the Executive is disabled through any illness, injury, accident or condition of either a physical or psychological nature so as to be unable to perform substantially all of her duties and responsibilities hereunder, the Executive may, and at the request of the Company shall, submit to a medical examination by a physician selected by the Company and reasonably acceptable to the Executive, to determine whether the Executive is so disabled and such determination shall for the purposes of this Agreement be conclusive. If such question shall arise and the Executive shall fail to submit to such medical examination, the Company's determination of the issue shall be binding on the Executive.

(c) By the Company for Cause. The Company may terminate the Executive's employment hereunder for Cause at any time upon notice to the Executive setting forth in reasonable detail the nature of such Cause. The following shall constitute Cause for termination:

(i) the Executive's willful failure to perform, or gross negligence in the performance of, the Executive's duties and responsibilities to the Company or its Affiliates (other than any such failure from incapacity due to physical or mental illness), which failure or neglect, if susceptible to cure, remains uncured or continues or recurs fifteen (15) business days after written notice from the Company specifying in reasonable detail the nature of such failure;

(ii) the Executive's indictment or conviction of or plea of guilty or nolo contendere to a felony or other crime involving moral turpitude;

(iii) the Executive's engaging in illegal misconduct or gross misconduct that is intentionally harmful to the Company or its Affiliates; or

(iv) any material and knowing violation by the Executive of any covenant or restriction contained in this Agreement or any other agreement entered into with the Company, KHI, or any of their respective Affiliates.

Upon the giving of notice of termination of the Executive's employment hereunder for Cause, the Company shall have no further obligation to the Executive, other than for Final Compensation. Other than the tax gross-up payment described in Section 5(a)(iii), which shall be paid at the time provided in Section 4(g) above, and business expenses described in Section 5(a)(iv), Final Compensation shall be paid to the Executive within sixty (60) days following the date of termination of employment.

(d) By the Company Other Than for Cause. The Company may terminate the Executive's employment hereunder other than for Cause at any time upon notice to the Executive. A termination of the Executive's employment that occurs on the last day of the term of this Agreement following the Company's notice to the Executive of non-renewal of the term hereof under Section 2 hereof shall be treated as a termination by the Company other than for Cause. In the event of such termination, the Executive shall be entitled to Final Compensation, and, in addition, the Company shall pay the Executive an amount equal to two (2) times the sum of (x) the Base Salary at the rate in effect on the date of termination plus (y) the Target Bonus for the year of termination, which shall be annualized in the case of a termination of employment during 2009 (the " Severance Amount"). The Severance Amount shall be paid to the Executive in twenty-four (24) equal monthly installments as further provided for below. Any obligation of the Company to the Executive under this Section 5 (including in the event of a termination of employment due to death or Disability), other than for Final Compensation, is conditioned on (A) the Executive, or the Executive's Designated Beneficiary, signing and returning to the Company (without revoking) a timely and effective release of claims in the form attached hereto as Exhibit C, by the deadline specified therein, which in all events shall be no later than the forty fifth (45th) calendar day following the date of termination (any such release submitted by such deadline, the " Release of Claims"), (B) the Executive not engaging in an intentional or materially harmful violation of Section 7, 8 or 9(b) of this Agreement, and (C) the Executive's continued compliance with the covenants contained in Section 9(a) of this Agreement (subsections (B) and (C) collectively, the " Compliance Condition"). Subject to Section 5(g) below, severance pay to which the Executive is entitled hereunder shall be payable in accordance with the normal payroll practices of the Company, with the first payment, which shall be retroactive to the day immediately following the date the Executive's employment terminated, being due and payable on the Company's next regular payday for executives that follows the expiration of sixty (60) calendar days from the date the Executive's employment terminates. Other than the tax gross-up payment described in Section 5(a)(iii), which shall be paid at the time provided in Section 4(g) above, and the business expenses described in Section 5(a)(iv), Final Compensation shall be paid to the Executive within sixty (60) days following the date of termination of employment.

(e) By the Executive for Good Reason. The Executive may terminate her employment hereunder for Good Reason (A) by providing notice to the Company specifying in reasonable detail the condition giving rise to the Good Reason no later than thirty (30) days following the date Executive first becomes aware of the occurrence of that condition, or in the case of a series of events resulting in a material diminution in the nature or scope of the Executive's duties, authority or responsibilities, thirty (30) days following the date Executive first becomes aware of the last such event; provided, however, that in order to claim that an event, taken together with another event or events, constitutes Good Reason hereunder the Executive must have given notice to a member of the Board of such event at the time she first becomes aware of its occurrence; (B) by providing the Company a period of thirty (30) days to remedy the condition and so specifying in the notice and (C) by terminating her employment for Good Reason within thirty (30) days following the expiration of the period to remedy if the Company fails to remedy the condition. The following, occurring without the Executive's consent, shall constitute "Good Reason" for termination by the Executive:

(i) material diminution in the nature or scope of the Executive's duties, authority or responsibilities including without limitation loss of membership on the Board or the KHI Board; provided, however, that the following shall not constitute Good Reason: (A) the Executive's no longer serving as Chair of the Board or the KHI Board; (B) the Executive's ceasing to be a member of the Board or the KHI Board as a result of a merger of the Company into KHI or a merger of KHI into the Company or any other similar transaction, so long as the Executive remains on the board of directors of the surviving entity, or (C) any sale or transfer of equity or assets of the Company or an Affiliate so long as the Executive remains Chief Executive Officer of the Company (or any successor to the Company) following such transaction, provided that a sale or other transfer, in one or a series of related transactions, of a majority of the assets of the Company other than to an entity controlled by the Company shall constitute Good Reason, but only if the conditions set forth above in this subsection (i) are also satisfied;

(ii) a reduction in the Base Salary or Target Bonus as set forth in Section 4(b) hereof;

(iii) the Company requiring the Executive to be based at a location in excess of fifty (50) miles from the location of the Company's principal executive offices in Tampa, Florida as of the effective date of this Agreement; or

(iv) a material breach by the Company or KHI of its obligations under this Agreement or the Retention Bonus Agreement (as defined herein).

A termination of employment by the Executive under this Section 5(e) shall be treated as a termination by the Company other than for Cause under Section 5(d) above; provided that the Executive satisfies all conditions to such entitlement as set forth in Section 5(d), including, without limitation, the signing of an effective Release of Claims.

(f) By the Executive Without Good Reason. The Executive may terminate her employment hereunder at any time upon sixty (60) days' prior written notice to the Company. In the event of termination of the Executive's employment pursuant to this Section 5(f), the Board may elect to waive the period of notice, or any portion thereof, and, if the Board so elects, the Company will pay the Executive her Base Salary for the notice period (or for any remaining portion of the period). The Company shall also pay the Executive the Final Compensation (other than the tax gross-up payment described in Section 5(a)(iii), which shall be paid at the time provided in Section 4(g) above, and business expenses described in Section 5(a)(iv)) in a lump sum within sixty (60) days following the date of the termination of employment. A termination of the Executive's employment that occurs by reason of the Executive's notice to the Company of non-renewal of the term of this Agreement under Section 2 hereof will be treated as a termination by the Executive without Good Reason.

(g) Timing of Payments and Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, if at the time of the Executive's termination of employment, the Executive is a "specified employee," as defined below, any and all amounts payable under this Agreement on account of such separation from service that would (but for this provision) be payable within six (6) months following the date of termination, shall instead be paid on the next business day following the expiration of such six (6) month period or, if earlier, upon the Executive's death; except (A) to the extent of amounts that do not constitute a deferral of compensation within the meaning of Treasury regulation Section 1.409A-1(b) (including without limitation by reason of the safe harbor set forth in Section 1.409A-1(b)(9)(iii), as determined by the Company in its reasonable good faith discretion); (B) benefits which qualify as excepted welfare benefits pursuant to Treasury regulation Section 1.409A-1(a)(5); or (C) other amounts or benefits that are not subject to the requirements of Section 409A.

(ii) For purposes of this Agreement, all references to "termination of employment" and correlative phrases shall be construed to require a "separation from service" (as defined in Section 1.409A-1(h) of the Treasury regulations after giving effect to the presumptions contained therein), and the term "specified employee" means an individual determined by the Company to be a specified employee under Treasury regulation Section 1.409A-1(i).

(iii) Each payment made under this Agreement shall be treated as a separate payment and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.

(h) Post-Agreement Employment. In the event the Executive remains in the employ of the Company or any of its Affiliates following the termination of this Agreement, then such employment shall be at will.

(i) Exclusive Right to Severance. The Executive's right to severance payments and benefits upon termination of employment shall be as expressly set forth in this Agreement. In no event shall the Executive participate in, or receive benefits under, any other plan, program or policy of the Company providing for severance or termination pay or benefits.

6. Effect of Termination. The provisions of this Section 6 shall apply to any termination of the Executive's employment under this Agreement.

(a) Subject to the other provisions of this Section 6, payment by the Company of any Final Compensation and the amounts provided for under the applicable termination provision of Section 5 shall constitute the entire obligation of the Company to the Executive hereunder.

(b) Except for any right of the Executive to continue medical and dental plan participation in accordance with applicable law, the Executive's participation in all Employee Benefit Plans shall be determined pursuant to the terms of the applicable plan documents based on the date of termination of the Executive's employment without regard to any continuation of Base Salary or other payment to or on behalf of the Executive following such date of termination. The Executive shall be entitled to retain any then vested benefits under the Employee Benefit Plans in accordance with the terms of such plans.

(c) Upon any termination of employment, the Option and, to the extent granted, the Additional Option shall be governed by the terms of the Equity Agreements or the Additional Equity Agreements, as applicable.

(d) Provisions of this Agreement shall survive any termination of employment if so provided herein or if necessary or desirable fully to accomplish the purposes of other surviving provisions, including without limitation, the obligations of the Executive under Sections 7, 8 and 9 hereof. The obligation of the Company to provide severance pay or benefits hereunder is expressly conditioned upon the Executive's continued compliance with the Compliance Condition.

7. Confidential Information.

(a) The Executive acknowledges that the Company and its Affiliates continually develop Confidential Information, that the Executive may develop Confidential Information for the Company or its Affiliates and that the Executive may learn of Confidential Information during the course of her employment. The Executive agrees that all Confidential Information which the Executive creates or to which she has access as a result of her employment or other associations with the Company or its Affiliates is and shall remain the sole and exclusive property of the Company or its Affiliates, as applicable. The Executive will comply with the policies and procedures of

the Company and its Affiliates for protecting Confidential Information and shall never disclose to any Person (except as required by applicable law or in connection with the good faith performance of her duties and responsibilities to the Company and its Affiliates), or use for her own benefit or gain or the benefit or gain of any third party, any Confidential Information obtained by the Executive incident to her employment or other association with the Company or any of its Affiliates. The Executive understands that this restriction shall continue to apply after her employment terminates, regardless of the reason for such termination. Further, the Executive agrees to furnish prompt notice, if legally permitted to do so, to the Company of any required disclosure of Confidential Information sought pursuant to subpoena, court order or any other legal process or requirement, and agrees to provide the Company a reasonable opportunity to seek protection of the Confidential Information prior to any such disclosure. The confidentiality obligation under this Section 7 shall not apply to information which becomes generally known through no breach of this Agreement on the part of the Executive.

(b) All documents, records, tapes and other media of every kind and description relating to the business, present or otherwise, of the Company or its Affiliates, including, without limitation, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks and all other like information or products, and any copies or derivatives (including without limitation electronic), in whole or in part, thereof (the "Documents"), whether or not prepared by the Executive, shall be the sole and exclusive property of the Company and its Affiliates. Except in connection with the good faith performance of the Executive's regular duties for the Company or as expressly authorized in writing in advance by the Company, the Executive will not copy any Documents or remove any Documents or copies or derivatives thereof from the premises of the Company. The Executive shall safeguard all Documents in her possession and shall surrender to the Company at the time her employment terminates, or at such earlier time or times as the Board or its designee may specify, all Documents and other property of the Company or any of its Affiliates then in the Executive's possession or control.

8. Assignment of Rights to Intellectual Property. The Executive shall promptly and fully disclose all Intellectual Property to the Company. The Executive hereby assigns and agrees to assign to the Company (or as otherwise directed by the Company) the Executive's full right, title and interest in and to all Intellectual Property. The Executive agrees to execute any and all applications for domestic and foreign patents, copyrights or other proprietary rights and to do such other acts (including without limitation the execution and delivery of instruments of further assurance or confirmation) requested by the Company to assign the Intellectual Property to the Company and to permit the Company to enforce any patents, copyrights or other proprietary rights to the Intellectual Property. The Executive will not charge the Company for time spent in complying with these obligations. All copyrightable works that the Executive creates in connection with or related to the performance of her services hereunder shall be considered "work made for hire" and shall, upon creation, be owned exclusively by the Company.

9. Restricted Activities. The Executive acknowledges that her access to and/or development of trade secrets, Confidential Information and goodwill on behalf of the Company and its Affiliates during the course of employment, as well as the provision of extraordinary or specialized training by the Company and its Affiliates, would give her an unfair competitive advantage were she to leave employment and begin competing with the Company or any of its Affiliates, and that she is being granted access to training, trade secrets, Confidential Information, and goodwill in reliance on her agreements hereunder. Accordingly, the Executive agrees that the restrictions set forth herein are necessary to protect the goodwill, trade secrets, Confidential Information and other legitimate interests of the Company and its Affiliates:

(a) While the Executive is employed by the Company and for a period of twenty-four months after her employment terminates for any reason hereunder (the "Non-Competition Period"), the Executive shall not, directly or indirectly, whether as owner, partner, investor, consultant, agent, co-venturer or otherwise, engage in or own or hold any ownership interest in or assist any person or entity engaged in or work for or provide services to, in any capacity, whether as an employee, independent contractor or otherwise, whether with or without compensation, any full service restaurant business (including, but not limited to, any restaurant business generally considered to be in the casual dining or polished casual dining business) that is located or intended to be located anywhere within a state (if inside the United States of America) or a country (if outside the United States of America) in which is located any restaurant owned or operated by the Company or any of its Affiliates, or any proposed full service restaurant (including, but not limited to, any restaurant generally considered to be in the casual dining or polished casual dining business) to be owned or operated by any of the foregoing or undertake any planning for any such business (collectively, the "Business"). For the purposes of this Section 9, full service restaurants (including, but not limited to, any restaurant business generally considered to be in the casual dining or polished casual dining business) owned or operated by the Company or any of its Affiliates shall include any entity in which the Company or any of its Affiliates has an interest, including, but not limited to, an interest as a franchisor. The term "proposed full service restaurant" shall include all locations for which the Company or any of its franchisees or Affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing a full service restaurant (including, but not limited to, any restaurant generally considered to be in the casual dining or polished casual dining

business) thereon. The foregoing, however, shall not prevent (i) the Executive's passive ownership of two percent (2%) or less of the equity securities of any publicly traded company, or (ii) the Executive from working for or providing services to any entity if such entity, together with its affiliates, derives less than five percent (5%) of consolidated gross revenues from the Business and the Executive's responsibilities do not primarily involve the conduct of the Business by such entity.

(b) The Executive agrees that during her employment and during the Non-Competition Period, the Executive will not, and will not assist any other Person to, (i) hire, offer employment to or solicit for hiring any employee of the Company or any of its franchises or Affiliates or seek to persuade any employee of the Company or any of its franchises or Affiliates to discontinue employment or (ii) solicit or encourage any independent contractor providing services to the Company or any of its franchisees or Affiliates to terminate or diminish its relationship with them. For the purposes of this Agreement, an "employee" or "independent contractor" of the Company or any of its Affiliates is any person who was such at any time within the preceding two years.

10. Notification Requirement. Until forty-five (45) days after the conclusion of the Non-Competition Period, the Executive shall give notice to the Company of each new business activity she plans to undertake related to or involving the Business, at least thirty (30) days prior to beginning any such activity. Such notice shall state the name and address of the Person for whom such activity is undertaken and the nature of the Executive's business relationship(s) and position(s) with such Person. The Executive shall provide the Company with such other pertinent information concerning such business activity as the Company may reasonably request in order to determine the Executive's continued compliance with her obligations under Sections 7, 8 and 9 hereof.

11. Enforcement of Covenants. The Executive acknowledges that she has carefully read and considered all the terms and conditions of this Agreement, including the restraints imposed upon her pursuant to Sections 7, 8 and 9 hereof. The Executive agrees that each of the restraints contained herein is necessary for the reasonable and proper protection of the goodwill, Confidential Information and other legitimate interests of the Company and its Affiliates; that each and every one of those restraints is reasonable in respect to subject matter, length of time and geographic area; and that these restraints, individually or in the aggregate, will not prevent her from obtaining other suitable employment during the period in which the Executive is bound by these restraints. The Executive further acknowledges that, were she to breach any of the covenants contained in Sections 7, 8 or 9 hereof, the damage to the Company could be irreparable. The Executive therefore agrees that the Company, in addition to any other remedies available to it, shall be entitled to preliminary and permanent injunctive relief against any breach or threatened breach by the Executive of any of said covenants, without having to post bond. Without limiting the generality of the foregoing, the Executive further agrees that, in the event of her failure to comply with the Compliance Condition, the Company shall have the immediate right to cease making any severance payments under Section 5(d) or (e) of this Agreement, shall have the right to require the Executive to repay any severance payments that had been paid to her prior to the date of such breach (only with respect to a breach of Section 9 hereof), and shall terminate any outstanding equity awards that have been awarded to her by KHI or the Company, notwithstanding anything to the contrary in any applicable grant document, stock option plan or any other applicable agreement or plan. The parties further agree that, in the event that any provision of Section 7, 8 or 9 hereof shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law. The Executive agrees that the Non-Competition Period shall be tolled, and shall not run, during any period of time in which she is in violation of the terms thereof, in order that the Company and its Affiliates shall have all of the agreed-upon temporal protection recited herein. No breach of any provision of this Agreement by the Company (other than a breach by the Company of its obligations to make severance payments under Section 5(d) or (e) of this Agreement), or any other claimed breach of contract or violation of law, or change in the nature or scope of the Executive's employment relationship with the Company, shall operate to extinguish the Executive's obligation to comply with Sections 7, 8 and 9 hereof.

12. Indemnification. The Company shall indemnify the Executive and provide the Executive with advancement of expenses to the fullest extent permitted by applicable law. The Executive agrees to promptly notify the Company of any actual or threatened claim arising out of or as a result of her employment with the Company.

13. Executive's Additional Representations. The Executive hereby represents and warrants to the Company that the Executive (i) is not subject to any noncompetition agreement affecting the Executive's employment with the Company or its Affiliates (other than any prior agreement with the Company), (ii) is not subject to any confidentiality or nonuse/nondisclosure agreement affecting the Executive's employment with the Company or its Affiliates (other than any prior agreement with the Company) and (iii) will not use for the benefit of the Company or its Affiliates any trade secrets, confidential business information, documents or other personal property of a prior employer.

14. Section 280G.

(a) In the event that the Company undergoes a change in control prior to the time that it (or any Affiliate that would be treated, together with the Company, as a single corporation under Section 280G of the Internal Revenue Code of 1986, as amended (the " Code") and the regulations thereunder) has stock that is readily tradeable on an established securities market (within the meaning of the Section 280G of the Code of 1986 and the regulations thereunder), the Company agrees, upon the Executive's request (the " Request"), to use its reasonable best efforts to seek the requisite approval by its shareholders of the payments proposed to be made to the Executive in connection with such change in control by taking all administrative steps necessary to prevent having the payments or any portion thereof characterized as "parachute payments" under Sections 280G and 4999 of the Code. The Company's actions pursuant to this provision are not intended to bind, nor shall be construed as binding, the shareholders of the Company. In connection with the obtaining of such approval, if so requested, the Executive agrees to undertake any such waivers that may be required in order for the Company to validly seek the approval of its shareholders. Prior to making the Request, the Executive may seek, at the Company's expense, input from the Company's public accounting firm (the " Accounting Firm") regarding the Executive's potential parachute payments. The Company shall cooperate with, and provide the necessary information to, the Executive and the Accounting Firm for purposes of determining the Executive's potential parachute payments.

(b) If the Executive does not request that the Company seek the shareholder approval described in subsection (a) above:

(i) In the event it shall be determined that all, or any portion, of the payments or benefits provided under this Agreement, either alone or together with other payments or benefits which the Executive receives or is entitled to receive in connection with the Executive's services for the Company or an Affiliate (the "Payments"), but determined for this purpose without regard to any required Gross-Up Payment (as defined below), will be subject to the excise tax imposed by Section 4999 of the Code or any comparable tax imposed by any replacement or successor provision of United States tax law, or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the " Excise Tax"), then the Company shall pay to the Executive one or more additional cash payments (each such payment, a " Gross-Up Payment") in such amounts so that the net cash amount remaining from such Gross-Up Payment after deduction or payment of (a) the Excise Tax imposed on the Gross-Up Payments and (b) all federal, state and local income and employment taxes imposed upon the Gross-Up Payments, shall equal fifty percent (50%) of the excise tax imposed by Section 4999 of the Code on the total Payments. The intent of the parties is that the Company shall be responsible for, and shall pay, 50% of the Excise Tax on any Payment and on any Gross-Up Payment and 50% of any income and employment taxes (including, without limitation, penalties and interest) imposed on any Gross-Up Payment, as well as bearing any loss of tax

deduction caused by the Gross-Up Payment. For purposes of determining the amount of any Gross-Up Payment, the Executive shall be deemed to pay (a) federal income tax at the highest marginal rate in effect for the calendar year during which such Gross-Up Payment is to be made, (b) FICA taxes at the highest rate applicable to wages in excess of the Social Security taxable wage base in effect for such calendar year, and (c) state and local income taxes at the highest marginal rates in effect for such calendar year in the state and local municipality of the Executive's principal residence as of the date of termination of employment with the Company or the date that any portion of the total Payments become subject to the Excise Tax, net of the reduction in federal income tax attributable to the deduction of such state and local income taxes, and taking into account any limitation on deductions or credits or comparable negative impact for purposes of federal income tax as a result of the total Payments made to the Executive during such calendar year.

(ii) All determinations required to be made under this Section 14, including whether and when a Gross-Up payment is required and the amount of the such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the Accounting Firm which shall provide detailed supporting calculations both to the Company and the Executive within fifteen (15) business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 14, shall be paid by the Company to the Executive within thirty (30) days of the receipt of the Accounting Firm's determination; provided that in no event shall any Gross-Up Payment be paid later than the end of the calendar year next following the calendar year in which the Executive or the Company remits the taxes for which the Gross-Up Payment is being paid. Any determination by the Accounting Firm shall be binding on the Company and the Executive.

15. Definitions. Words or phrases which are initially capitalized or are within quotation marks shall have the meanings provided in this Section 15 and as provided elsewhere herein. For purposes of this Agreement, the following definitions apply:

(a) "Affiliates" means all persons and entities directly or indirectly controlled by the Company or by KHI.

(b) "Confidential Information" means any and all information of the Company and its Affiliates that is not generally known by others with whom they compete or do business, or with whom they plan to compete or do business and any and all information, publicly known in whole or in part or not, which, if disclosed by the Company or its Affiliates would assist in competition against them. Confidential Information includes without limitation such information relating to (i) the development, research, testing, manufacturing, marketing and financial activities of the Company and its Affiliates, (ii) the costs, sources of supply, financial performance and strategic plans of the Company and its Affiliates, (iii) the identity and special needs of the customers of the Company and its

Affiliates, (iv) trade and industrial practices, trade secrets, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures and vendors, and (v) the people and organizations with whom the Company and its Affiliates have business relationships and those relationships. Confidential Information also includes information that the Company or any of its Affiliates have received, or may receive hereafter, belonging to others or which was received by the Company or any of its Affiliates, and is being held, with any understanding, express or implied, that it will not be disclosed.

(c) "Designated Beneficiary" shall mean the beneficiary or beneficiaries designated by the Executive to the Company from time to time by written notice hereunder, and if no such designation is made, the Executive's estate or personal representative

(d) "Intellectual Property" means inventions, discoveries, developments, methods, processes, compositions, works, recipes, concepts and ideas (whether or not patentable or copyrightable or constituting trade secrets) conceived, made, created, developed or reduced to practice by the Executive (whether alone or with others, whether or not during normal business hours or on or off Company premises) during the Executive's employment and during the period of six (6) months immediately following termination of her employment that relate to either the business or any prospective activity of the Company or any of its Affiliates or that make use of Confidential Information or any of the equipment or facilities of the Company or any of its Affiliates.

(e) "Person" means an individual, a corporation, an association, a partnership, an estate, a trust and any other entity or organization, other than the Company or any of its Affiliates.

16. Withholding. All payments made by the Company under this Agreement shall be reduced by any tax or other amounts required to be withheld by the Company under applicable law.

17. Assignment. Neither the Company nor the Executive may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other; provided, however, that the Company may assign its rights and obligations under this Agreement, without the consent of the Executive, to an Affiliate (that will manage the assets and carry on the historic business of the Company following such assignment) or a successor that expressly assumes and agrees in writing to perform this Agreement in the same manner and to the same extent as the Company, including in the event that the Company shall hereafter affect a reorganization, consolidate with, or merge into, any other Person, or transfer all or substantially all of its properties, stock, or assets to any other Person. This Agreement shall inure to the benefit of and be binding upon the Company and the Executive, their respective successors, executors, administrators, heirs and permitted assigns.

18. Severability. If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

20. Notices. Any and all notices, requests, demands and other communications provided for by this Agreement shall be in writing and shall be effective when delivered in person, consigned to a reputable national courier service or deposited in the United States mail, postage prepaid, registered or certified, and addressed to the Executive at her last known address on the books of the Company, with a copy to Stephan G. Bachelder, Bachelder & Dowling, 120 Exchange St., Portland, Maine 04112 or, in the case of the Company, at its principal place of business, attention of the Corporate Secretary of the Company, with a copy to Ropes & Gray LLP, One International Place, Boston, MA 02110, Attention: Newcomb Stillwell and Renata Ferrari or to such other address as either party may specify by notice to the other actually received.

21. Entire Agreement. This Agreement and any other agreements specifically referred to herein, together with that certain Retention Bonus Agreement entered into between KHI and the Executive dated as of the date hereof (the " Retention Bonus Agreement"), constitute the entire agreement between the parties and supersedes and terminates all prior communications, agreements and understandings, written or oral, with respect to the terms and conditions of the Executive's employment with the Company.

22. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Executive and by an expressly authorized representative of the Company.

23. Headings. The headings and captions in this Agreement are for convenience only and in no way define or describe the scope or content of any provision of this Agreement.

24. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

25. Governing Law. This is a Florida contract and shall be construed and enforced under and be governed in all respects by the laws of the State of Florida, without regard to the conflict of laws principles thereof. In the event of any alleged breach or threatened breach of this Agreement, the Executive hereby consents and submits to the jurisdiction of the federal and state courts in and of the State of Florida.

26. Cooperation. The Executive shall cooperate fully with all reasonable requests for information and participation by the Company, its agents or its attorneys at the Company's expense in prosecuting or defending claims, suits and disputes brought on behalf of or against the Company and in which Executive is involved or about which Executive has knowledge.

27. WAIVER OF JURY TRIAL. THE PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED –FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THAT THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

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IN WITNESS WHEREOF, this Agreement, as amended and restated, has been executed as a sealed instrument by each of Company and KHI, by their respective duly authorized representatives, and by the Executive, as of December 31, 2009.

THE EXECUTIVE:

By: /s/ Elizabeth A. Smith
Elizabeth A. Smith

THE COMPANY:

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

KHI (with respect to Sections 3(a) and 4(d) only):

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

EXHIBIT A

Member of the Board of Directors of Staples, Inc.
Member of the Board of Directors of Big Brothers, Big Sisters of America

EXHIBIT B

[Option Award]

EXHIBIT C

[Form of Release]

Agreement for Use of Corporate Airplane

This Agreement for Use of Corporate Airplane ("Agreement") is made effective as of January 1, 2011, by and between OSI Restaurant Partners, LLC ("OSI") and Elizabeth Smith ("Executive").

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. During the calendar year 2011, OSI grants Executive the right to use the OSI corporate airplanes for personal trips at no cost to Executive.
2. Executive acknowledges and agrees that she is required to report any such personal use of the OSI corporate airplanes as taxable income.
3. OSI will provide Executive with a tax gross-up payment for applicable federal, state and local taxes paid by Executive in connection with (i) the airplane use for up to fifty (50) hours of flying time for personal trips, and (ii) the tax gross-up payment itself. This gross-up payment shall be paid no later than April 15, 2012.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the 30th day of June, 2011.

OSI Restaurant Partners, LLC

By: /s/ Joseph Kadow
Name: Joseph Kadow
Title: Executive Vice President

Elizabeth Smith

By: /s/ Elizabeth Smith

February 2, 2012

Dave Pace
Chief Resource Officer
OSI Restaurant Partners, LLC

Dear Dave:

This will evidence my agreement to hereby amend my employment agreement to provide that effective as of January 1, 2012 my base salary will be reduced by $75,000 to $925,000 and my bonus target will be increased from 85% of base salary to 100% of base salary.

Very Truly Yours,

/s/ Elizabeth Smith
Elizabeth Smith

Exhibit 10.37

OSI RESTAURANT PARTNERS, LLC
Officer Employment Agreement

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this 17th day of August, 2010, to be effective for all purposes as of August 16, 2010 (the "Effective Date"), by and among DAVID A. PACE, whose address is 6118 Beverly Drive, Frisco, TA 75034 (hereinafter referred to as "Employee") and OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (the "Company").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

A. WHEREAS, the Company is engaged in the business of owning and operating, through its subsidiaries and their affiliates, various restaurant concepts utilizing restaurant operating systems and trademarks ("Trademarks") owned by or licensed to the Company; and

B. WHEREAS, the Company desires, on the terms and conditions stated herein, to employ the Employee as Executive Vice President and Chief Resource Officer of the Company; and

C. WHEREAS, the Employee desires, on the terms and conditions stated herein, to be employed by the Company as Executive Vice President and Chief Resource Officer.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. **Employment and Term.** Subject to earlier termination as provided for in **Section 8** hereof, the Company hereby employs the Employee, and the Employee hereby accepts employment with the Company as Executive Vice President and Chief Resource Officer of the Company for a term commencing on August 16, 2010 and expiring August 16, 2015 ("Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. Representations and Warranties. The Employee hereby represents and warrants to the Company that (a) the Employee (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Employee's employment with the Company (other than any prior agreement with the Company or its affiliate), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Employee's employment with the Company (other than any prior agreement with the Company), and (iii) has brought to the Company no trade secrets, confidential business information, documents, or other personal property of a prior employer, and (b) the execution of this Agreement and the performance of the Employee's obligations hereunder will not breach or be in conflict with any other agreement to which the Employee is a party or is bound or any order, decree, judgment, ruling, determination or injunction of any federal, state, local or foreign governmental, administrative or regulatory court, agency or body or any arbitrator.

3. Duties. As Executive Vice President and Chief Resource Officer of the Company, the Employee shall:

(a) have such management, supervisory and operational functions as are customary to such position, and such other powers, functions and duties as may be assigned to the Employee by the Board of Directors or Chief Executive Officer of the Company; and

(b) diligently, competently, and faithfully perform all of the duties and functions as may be assigned to the Employee hereunder;

(c) not create a situation that results in termination for Cause (as that term is defined in **Section 8** hereof);

(d) devote one hundred percent (100%) of the Employee's full business time, attention, energies, and effort to the business affairs of the Company;

(e) achieve the results and other goals required by the Company; and

(f) Conduct all of his activities in a manner so as to maintain and promote the business and reputation of the Company.

The Employee shall not, during the term of this Agreement, engage in any other business activity; ***provided, however,*** that the Employee shall be permitted to invest the Employee's personal assets and manage the Employee's personal investment portfolio in such a form and manner as will not require any business services on Employee's part to any third party or conflict with the provisions of **Section 9**, **Section 10** or **Section 12** hereof, conflict with the Employee's duties or responsibilities to the Company hereunder, or conflict with any published policy of the Company or its affiliates, including but not limited to the insider trading policy of the Company or its affiliates.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Employee shall, during the term of this Agreement and at the request of the Company, also serve as an officer of any subsidiary or affiliate of the Company as the Company shall request. In such capacity, Employee shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to Employee while serving in such office as though Employee and such subsidiary or affiliate of the Company had separately entered into this Agreement, except that the Employee shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such subsidiary or affiliate of the Company.

4. Compensation.

a. *Base Salary*. During the Term of Employment, the Employee shall be entitled to an annual base salary equal to Four Hundred Eighty-five Thousand Dollars ($485,000), payable in equal biweekly installments by the Company, to be reviewed annually.

b. *OSI Bonus Program*. During the Term of Employment, the Employee shall be entitled to discretionary bonuses pursuant to a bonus plan developed by the Compensation Committee of the Company (the "OSI Bonus Program"). Employee's bonus target under the OSI Bonus Program for 2010 is 100% of the base salary paid to the Employee in the 2010 calendar year. The OSI Bonus Program is subject to increase, decrease, change or elimination in the discretion of the Compensation Committee.

c. *Relocation Costs*. Employee shall be entitled to benefits under the Company's standard relocation policy.

d. *Signing Bonus.* Employee shall be entitled to a one-time signing bonus of One Hundred Thousand Dollars ($100,000) payable on or before September 15, 2010. In the event that prior to August 16, 2011, Employee resigns or is terminated pursuant to Section 8(c) hereof, Employee shall repay the entire One Hundred Thousand Dollar ($100,000) signing bonus to the Company.

5. Paid Time Off. Employee shall be entitled to vacation time or other paid time off (collectively "PTO") to be accrued in accordance with the Company's PTO Policy (selected by Employee, but subject to the reasonable business requirements of the Company as determined by Employee's supervisor). Unless required by applicable law which cannot be waived, PTO granted but not used in any year shall be forfeited at the end of such one-year period and may not be carried over to any subsequent year.

6. Fringe Benefits. In addition to any other rights the Employee may have hereunder, the Employee shall also be entitled to participate in those employee benefit plans, programs and arrangements, including, but not limited to life insurance and a medical plan, etc., if any, as may be provided by the Company to similar employees of the Company. In each case as such plans, programs and arrangements may be in effect from time to time, all subject to the terms of such plans, programs and arrangements and applicable policies of the Company.

7. Expenses. Subject to approval by the Company and compliance with the Company's policies, the Employee may incur reasonable expenses on behalf of and in furtherance of the business of the Company. Upon approval of such expenses by the Chief Financial Officer, the Company shall promptly reimburse the Employee for all such expenses upon presentation by the Employee, from time to time, of appropriate receipts or vouchers for such expenses that are sufficient in form and substance to satisfy all federal tax requirements for the deductibility of such expenses by the Company.

8. **Termination.** Notwithstanding the provisions of **Section 1** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in **Section 1**, immediately upon:

(a) The death of the Employee; or

(b) The Company's election in the event of the Employee's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Employee, arising out of any medically determinable physical or mental impairment, to perform the services required of the Employee hereunder for a period of (i) ninety (90) consecutive days or (ii) one hundred and twenty (120) total days during any period of three hundred and sixty-five (365) consecutive calendar days; or

(c) The existence of Cause. For purposes of this Agreement, the term "Cause" shall be defined as:

(i) Failure of the Employee to perform the duties required of the Employee in this Agreement in a manner satisfactory to the Company, in its sole discretion; provided, however, that the Term of Employment shall not be terminated pursuant to this subparagraph (i) unless the Company first gives the Employee a written notice ("Notice of Deficiency"). The Notice of Deficiency shall specify the deficiencies in the Employee's performance of the Employee's duties. The Employee shall have a period of thirty (30) days, commencing on receipt of the Notice of Deficiency, in which to cure the deficiencies contained in the Notice of Deficiency. In the event the Employee does not cure the deficiencies to the satisfaction of the Company, in its sole discretion, within such thirty (30) day period (or if during such thirty (30) day period the Company determines that the Employee is not making reasonable, good faith efforts to cure the deficiencies to the satisfaction of the Company), the Company shall have the right to immediately terminate the Term of Employment. The provisions of this subparagraph (i) may be invoked by the Company any number of times and cure of deficiencies contained in any Notice of Deficiency shall not be construed as a waiver of this subparagraph (i) nor prevent the Company from issuing any subsequent Notices of Deficiency; or

(ii) Any dishonesty by the Employee in the Employee's dealings with the Company, the commission of fraud by the Employee, negligence in the performance of the duties of the Employee, insubordination, willful misconduct, or the conviction (or plea of guilty or nolo contendere) of the Employee of, or indictment or charge with respect to, any felony, or any other crime involving dishonesty or moral turpitude; or

(iii) Any violation of any covenant or restriction contained in **Section 9, Section 10 or Section 12** hereof; or

(iv) Any violation of any current or future material published policy of the Company or its affiliates (material published policies include, but are not limited to, the Company's discrimination and harassment policy, management dating policy, responsible alcohol policy, insider trading policy and security policy).

(d) At the election of the Company, upon the sale of a majority ownership interest in the Company or substantially all of the assets of the Company; or

(e) At the election of the Company, upon the determination by the Company to cease the Company's business operations.

(f) At the election of the Company in its sole discretion, for any reason or no reason. In the event of termination of this Agreement pursuant to this **Section 8(f)**, the Employee shall be entitled to receive as full and complete severance compensation, the base salary provided for herein for a period of one (1) year from the effective date of such termination (the "Severance"). Severance shall be payable in bi-weekly installments. The Employee acknowledges and agrees that in the event of termination of this Agreement pursuant to this **Section 8(f)** the Severance provided in this **Section 8(f)** shall be the only obligation that the Company or any of its affiliates shall have to the Employee.

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred in the event of the Employee's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Except as otherwise provided in **Section 8(f)**, in the event of termination of this Agreement pursuant to this **Section 8**, the Employee or the Employee's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Employee's death) the base salary provided for herein up to and including the effective date of termination, prorated on a daily basis.

9. **Noncompetition.**

(a) During Term. During the Employee's employment with the Company, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to any such person or entity.

(b) Post Term. For a continuous period of one (1) year commencing on termination of the Employee's employment with the Company, regardless of any termination pursuant to **Section 8** or any voluntary termination or resignation by the Employee, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business with a theme, décor, menu or style of or featured cuisine the same as or substantially similar to that of any restaurant owned or operated by the Company, its subsidiaries or affiliates, or any of the affiliates any of the foregoing, and that is located or intended to be located anywhere within a radius of thirty (30) miles of any restaurant owned or operated by the Company, its subsidiaries or affiliates, or any of the affiliates any of the foregoing, or any proposed restaurant to be owned or operated by any of the foregoing, and Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person, or entity. For purposes of this **Section 9(b)**, Restaurants owned or operated by the Company shall include restaurants operated or owned by an affiliate of the Company, its subsidiaries or affiliates, any successor entity to the Company, its subsidiaries or affiliates, and any entity in which the Company, its subsidiaries or any of their affiliates has an interest, including but not limited to, an interest as a franchisor. The term "proposed restaurant" shall include all locations for which the Company, or its franchisees or affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing a restaurant thereon.

(c) Limitation. Notwithstanding **subsections (a)** and **(b)**, it shall not be a violation of this **Section 9** for Employee to own a one percent (1%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

10. **Nondisclosure; Nonsolicitation; Nonpiracy.** Except in the performance of Employee's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall Employee, individually or jointly with others, for the benefit of Employee or any third party, publish, disclose, use, or authorize anyone else to publish, disclose, or use, any secret or confidential material or information relating to any aspect of the business or operations of the Company, or its affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes or know-how of any of the Company, or its affiliates. Moreover, during the Employee's employment with the Company and for two (2) years thereafter, Employee shall not offer employment to, or hire, any employee of the Company, its franchisees or affiliates, or otherwise solicit or induce any employee of the Company, its franchisees or affiliates to terminate their employment, nor shall Employee act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, for any person or entity that solicits or otherwise induces any employee of the Company, its franchisees or affiliates to terminate their employment.

11. **Company Property: Employee Duty to Return.** All property and information of the Company, its franchisees or affiliates, including but not limited to products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks, and all other like information or products, including but not limited to all copies, duplications, replications, and derivatives of such information or products, now in the possession of Employee or acquired by Employee while in the employ of the Company, shall be the exclusive property of the Company and shall be returned to the Company no later than the date of Employee's last day of work with the Company.

12. **Inventions, Ideas, Processes, and Designs.** All inventions, recipes, processes, discoveries, developments, designs, innovations or improvements, including but not limited to recipes, programs, software, and designs (including but not limited to all improvements on any of the foregoing) (i) conceived or made by Employee during the course of Employee's employment with the Company (whether or not conceived during regular business hours) and for a period of six (6) months subsequent to the termination or expiration of such employment and (ii) related to the business of the Company, shall be disclosed in writing promptly to the Company and shall be the sole and exclusive property of the Company. An invention, idea, recipe, process, program, software or design (including but not limited to an improvement) shall be deemed "related to the business of the Company" if (a) it was made with equipment, supplies, facilities, or confidential information of the Company or its affiliate (whether or not actually made or occurring on the Company's premises), (b) results from work performed by Employee for the Company, or (c) pertains to the current business or demonstrably anticipated research or development work of the Company. Employee shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly confirm the assignment of all such inventions, formulae, processes, discoveries, developments, designs, innovations or improvements to the Company. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Company, and Employee shall be bound by such decision. Employee shall provide, on the back of this Employment Agreement, a complete list of all inventions, ideas, recipes, processes, and designs if any, patented or unpatented, copyrighted or non-copyrighted, including but not limited to a brief description, that the Employee made or conceived prior to Employee's employment with the Company and that therefore are excluded from the scope of this Agreement.

13. **Restrictive Covenants: Consideration; Non-Estoppel; Independent Agreements; and Non-Executory Agreements.** The restrictive covenants of **Section 9, Section 10** and **Section 12** of this Agreement are given and made by Employee to induce the Company to employ the Employee and to enter into this Agreement with the Employee, and Employee hereby acknowledges that employment with the Company is sufficient consideration for these restrictive covenants.

The restrictive covenants of **Section 9, Section 10** and **Section 12** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of Employee against the Company, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant. The Company has fully performed all obligations entitling them to the restrictive covenants of **Section 9, Section 10** and **Section 12** of this Agreement, and those restrictive covenants therefore are not executory or otherwise subject to rejection under the Bankruptcy Code.

The refusal or failure of the Company to enforce any restrictive covenant of **Section 9, Section 10** or **Section 12** of this Agreement (or any similar agreement) against any other employee, agent, or independent contractor, for any reason, shall not constitute a defense to the enforcement by the Company of any such restrictive covenant, nor shall it give rise to any claim or cause of action by Employee against the Company.

14. **Reasonableness of Restrictions; Reformation; Enforcement.** The parties hereto recognize and acknowledge that the geographical and time limitations contained in **Section 9, Section 10** and **Section 12** hereof are reasonable and properly required for the adequate protection of the Company's interests. Employee acknowledges that the Company or its affiliate is the owner or the licensee of the Trademarks, and the owner or the licensee of the restaurant operating systems. It is agreed by the parties hereto that if any portion of the restrictions contained in **Section 9, Section 10** or **Section 12** are held to be unreasonable, arbitrary, or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate

period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time period or geographical area that is determined to be reasonable, nonarbitrary, and not against public policy may be enforced against Employee. If Employee shall violate any of the covenants contained herein and if any court action is instituted by the Company to prevent or enjoin such violation, then the period of time during which the Employee's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Employee's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Company to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in **Section 9, Section 10** or **Section 12** hereof, the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs, including but not limited to reasonable attorneys' fees, of such proceedings including appellate proceedings.

15. **Specific Performance.** Employee agrees that a breach of any of the covenants contained in **Section 9, Section 10** or **Section 12** hereof will cause irreparable injury to the Company for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or threatened breach of any such covenants, the Company shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to obtain an injunction to restrain Employee from any threatened or actual activities in violation of any such covenants. Employee hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Company does apply for such an injunction, Employee shall not raise as a defense thereto that the Company has an adequate remedy at law.

16. **Assignability.** This Agreement and the rights and duties created hereunder, shall not be assignable or delegable by Employee. The Company shall have the right, without Employee's knowledge or consent, to assign this Agreement, in whole or in part and any or all of the rights and duties hereunder, including but not limited to the restrictive covenants of **Section 9, Section 10, Section 11** and **Section 12** hereof to any person, including but not limited to any affiliate of the Company, or any successor to the Company's interest, and Employee shall be bound by such assignment. Any assignee or successor may enforce any restrictive covenant of this Agreement.

17. **Effect of Termination.** The termination of this Agreement, for whatever reason or for no reason, or the expiration of this Agreement shall not extinguish those obligations of the Employee specified in **Section 9**, **Section 10**, **Section 11** and **Section 12** hereof. The restrictive covenants of **Section 9, Section 10, Section 11** and **Section 12** shall survive the termination or expiration of this Agreement. The termination or expiration of this Agreement shall extinguish the right of any party to bring an action, either in law or in equity, for breach of this Agreement by any other party.

18. **Captions; Terms.** The captions of this Agreement are for convenience only, and shall not be construed to limit, define, or modify the substantive terms hereof.

19. **Acknowledgments.** Employee hereby acknowledges, represents and warrants that the Employee has been provided with a copy of this Agreement for review, that the Employee has been given a full and sufficient opportunity to consider this Agreement and to consult with the Employee's attorney

concerning this Agreement; that the Employee has read and understands the purposes and effects of this Agreement, and all of its terms and provisions; and that in agreeing to be bound by this Agreement the Employee has not relied on any promises or representations, express or implied, that are not set forth expressly in this Agreement; and that the Employee has been given a copy of this Agreement for Employee's own records.

20. **Notices.** All notices or other communications provided for herein to be given or sent to a party by the other party shall be in writing and shall be effective when mailed, postage prepaid, by certified United States mail, return receipt requested, or delivered by hand or consigned to a nationally recognized overnight courier, and addressed to the parties at their addresses hereinabove set forth or at their last known address. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed, which change of address shall be effective if notice thereof is actually received.

21. **Severability.** Each section, subsection, and lesser section of this Agreement constitutes a separate and distinct undertaking, covenant, or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

22. **Waiver.** The failure of a party to enforce any term, provision, or condition of this Agreement or failure to insist on strict performance of a covenant hereunder or any obligation hereunder, at any time or times shall not be deemed a waiver of that term, provision, or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such party's right to demand compliance therewith in the future.

23. **Parties.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their legal representatives, executors, administrators, heirs, and proper successors or permitted assigns, as the case may be.

24. **Governing Law.** This Agreement takes effect upon its acceptance and execution by the Company. The validity, interpretation, and performance of this Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

25. **Consent to Personal Jurisdiction and Venue.** Employee hereby consents to personal jurisdiction and venue, for any action brought by the Company arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida; Employee hereby agrees that any action brought by Employee, alone or in combination with others, against the Company, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

26. **Affiliate.** Whenever used in this Agreement, the term "affiliate" shall mean, with respect to any person or entity, all persons or entities (i) directly or indirectly controlled by the person or entity, (ii) that directly or indirectly control the person or entity, or (iii) that are directly or indirectly under common control with the person or entity; and all directors, managers, members, shareholders, officers, and partners of and such entity.

27. **Cooperation.** Employee shall cooperate fully with all reasonable requests for information and participation by the Company, its agents, or its attorneys, in prosecuting or defending claims, suits, and disputes brought on behalf of or against one or both of them and in which Employee is involved or about which Employee has knowledge.

28. **Amendments.** No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

29. **WAIVER OF JURY TRIAL. ALL PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.**

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

30. **Entire Agreement; Counterparts.** This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, and supersedes any prior employment agreement with the Company, or any of its affiliates and supersedes all prior memoranda, correspondence, conversations, negotiations and agreements. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EMPLOYEE"

/s/ David A. Pace

Witness

DAVID A. PACE

Witness

"COMPANY"

Attest:

OSI RESTAURANT PARTNERS, LLC, a Delaware limited liability company

By: /s/ Kelly Lefferts
KELLY LEFFERTS, Assistant Secretary

By: /s/ Joseph J. Kadow
JOSEPH J. KADOW, Executive Vice President

Exhibit 10.38

OUTBACK STEAKHOUSE INTERNATIONAL®
Amended and Restated
Officer Employment Agreement

THIS AMENDED AND RESTATED OFFICER EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into effective September 12, 2011, by and among DAVID BERG (hereinafter referred to as "Employee"), OS MANAGEMENT, INC., a Florida corporation having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (hereinafter referred to as the "Employer") and OUTBACK STEAKHOUSE INTERNATIONAL, L.P., a Georgia limited partnership having its principal office at 2202 N. West Shore Boulevard, 5th Floor, Tampa, Florida 33607 (the "Company").

W I T N E S S E T H:

This Agreement is made and entered into under the following circumstances:

A. WHEREAS, the Employee, the Company and OS Restaurant Services, Inc, a Delaware corporation (the "Former Employer") were parties to that certain Officer Employment Agreement dated September 12, 2011, as amended by that certain Amendment to Officer Employment Agreement dated effective September 12, 2011, and the Employee, the Company, the Former Employer and the Employer were parties to that certain Assignment of Officer Employment Agreement dated November 4, 2011 (collectively, as amended and assigned, the "Former Agreement"); and

B. WHEREAS, the Former Employer, the Company and the Employer are affiliates of OSI Restaurant Partners, LLC ("OSI"); and

C. WHEREAS, the parties desire that the Former Agreement be amended and restated in its entirety as more fully described herein.

D. WHEREAS, the Company is engaged in the business of owning through its subsidiaries and their affiliates, various restaurant concepts utilizing operating systems and trademarks ("Trademarks") owned by or licensed to the Company; and

E. WHEREAS, the Employer agreed to hire and lease to the Company management employees necessary for the management, oversight and support of the Company's Outback Steakhouse International® restaurants; and

F. WHEREAS, the Employer desires, on the terms and conditions stated herein, to employ Employee and lease Employee to the Company as President of the Company; and

G. WHEREAS, the Employee desires, on the terms and conditions stated herein, to be employed by the Employer and leased to the Company as President of the Company.

NOW, THEREFORE, in consideration of the foregoing recitals, and of the premises, covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. **Employment and Term.** Subject to earlier termination as provided for in **Section 8** hereof, the Employer hereby employs the Employee, and the Employee hereby accepts employment with the Employer, to be leased to the Company as President of the Company for a term commencing on September 12, 2011, and expiring five (5) years thereafter ("Term of Employment"). Such Term of Employment shall be automatically renewed for successive renewal terms of one (1) year each unless either party elects not to renew by giving written notice to the other party not less than sixty (60) days prior to the start of any renewal term.

2. **Representations and Warranties.** The Employee hereby represents and warrants to the Employer and the Company that (a) the Employee (i) is not subject to any written nonsolicitation or noncompetition agreement affecting the Employee's employment with the Employer or its Affiliates (other than any prior agreement with the Employer or its Affiliates), (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting the Employee's employment with the Employer or its Affiliates (other than any prior agreement with the Employer or its Affiliates), and (iii) has brought to the Employer and its Affiliates no trade secrets, confidential business information, documents, or other personal property of a prior employer, and (b) the execution of this Agreement and the performance of the Employee's obligations hereunder will not breach or be in conflict with any other agreement to which the Employee is a party or is bound or any order, decree, judgment, ruling, determination or injunction of any federal, state, local or foreign governmental, administrative or regulatory court, agency or body or any arbitrator.

3. **Duties.** As President of the Company, the Employee shall:

(a) have such management, supervisory and operational functions as are customary to such position, and such other powers, functions and duties as may be assigned to the Employee by Employee's supervisor;

(b) diligently, competently, and faithfully perform all of the duties and functions hereunder;

(c) except as otherwise specifically provided in this Section 3, devote one hundred percent (100%) of the Employee's full business time, attention, energies, and effort to the business affairs of the Employer and the Company;

(d) achieve the results and other goals required by the Employer and the Company;

(e) conduct all of Employee's activities in a manner so as to maintain and promote the business and reputation of the Employer and the Company; and

(f) not create a situation that results in termination for Cause (as that term is defined in **Section 8** hereof).

The Employee shall not, during the term of this Agreement, engage in any other business activity; ***provided, however,*** that the Employee shall be permitted to invest the Employee's personal assets and manage the Employee's personal investment portfolio in such a form and manner as will not require any business services on the Employee's part to any third party, and provided it does not conflict with the Employee's duties and responsibilities to the Employer and the Company or the provisions of ***Section 9*** or ***Section 10*** hereof, or conflict with any published policy of the Employer or its Affiliates, including, but not limited to, the insider trading policy of the Employer or its Affiliates.

Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the Employee shall, during the term of this Agreement and at the request of the Employer, also serve as an officer of any Affiliate of the Employer or the Company as the Employer shall reasonably request. In such capacity, the Employee shall be responsible generally for all aspects of such office. All terms, conditions, rights and obligations of this Agreement shall be applicable to the Employee while serving in such office as though the Employee and such Affiliate had separately entered into this Agreement, except that the Employee shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from such Affiliate.

The parties acknowledge and agree that the Company and the Employer have approved Employee's continued service on the Board of Directors of Imation Corporation and The University of Florida Retailing Center. The Employee's continued service on such boards shall not be a violation of paragraph 3(c) above.

4. **Compensation.** During the Term of Employment, subject to the Employee's performance in accordance with this Agreement, the Employee shall be entitled to the following:

a. *Base Salary*. The Employee shall be entitled to an annual base salary equal to Four Hundred and Fifty Thousand Dollars ($450,000), payable in equal biweekly installments by the Employer, to be reviewed annually for increase or decrease by the Employer.

b. *Incentive Bonus*. The Employee shall participate in the Employer's incentive bonus plan, as in effect as of the date hereof, and as may be amended by the Employer from time to time in accordance with its terms (the "OSI Bonus Program"). Employee's bonus target under the OSI Bonus Program is 85% of the base salary paid to the Employee in the calendar year for which the bonus is awarded; provided however, so long as Employee remains employed by Employer through the end of the 2011 calendar year, the Employee's bonus under the OSI Bonus Program for the calendar year 2011 shall be a guaranteed minimum of Three Hundred and Eighty-two Thousand Five Hundred Dollars ($382,500). The OSI Bonus Program and the Employee's bonus percentage are subject to increase, decrease, change or elimination in the discretion of the Employer.

c. *Signing Bonuses.* The Employee shall be entitled to a signing bonus of Seven Hundred Thousand Dollars ($700,000) to be paid as follows:

(i) Four Hundred Thousand Dollars ($400,000) to be paid by the Employer in the first bi-weekly pay period that follows Employee's commencement of employment;

(ii) One Hundred Fifty Thousand Dollars ($150,000) to be paid by the Employer on December 6, 2011;

(iii) One Hundred Fifty Thousand Dollars ($150,000) to be paid by the Employer on March 6, 2012.

The Employee shall reimburse the Employer for the entire amount of any signing bonus paid by the Employer if the Employee resigns or otherwise voluntarily terminates employment with the Employer within twelve (12) months of the date of payment of such signing bonus.

d. *Reimbursement of Bonus Subject to Claw Back*. The Employee shall be entitled to an additional bonus (the "Claw Back Bonus") of One Hundred Thousand Dollars ($100,000) if Employee's prior employer exercises the claw back provision applicable to the hiring bonus of One Hundred Thousand Dollars ($100,000) paid to the Employee by such prior employer. If Employee becomes eligible for the Claw Back Bonus, such bonus shall be paid by the Employer within fifteen (15) days of Employee's notice of the prior employer's exercise of the claw back provision and the Employee's payment to such prior employer. The Employee shall reimburse the Employer for the entire amount of the Claw Back Bonus paid by the Employer if the Employee resigns or otherwise voluntarily terminates employment with the Employer within twelve (12) months of the payment of such Claw Back Bonus.

5. **Paid Time Off.** Employee shall be entitled to vacation time or other paid time off (collectively "PTO") to be accrued in accordance with the Employer's PTO Policy as may be in effect from time to time. PTO scheduling is selected by the Employee, but subject to the reasonable business requirements of the Employer and the Company as determined by the Employee's supervisor. Unless required by applicable law which cannot be waived, PTO granted but not used in any year shall be forfeited at the end of such one-year period and may not be carried over to any subsequent year.

6. **Fringe Benefits.** In addition to any other rights the Employee may have hereunder, the Employee shall also be entitled to participate in those employee benefit plans, programs and arrangements, including, but not limited to life insurance, medical benefits, etc., if any, as may be provided by the Employer to similar employees of the Employer. In each case as such plans, programs and arrangements may be in effect from time to time, all subject to the terms of such plans, programs or arrangements and applicable policies of the Employer. Any taxable welfare benefits provided to the Employee pursuant to this **Section 6** that are not 'disability pay' or 'death benefits' within the meaning of Treasury Regulations Section 1.409A-1(a)(5) (collectively, the 'Applicable Benefits') shall be subject to the following requirements in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). The amount of any Applicable Benefits provided during one taxable year shall not affect the amount of the Applicable Benefits provided in any other taxable year, except that with respect to any Applicable Benefits that consist of the reimbursement of expenses referred to in Code Section 105(b), a limitation may be imposed on the amount of such reimbursements as described in Treasury Regulations Section 1.409A-3(i)(iv)(B). To the extent that any

Applicable Benefits consist of the reimbursement of eligible expenses, such reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and the Employer shall not be obligated to reimburse any expense for which the Employee fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense for any such reimbursement was incurred. Further, no Applicable Benefits may be liquidated or exchanged for another benefit. The Employee shall not be entitled to any compensation, vacation, fringe benefits, automobile allowance or other remuneration of any kind whatsoever from the Company.

7. **Expenses.** Subject to compliance with the Employer's policies as in effect from time to time, the Employee may incur and be reimbursed by the Employer for reasonable expenses on behalf of and in furtherance of the business of the Employer and the Company. If any reimbursements under this provision are taxable to the Employee, such reimbursements shall be paid on or before the end of the calendar year following the calendar year in which the reimbursable expense was incurred, and the Employer shall not be obligated to pay any such reimbursement amount for which Employee fails to submit an invoice or other documented reimbursement request at least thirty (30) business days before the end of the calendar year next following the calendar year in which the expense was incurred. Such expenses shall be reimbursable only to the extent they were incurred during the term of the Agreement. In addition, the amount of such reimbursements that the Employer is obligated to pay in any given calendar year shall not affect the amount the Employer is obligated to pay in any other calendar year. Further, Employee may not liquidate or exchange the right to reimbursement of such expenses for any other benefits.

8. **Termination.** Notwithstanding the provisions of **Section 1** hereof, the Term of Employment shall terminate prior to the end of the period of time specified in **Section 1** hereof, immediately upon:

(a) The death of the Employee; or

(b) At the election of the Employer in the event of the Employee's Disability during the Term of Employment. For purposes of this Agreement, the term "Disability" shall mean the inability of the Employee, arising out of any medically determinable physical or mental impairment, to perform the services required of the Employee hereunder for a period of (i) ninety (90) consecutive days or (ii) one hundred and twenty (120) total days during any period of three hundred and sixty-five (365) consecutive calendar days; or

(c) The existence of Cause. For purposes of this Agreement, the term "Cause" shall be defined as:

(i) Failure of the Employee to perform the duties required of the Employee in this Agreement in a manner satisfactory to the Employer, in its sole discretion; provided, however, that the Term of Employment shall not be terminated pursuant to this subparagraph (i) unless the Employer first gives the Employee a written notice ("Notice of Deficiency"). The Notice of Deficiency shall specify the deficiencies in the Employee's performance of the Employee's duties. The Employee shall have a period of thirty (30) days, commencing on receipt of the Notice of Deficiency, in which to cure the deficiencies contained in the Notice of Deficiency. In the event the Employee does not cure the deficiencies to the satisfaction of the Employer, in its sole discretion, within such thirty (30) day period (or if during such thirty (30) day period the Employer determines that the Employee is not making reasonable, good faith efforts to cure the deficiencies to the satisfaction of the Employer), the Employer shall have the right to immediately terminate the Term of Employment. The provisions of this subparagraph (i) may be invoked by the Employer any number of times and cure of deficiencies contained in any Notice of Deficiency shall not be construed as a waiver of this subparagraph (i) nor prevent the Employer from issuing any subsequent Notices of Deficiency; or

(ii) Any dishonesty by the Employee in the Employee's dealings with the Employer or its Affiliates, the commission of fraud by the Employee, negligence in the performance of the duties of the Employee, insubordination, willful misconduct, or the conviction (or plea of guilty or nolo contendere) of the Employee of, or indictment or charge with respect to, any felony, or any other crime involving dishonesty or moral turpitude; or

(iii) Any violation of any covenant or restriction contained in **Section 9, Section 10** or **Section 12** hereof; or

(i) Any violation of any current or future material published policy of the Employer or its Affiliates (material published policies include, but are not limited to, the Employer's discrimination and harassment policy, management dating policy, responsible alcohol policy, insider trading policy and security policy); or

(d) At the election of the Employer, upon the sale of a majority ownership interest in the Employer or the Company or substantially all of the assets of the Employer or the Company; or

(e) At the election of the Employer, upon the determination by the Employer or the Company to cease the Employer's or the Company's business operations; or

(f) At the election of the Employer in its sole discretion, for any reason or no reason. In the event of termination of this Agreement pursuant to this **Section 8(f)**, the Employee shall be entitled to receive as full and complete severance compensation, the base salary provided for herein for a period of one (1) year from the effective date of such termination (the "Severance"). Severance shall be payable in bi-weekly installments. The Employee acknowledges and agrees that in the event of termination of this Agreement pursuant to this **Section 8(f)** the Severance provided in this **Section 8(f)** shall be the only obligation that the Employer or any of its Affiliates shall have to the Employee (except for any vested benefits in tax-qualified pension plans maintained by the Employer). Any Long Term Incentive Agreement ("LTIA") with the Company or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA. Payment of Severance shall be contingent on Employee's continued compliance with **Section 9(b)** and **Section 10** of this Agreement.

Termination of Employment for all purposes under this Agreement will be determined to have occurred in accordance with the 'separation from service' requirements of Code Section 409A and the Treasury Regulations and other guidance issued thereunder, and based on whether the facts and circumstances indicate that Employer and Employee reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services Employee would perform after such date (as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period (or actual period of service, if less).

For all purposes of this Agreement, termination for Cause shall be deemed to have occurred in the event of the Employee's resignation when, because of existing facts and circumstances, subsequent termination for Cause can be reasonably foreseen.

Except as otherwise provided in **Section 8(f)**, in the event of termination of this Agreement pursuant to this **Section 8**, the Employee or the Employee's estate, as appropriate, shall be entitled to receive (in addition to any fringe benefits payable upon death in the case of the Employee's death) the base salary provided for herein up to and including the effective date of termination, prorated on a daily basis.

The Employee acknowledges and agrees that in the event of termination of Employee's employment as President of the Company, with or without Cause, any LTIA between the Employee and the Company or any of its affiliates shall terminate immediately and the Employee shall not be entitled to any further payments under such LTIA.

9. **Noncompetition.**

(a) During Term. Except with the prior written consent of the Employer, during the Employee's employment with the Employer, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person or entity.

(b) Post Term. For a continuous period of two (2) years commencing on termination of the Employee's employment with the Company, regardless of any termination pursuant to **Section 8** or any voluntary termination or resignation by the Employee, the Employee shall not, individually or jointly with others, directly or indirectly, whether for the Employee's own account or for that of any other person or entity, engage in or own or hold any ownership interest in, have any interest in or lend any assistance to, any casual steakhouse restaurant or any person or entity engaged in a business owning, operating, franchising or controlling an casual steakhouse business, and that is located or intended to be located anywhere within a radius of thirty (30) miles of any Outback Steakhouse® restaurant owned or operated by the Company or any Affiliate, or any proposed Outback Steakhouse ® restaurant to be owned or operated by any of the foregoing, and the Employee shall not act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, chef, or in any other capacity for, nor lend any assistance (financial or otherwise) or cooperation to, any such person, or entity. For purposes of this **Section 9(b)**, Outback Steakhouse® restaurants owned or operated by the Company or any Affiliate shall include Outback Steakhouse® restaurants operated or owned by any successor entity to the Company or any Affiliate, and any entity in which the Company or any Affiliate has an interest, including but not limited to, an interest as a franchisor. The term "proposed Outback Steakhouse ® restaurant" shall include all locations for which the Company or any Affiliate, its franchisees or affiliates is conducting active, bona fide negotiations to secure a fee or leasehold interest with the intention of establishing one or more Outback Steakhouse ® restaurants thereon. For purposes of this **Section 9(b)**, the term "casual steakhouse" shall mean any restaurant for which the check average is equal to or less than of $30.00 per person, and: (i) the words "steak" or "beef" or any item of steak or beef or any word that connotes steak or beef is used in its name; or (ii) the sale of steak or beef is regularly featured in its advertising or marketing efforts, or (iii) the sale of steak and beef in the aggregate constitute thirty percent (30%) or more of its entrée sales, computed on a dollar basis.

(c) Limitation. Notwithstanding **subsections (a)** and **(b)** immediately above, it shall not be a violation of this **Section 9** for Employee to own a one percent (1%) or smaller interest in any corporation required to file periodic reports with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or successor statute.

10. **Nondisclosure; Nonsolicitation; Nonpiracy.** Except in the performance of the Employee's duties hereunder, at no time during the Term of Employment, or at any time thereafter, shall the Employee, individually or jointly with others, for the benefit of the Employee or any third party, publish, disclose, use or authorize anyone else to publish, disclose or use any secret or confidential material or information relating to any aspect of the business or operations of the Employer, the Company or any of their Affiliates, including, without limitation, any secret or confidential information relating to the business, customers, trade or industrial practices, trade secrets, technology, recipes, product specifications, restaurant operating techniques and procedures, marketing techniques and procedures, financial data, processes, vendors and other information or know-how of the Employer, the Company or any of their Affiliates, except (i) to the extent required by law, regulation or valid subpoena, or (ii) to the extent that such information or material becomes publicly known or available through no fault of the Employee. Moreover, during the Employee's employment with the Employer and for two (2) years thereafter, except as is the result of a broad solicitation that is not targeting employees of

the Employer, the Company or any of their franchisees or Affiliates, the Employee shall not offer employment to, or hire, any employee of the Employer, the Company or any of their franchisees or Affiliates, or otherwise directly or indirectly solicit or induce any employee of the Employer, the Company or any of their franchisees or Affiliates to terminate his or her employment with the Employer, the Company or any of their franchisees or Affiliates; nor shall the Employee act as an officer, director, employee, partner, independent contractor, consultant, principal, agent, proprietor, owner or part owner, or in any other capacity, of or for any person or entity that solicits or otherwise induces any employee of the Employer, the Company or any of their franchisees or Affiliates to terminate his or her employment with the Employer, the Company or any of their franchisees or Affiliates.

11. **Company and Employer Property: Employee Duty to Return .** All Employer and Company property and assets, including but not limited to products, recipes, product specifications, training materials, employee selection and testing materials, marketing and advertising materials, special event, charitable and community activity materials, customer correspondence, internal memoranda, products and designs, sales information, project files, price lists, customer and vendor lists, prospectus reports, customer or vendor information, sales literature, territory printouts, call books, notebooks, textbooks, and all other like information or products, including but not limited to all copies, duplications, replications, and derivatives of such information or products, now in the possession of Employee or acquired by Employee while in the employ of the Employer shall be the exclusive property of the Employer and shall be returned to the Employer no later than the date of Employee's last day of work with the Employer.

12. **Inventions, Ideas, Processes, and Designs .** All inventions, ideas, recipes, processes, programs, software and designs (including all improvements) related to the business of the Employer or the Company shall be disclosed in writing promptly to the Employer, and shall be the sole and exclusive property of the Employer, if either (i) conceived, made or used by the Employee during the course of the Employee's employment with the Employer (whether or not actually conceived during regular business hours) or (ii) made or used by the Employee for a period of six (6) months subsequent to the termination or expiration of such employment. Any invention, idea, recipe, process, program, software or design (including an improvement) shall be deemed "related to the business of the Employer or the Company" if (i) it was made with equipment, facilities or confidential information of the Employer or the Company, (ii) results from work performed by the Employee for the Employer or the Company or (iii) pertains to the current business or demonstrably anticipated research or development work of the Employer or the Company. The Employee shall cooperate with the Employer and its attorneys in the preparation of patent and copyright applications for such developments and, upon request, shall promptly assign all such inventions, ideas, recipes, processes and designs to the Employer. The decision to file for patent or copyright protection or to maintain such development as a trade secret shall be in the sole discretion of the Employer, and the Employee shall be bound by such decision. The Employee shall provide, on the back of this Agreement, a complete list of all inventions, ideas, recipes, processes and designs if any, patented or unpatented, copyrighted or non-copyrighted, including a brief description, that the Employee made or conceived prior to the Employee's employment with the Employer, and that, therefore, are excluded from the scope of this Agreement.

13. **Restrictive Covenants: Consideration; Non-Estoppel; Independent Agreements; and Non-Executory Agreements .** The restrictive covenants of **Section 9, Section 10** and **Section 12** of this Agreement are given and made by Employee to induce the Employer to employ the Employee and to enter into this Agreement with the Employee, and Employee hereby acknowledges that employment with the Employer is sufficient consideration for these restrictive covenants.

The restrictive covenants of **Section 9, Section 10** and **Section 12** of this Agreement shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of Employee against the Employer or the Company, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of any restrictive covenant.

The refusal or failure of the Employer or the Company to enforce any restrictive covenant of **Section 9, Section 10** or **Section 12** of this Agreement (or any similar agreement) against any other employee, agent, or independent contractor, for any reason, shall not constitute a defense to the enforcement by the Employer or the Company of any such restrictive covenant, nor shall it give rise to any claim or cause of action by Employee against the Employer or the Company.

14. **Reasonableness of Restrictions; Reformation; Enforcement .** The parties hereto recognize and acknowledge that the geographical and time limitations contained in **Section 9, Section 10** and **Section 12** hereof are reasonable and properly required for the adequate protection of the Employer's and the Company's interests. Employee acknowledges that the Company or its Affiliate is the owner or the licensee of the Trademarks, and the owner or the licensee of the restaurant operating systems. It is agreed by the parties hereto that if any portion of the restrictions contained in **Section 9, Section 10** or **Section 12** are held to be unreasonable, arbitrary, or against public policy, then the restrictions shall be considered divisible, both as to the time and to the geographical area, with each month of the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy. The parties hereto agree that in the event any court of competent jurisdiction determines the specified period or the specified geographical area of the restricted territory to be unreasonable, arbitrary, or against public policy, a lesser time period or geographical area that is determined to be reasonable, nonarbitrary, and not against public policy may be enforced against Employee. If Employee shall violate any of the covenants contained herein and if any court action is instituted by the Employer or the Company to prevent or enjoin such violation, then the period of time during which the Employee's business activities shall be restricted, as provided in this Agreement, shall be lengthened by a period of time equal to the period between the date of the Employee's breach of the terms or covenants contained in this Agreement and the date on which the decree of the court disposing of the issues upon the merits shall become final and not subject to further appeal.

In the event it is necessary for the Employer or the Company to initiate legal proceedings to enforce, interpret or construe any of the covenants contained in **Section 9, Section 10** or **Section 12** hereof, each party shall pay its own legal fees, and the prevailing party in such proceedings shall be entitled to receive from the non-prevailing party, in addition to all other remedies, all costs of such proceedings including appellate proceedings.

15. **Specific Performance.** Employee agrees that a breach of any of the covenants contained in **Section 9, Section 10** or **Section 12** hereof will cause irreparable injury to the Employer and the Company for which the remedy at law will be inadequate and would be difficult to ascertain and therefore, in the event of the breach or threatened breach of any such covenants, the Employer and the Company shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to obtain an injunction to restrain Employee from any threatened or actual activities in violation of any such covenants. Employee hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings that might be brought to enforce any such covenants without the necessity of proof of actual damages, and in the event the Employer or the Company does apply for such an injunction, Employee shall not raise as a defense thereto that the Employer or the Company has an adequate remedy at law.

16. **Assignability.** This Agreement and the rights and duties created hereunder, shall not be assignable or delegable by Employee. The Employer shall have the right, without Employee's knowledge or consent, to assign this Agreement, in whole or in part and any or all of the rights and duties hereunder, including but not limited to the restrictive covenants of **Section 9, Section 10** and **Section 12** hereof to any person, including but not limited to any Affiliate of the Employer and the Company, or any successor to the Employer and the Company's interest in the restaurants, and Employee shall be bound by such assignment. Any assignee or successor may enforce any restrictive covenant of this Agreement.

17. **Effect of Termination.** For the avoidance of doubt, the termination of this Agreement or expiration of the Term of Employment, for any reason, shall not extinguish those obligations of the Employee specified in **Section 9**, **Section 10**, **Section 12** and **Section 27** hereof.

18. **Captions; Terms.** The captions of this Agreement are for convenience only, and shall not be construed to limit, define, or modify the substantive terms hereof.

19. **Acknowledgments.** Employee hereby acknowledges, that the Employee has been provided with a copy of this Agreement for review prior to signing it, that the Employee has been given a full and sufficient opportunity to consider this Agreement and has been given the opportunity to have this Agreement reviewed by Employee's attorney prior to signing it, that the Employee understands the purposes and effects of this Agreement; and that in agreeing to be bound by this Agreement the Employee has not relied on any promises or representations, express or implied, that are not set forth expressly in this Agreement; and that the Employee has been given a signed copy of this Agreement for Employee's own records.

20. **Notices.** All notices or other communications provided for herein to be given or sent to a party by another party shall be deemed validly given or sent if in writing mailed, postage prepaid, by certified United States mail, return receipt requested, or delivered by hand or consigned to a nationally recognized overnight courier, and addressed to the parties at their addresses set forth in this agreement or at their last known address. Any party may give notice to the other party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed, which change of address shall be effective if notice thereof is actually received.

21. **Severability.** Each section, subsection, and lesser section of this Agreement constitutes a separate and distinct undertaking, covenant, or provision hereof. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

22. **Waiver.** The failure of a party to enforce any term, provision, or condition of this Agreement or failure to insist on strict performance of a covenant hereunder or any obligation hereunder, at any time or times shall not be deemed a waiver of that term, provision, or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a deemed a waiver of such term, provision, or condition for any future time or times.

23. **Parties.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their legal representatives, executors, administrators, heirs, and proper successors or permitted assigns, as the case may be.

24. **Governing Law.** This Agreement takes effect upon its acceptance and execution by the Employer. The validity, interpretation, and performance of this Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof.

25. **Consent to Personal Jurisdiction and Venue.** Employee hereby consents to personal jurisdiction and venue, for any action brought by the Employer or the Company arising out of a breach or threatened breach of this Agreement or out of the relationship established by this Agreement, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida; and, if applicable, the federal and state courts in any jurisdiction where the Employee is employed or resides; the Employee hereby agrees that any action brought by Employee, alone or in combination with others, against the Employer or the Company, whether arising out of this Agreement or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

26. **Affiliate.** Whenever used in this Agreement, the term "Affiliate" shall mean, with respect to any entity, OSI and all persons or entities directly or indirectly controlled by OSI Restaurant Partners, LLC, where control may be by management authority, contract or equity interest.

27. **Cooperation.** Employee shall cooperate fully with all reasonable requests for information and participation by the Employer and the Company, its agents, or its attorneys, in prosecuting or defending claims, suits, and disputes brought on behalf of or against the Employer and the Company and in which Employee is involved or about which Employee has knowledge.

28 **Internal Revenue Code Section 409A Compliance .**

a. Unless otherwise expressly provided, any payment of compensation by Employer to the Employee, whether pursuant to this Agreement or otherwise, shall be made within two and one-half months (2 1/2 months) after the end of the later of the calendar year or the Employer's fiscal year in which the Employee's right to such payment vests (i.e., is not subject to a substantial risk of forfeiture for purposes of Internal Revenue Code Section 409A ("Code Section 409A")). Such amounts shall not be subject to the requirements of subsection (b) below applicable to "nonqualified deferred compensation."

b. All payments of "nonqualified deferred compensation" (within the meaning of Code Section 409A are intended to comply with the requirements of Code Section 409A, and shall be interpreted in accordance therewith. No party individually or in combination may accelerate, offset or assign any such deferred payment, except in compliance with Code Section 409A. No amount shall be paid prior to the earliest date on which it is permitted to be paid under Code Section 409A and Employee shall have no discretion with respect to the timing of payments except as permitted under Section 409A. In the event that the Employee is determined to be a "specified employee" (as defined and determined under Code Section 409A) of Employer or any of its affiliates at a time when its stock is deemed to be publicly traded on an established securities market, payments determined to be "nonqualified deferred compensation" payable by reason of separation from service shall be paid no earlier than (i) the first day of the seventh (7th) calendar month commencing after such termination of employment, or (ii) the Employee's death, consistent with and to the extent necessary to meet the requirements Code Section 409A without the imposition of excise taxes. Any payment delayed by reason of the prior sentence shall be paid out in a single lump sum on the earliest date permitted under Code Section 409A in order to catch up to the original payment schedule. Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause the Agreement or any payment hereunder not to be in compliance with Code Section 409A.

c. The Employee shall be responsible for the payment of all taxes applicable to payments or benefits received from the Employer. It is the intent of the Employer that the provisions of this Agreement and all other plans and programs sponsored by the Employer be interpreted to comply in all respects with Code Section 409A, however, the Employer shall have no liability to the Employee, or any successor or beneficiary thereof, in the event taxes, penalties or excise taxes may ultimately be determined to be applicable to any payment or benefit received by the Employee or any successor or beneficiary thereof.

29. **Amendments.** No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

30. **WAIVER OF JURY TRIAL. ALL PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.**

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THAT THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

31. **Entire Agreement; Counterparts.** This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, and supersedes all prior memoranda, correspondence, conversations, negotiations and agreements, including the Former Agreement. This Agreement may be executed in several identical counterparts that together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

"EMPLOYEE"

/s/ David Berg

Witness

DAVID BERG

Print name

"COMPANY"

Attest:

OUTBACK STEAKHOUSE INTERNATIONAL, L.P., a Georgia limited partnership

By: OSI International, LLC, a Florida limited liability company and its general partner

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

"EMPLOYER"

Attest:

OS MANAGEMENT SERVICES, INC., a Florida corporation

By: /s/ Kelly Lefferts
KELLY LEFFERTS, Assistant Secretary

By: /s/ Joseph J. Kadow
JOSEPH J. KADOW, Chief Legal Officer

OUTBACK STEAKHOUSE INTERNATIONAL®
Amendment To Amended and Restated
Officer Employment Agreement

THIS AMENDMENT TO AMENDED AND RESTATED OFFICER EMPLOYMENT AGREEMENT ("Amendment") is entered into by and among OS MANAGEMENT, INC., a Florida corporation (the "Employer"), OUTBACK STEAKHOUSE INTERNATIONAL, L.P., a Georgia limited partnership (the "Company"), and DAVID BERG (the "Employee") to be effective for all purposes as of January 1, 2012.

WHEREAS, Employer employs Employee and leases Employee to the Company as President of the Company pursuant to that certain Amended and Restated Officer Employment Agreement dated effective September 12, 2011 (the "Employment Agreement"); and

WHEREAS, the parties hereto desire to enter into this Amendment in order to change the Employment Agreement to reflect that the Employee has been promoted to Executive Vice President and President of the Company.

NOW, THEREFORE, intending to be legally bound, for good consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. **Recitals.** The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

2. **Change of Employee's Title.** The parties acknowledge and agree that all references in the Employment Agreement to the Employee being employed as President of the Company are hereby amended to state that the Employee is employed as Executive Vice President and President of the Company effective January 1, 2012.

3. **Ratification.** All other terms of the Employment Agreement as amended hereby are hereby ratified and confirmed by each party.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as set forth above.

"EMPLOYEE"

/s/ David Berg
DAVID BERG

"COMPANY"

Attest:

OUTBACK STEAKHOUSE INTERNATIONAL, L.P., a Georgia limited partnership

By: OSI International, LLC, a Florida limited liability company and its general partner

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Executive Vice President

"EMPLOYER"

Attest:

OS MANAGEMENT SERVICES, INC.,
a Florida corporation

By: /s/ Kelly Lefferts
Kelly Lefferts, Assistant Secretary

By: /s/ Joseph J. Kadow
Joseph J. Kadow, Chief Legal Officer

Exhibit 10.40

OPTION AGREEMENT

Optionee: Elizabeth A. Smith

This Option and any securities issued upon exercise of this Option are subject to restrictions on voting and transfer and requirements of sale and other provisions as set forth in the Stockholders Agreement among Kangaroo Holdings, Inc. and certain investors, dated as of June 14, 2007 (as amended from time to time, the "Stockholders Agreement") and in the Registration Rights Agreement among Kangaroo Holdings, Inc. and certain investors, dated as of June 14, 2007 (as amended from time to time, the " Registration Rights Agreement"). This Option and any securities issued upon exercise of this Option constitute Management Shares as defined in the Stockholders Agreement.

KANGAROO HOLDINGS, INC.

OPTION AGREEMENT

The option described in this agreement (the "Agreement") is granted by Kangaroo Holdings, Inc., a Delaware corporation (the " Company"), to the undersigned (the "Optionee"), pursuant to the Company's 2007 Equity Incentive Plan (as amended from time to time, the " Plan"), which is incorporated herein by reference, and of which the Optionee hereby acknowledges receipt. Unless otherwise expressly provided for herein, capitalized terms used but not defined herein shall have the meanings set forth in the Plan. The terms "Cause," "Good Reason" and "Disability" shall have the meaning set forth in the Optionee's Employment Agreement with OSI Restaurant Partners, LLC and the Company (with respect to certain sections only) dated November 2, 2009 and effective November 16, 2009 (the "Employment Agreement"). For the purpose of this Agreement, the " Grant Date" shall mean November 16, 2009.

1. Grant of Option. The Agreement evidences the grant by the Company on the Grant Date to the Optionee of an option to purchase (the " Option"), in whole or in part, on the terms provided herein and in the Plan, the number of shares of Common Stock of the Company (the " Option Shares"), as set forth below and in each case subject to adjustment pursuant to Section 7 of the Plan in respect of transactions occurring after the date hereof:

(a) 1,087,500 Shares at $3.00 per Option Share (the "Tranche A Option Shares");

(b) 1,087,500 Shares at $3.00 per Option Share (the "Tranche B Option Shares");

(c) 1,087,500 Shares at $3.00 per Option Share (the "Tranche C Option Shares");

(d) 1,087,500 Shares at $3.00 per Option Share (the "Tranche D Option Shares");

The Option evidenced by this Agreement is a non-statutory option (that is, an option that is not treated as a stock option described in subsection (b) of Section 422 of the Code) and is granted to the Optionee in connection with the Optionee's Employment by the Company and its qualifying subsidiaries. For purposes of the immediately preceding sentence, "qualifying subsidiary" means a subsidiary of the Company as to which the Company has a "controlling interest" as described in Treas. Reg. §1.409A-1(b)(5)(iii)(E)(1).

2. Vesting. Shares subject to the Option, unless earlier terminated or forfeited, will become vested and exercisable as follows:

(a) Tranche A: The Tranche A Option Shares shall vest and become exercisable in five (5) equal installments (each with respect to 20% of the Tranche A Option Shares) on each of the first, second, third, fourth, and fifth anniversary of the Grant Date, subject, in each case, to the Optionee remaining in continuous Employment on each applicable vesting date.

(b) Tranche B: The Tranche B Option Shares shall become vested, but shall not become exercisable except as otherwise provided below, in five (5) equal installments (each with respect to 20% of the Tranche B Option Shares) on each of the first, second, third, fourth, and fifth anniversary of the Grant Date, subject, in each case, to the Optionee remaining in continuous Employment on each applicable vesting date. The Tranche B Option Shares shall only become exercisable upon a Qualifying Liquidity Event B. The Tranche B Option Shares which are vested as of the date of a Qualifying Liquidity Event B shall be exercisable immediately upon such Qualifying Liquidity Event B, and Tranche B Option Shares which are not yet vested as of a Qualifying Liquidity Event B and which thereafter become vested as a result of the Optionee's continued Employment shall become exercisable as of the date they become vested as provided for in this subsection (b) (unless they have ceased to be outstanding under Section 4 below).

(c) Tranche C: The Tranche C Option Shares shall become vested, but shall not become exercisable except as otherwise provided below, in five (5) equal installments (each with respect to 20% of the Tranche C Option Shares) on each of the first, second, third, fourth, and fifth anniversary of the Grant Date, subject, in each case, to the Optionee remaining in continuous Employment on each applicable vesting date. The Tranche C Option Shares shall only become exercisable upon a Qualifying Liquidity Event C. The Tranche C Option Shares which are vested as of the date of a Qualifying Liquidity Event C shall be exercisable immediately upon such Qualifying Liquidity Event C, and Tranche C Option Shares which are not yet vested as of a Qualifying Liquidity Event C and which thereafter become vested as a result of the Optionee's continued Employment shall become exercisable as of the date they become vested as provided for in this subsection (c) (unless they have ceased to be outstanding under Section 4 below).

(d) Tranche D: The Tranche D Option Shares shall become vested, but shall not become exercisable except as otherwise provided below, in five (5) equal installments (each with respect to 20% of the Tranche D Option Shares) on each of the first, second, third, fourth, and fifth anniversary of the Grant Date, subject, in each case, to the Optionee remaining in continuous Employment on each

applicable vesting date. The Tranche D Option Shares shall only become exercisable upon a Qualifying Liquidity Event D. The Tranche D Option Shares which are vested as of the date of a Qualifying Liquidity Event D shall be exercisable immediately upon such Qualifying Liquidity Event D, and Tranche D Option Shares which are not yet vested as of a Qualifying Liquidity Event D and which thereafter become vested as a result of the Optionee's continued Employment shall become exercisable as of the date they become vested as provided for in this subsection (d) (unless they have ceased to be outstanding under Section 4 below).

(e) Special Rules. Notwithstanding any contrary provision of subsections (a), (b) (c) or (d) of this Section 2, (i) the Tranche A, B, C or D Option Shares, to the extent then outstanding, shall become fully vested and exercisable upon a termination of Employment by the Optionee for any reason on or after the first anniversary of an Applicable Qualifying CIC Liquidity Event, and (ii) in the event of termination of the Optionee's Employment (X) by the Company without Cause or (Z) by the Optionee for Good Reason, the Applicable Percentage of the Option Shares that have not yet vested as of the date of such Employment termination shall vest immediately upon such termination of Employment, and shall become exercisable either immediately, in the case of Tranche A Option Shares, or, to the extent then outstanding, upon an Applicable Qualifying Liquidity Event (or immediately in the event an Applicable Qualifying Liquidity Event has occurred prior to such termination of employment), in the case of Tranche B, C or D Option Shares. For the avoidance of doubt, upon the occurrence of a Change in Control that does not meet the requirements of a Qualifying CIC Liquidity Event B, a Qualifying CIC Liquidity Event C, or a Qualifying CIC Liquidity Event D, any tranche of Option Shares that does not become exercisable as a result of such Change in Control shall immediately expire upon such Change in Control.

3. Exercise of Option. Each election to exercise this Option shall be subject to the terms and conditions of the Plan and the Agreement and shall be in writing, signed by the Optionee, or by her executor or administrator, or by the person or persons to whom this Option is transferred by will or the applicable laws of descent and distribution (the "Legal Representative"), and made pursuant to and in accordance with the terms and conditions set forth in the Plan. The latest date on which this Option may be exercised (the "Final Exercise Date") is the date which is the tenth (10th) anniversary of the Grant Date, subject to earlier termination in accordance with the terms and provisions of the Plan and this Agreement.

4. Cessation of Employment. Unless the Administrator determines otherwise, the following will apply if the Optionee's Employment ceases:

(a) To the extent the Option is not vested prior to, or does not become vested and exercisable as a result of, the termination of the Optionee's Employment, the Option will be forfeited immediately by the Optionee and will terminate with no consideration due to the Optionee.

(b) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding for one year following such termination of Employment in the case of a termination of Employment on account of the Optionee's death or Disability.

(c) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding for ninety (90) days in the case of Tranche A Option Shares, and one hundred eighty (180) days in the case of Tranche B, C, or D Option Shares following such termination of Employment in the case of a termination of Employment by the Optionee for any reason other than Good Reason that occurs prior to the occurrence of a Qualifying Liquidity Event.

(d) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding following such termination of Employment in the case of a termination of Employment by the Company without Cause or by the Optionee for Good Reason that occurs prior to the occurrence of a Qualifying Liquidity Event in accordance with the following schedule:

(i) The vested portion of the Tranche A Option Shares shall remain outstanding for one hundred and eighty (180) days following such termination of Employment; and

(ii) 100% of the vested portion of the Tranche B, C and D Option Shares shall remain outstanding for one year following such termination of Employment and on the one-year anniversary of such termination of Employment, 1/3 of the vested portion of the Tranche B, C and D Option Shares shall expire; 2/3 of the vested portion of the Tranche B, C and D Option Shares shall remain outstanding for two years following such termination of Employment and on the two-year anniversary of such termination of Employment, an additional 1/3 of the vested portion of the Tranche B, C and D Option Shares shall expire; and the remaining 1/3 of the vested portion of the Tranche B, C and D Option Shares shall remain outstanding for three years following such termination of Employment.

(e) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding following such termination of Employment in the case of a termination of Employment by the Company without Cause or by the Optionee for any reason, including Good Reason, in each case, that occurs on or following the occurrence of a Qualifying Liquidity Event, for ninety (90) days following such termination of Employment.

(f) To the extent that the Optionee is prohibited from exercising the Option or from selling Option Shares at any time during the applicable exercise period described

above as a result of, (x) in connection with an Initial Public Offering, a lock-up agreement entered into by the Optionee with the underwriter(s) of the Initial Public Offering or (y) a requirement of applicable securities law (as reasonably determined by the Company) (in either case, a "Restricted Period"), then the period of time during which the Optionee may exercise the Option shall be tolled during the Restricted Period (it being understood that this provision shall not increase the aggregate number of days outside a Restricted Period during which the Optionee shall be entitled to exercise the Option under this Section 4).

(g) The Option will immediately terminate if the Optionee's Employment is terminated by the Company for Cause.

(h) In no event shall the Option be exercisable after the Final Exercise Date.

5. Representations and Warranties of the Parties. Each of the Company and the Optionee represent and warrant to each other that:

(a) Authorization. Such party has full legal capacity, power and authority to execute and deliver this Agreement, and to perform such party's obligations hereunder. This Agreement has been duly executed and delivered by such party, and is the legal, valid and binding obligation of such party, enforceable against such party in accordance with the terms hereof.

(b) No Conflicts. The execution, delivery and performance by such party of this Agreement, and the consummation by such party of the transactions contemplated hereby, will not, with or without the giving of notice or lapse of time, or both (i) violate any provision of law, statute, rule or regulation to which such party is subject, (ii) violate in any material respect any order, judgment or decree applicable to such party or (iii) conflict with, or result in a breach or default under, any term or condition of any agreement or other instrument to which such party is a party or by which such party is bound.

(c) No Other Agreements. Except as provided by this Agreement, the Stockholders Agreement, the Registration Rights Agreement and the Plan, such party is not a party to or subject to any agreement or arrangement with respect to the voting or transfer of this Option or the shares of Stock issued upon exercise hereof.

(d) Thorough Review, Etc. Optionee has thoroughly reviewed the Plan and this Agreement in their entirety. Optionee has had an opportunity to obtain the advice of independent counsel (other than counsel to the Company or its Affiliates) prior to executing this Agreement, and fully understands all provisions of the Plan and this Agreement.

6. Other Agreements. Optionee acknowledges and agrees that the shares of Stock received upon exercise of this Option shall be subject to the Stockholders Agreement and the Registration Rights Agreement in accordance with their respective terms, and to the transfer and other restrictions, rights and obligations set forth therein; provided, however, that with respect to the Management Call Option (as defined in the Stockholders Agreement) as applied to the Optionee's Option Shares:

(a) Section 5.1.1(c) of the Stockholders Agreement, as applied to the Optionee's Option Shares, is modified as follows: If a termination of Employment is the result of a termination of Employment by the Optionee, then the Company may purchase all or any portion of the Option Shares at a per Share price equal to the Fair Market Value of such Shares.

(b) Section 5.1.2 of the Stockholders Agreement, as applied to the Optionee's Option Shares, is modified as follows: a Management Call Option may be exercised by delivery of the Management Call Notice (as defined in the Stockholders Agreement) to Optionee no later than the 90th day (or, in the case of termination of Employment by the Company other than for Cause or by the Optionee for Good Reason, no earlier than the 181st day and no later than the 210th day) after the later of (a) effectiveness of the applicable termination of Employment and (b) the date on which any Option Shares are purchased by the Optionee. The Management Call Notice shall state that the Company has elected to exercise the Management Call Option, and the number and price of the Shares with respect to which the Management Call Option is being exercised.

By executing this Agreement, Optionee hereby becomes a party to and bound by the Stockholders Agreement and Registration Rights Agreement as a Manager (as such term is defined in the Stockholders Agreement), without any further action on the part of Optionee, the Company or any other person.

7. Legends. Certificates evidencing any shares issued upon exercise of the Option granted hereby shall bear such legends as are required by the Stockholders Agreement, and as may be determined by the Administrator prior to issuance.

8. Withholding; Satisfaction of Exercise Price. No Stock will be transferred pursuant to the exercise of this Option unless and until the person exercising this Option shall have remitted to the Company an amount sufficient to satisfy any federal, state or local withholding tax requirements, or shall have made other arrangements satisfactory to the Company with respect to such taxes. Notwithstanding anything to the contrary herein or in the Plan, the Administrator shall permit the Optionee (or her permitted transferees, if applicable), at the Optionee's (or her permitted transferees') election, to exercise all or any portion of her then-exercisable Option through net-physical settlement (i.e. withholding of shares of Stock equal in value to the exercise price in lieu of delivery by the Optionee of the exercise price) or by delivery of shares of Stock owned by the Optionee (to satisfy both the exercise price and any applicable withholding taxes), to the extent permitted under Section 409A of the Code.

9. Nontransferability of Option. This Option is not transferable by the Optionee other than by will or the applicable laws of descent and distribution, and is exercisable during the Optionee's lifetime only by the Optionee.

10. Effect on Employment. Neither the grant of this Option, nor the issuance of Stock upon exercise of this Option, shall give the Optionee any right to be retained in the employ of the Company or its Affiliates, affect the right of the Company or its Affiliates to discharge or discipline such Optionee at any time or affect any right of such Optionee to terminate her Employment at any time.

11. Provisions of the Plan. This Option is subject in its entirety to the provisions of the Plan, which are incorporated herein by reference. A copy of the Plan as in effect on the date of the grant of this Option has been furnished to the Optionee. By exercising all or any part of this Option, the Optionee agrees to be bound by the terms of the Plan and this Option. In the event of any conflict between the terms of this Option and the Plan, the terms of this Option shall control.

12. Dividends. In the event the Company pays a dividend (whether in cash or other property) to its stockholders: (a) with respect to the portion, if any, of the Option outstanding on the record date for such dividend (the "Dividend Record Date") that is vested and exercisable as of such Dividend Record Date, the Company shall pay to the Optionee (or her permitted transferees) on the date the dividend is actually paid, pursuant to a separate arrangement that shall in no way be contingent upon the exercise (in whole or in part) of the Option, a bonus in respect of each Option Share underlying such portion of the Option that is vested and exercisable on the Dividend Record Date equal to the per share dividend that was actually paid to the Company stockholders in respect of each share of Company Common Stock outstanding on the Dividend Record Date (which bonus shall be payable in the same form of consideration as is received by the Company stockholders in respect of such dividend); and (b) with respect to the portion, if any, of the Option outstanding on the Dividend Record Date that is unvested or unexercisable as of such Dividend Record Date, the Company shall pay to the Optionee (or her permitted transferees) on the applicable date or dates set forth in the immediately succeeding sentence, pursuant to a separate arrangement that shall in no way be contingent upon the exercise (in whole or in part) of the Option, a bonus in respect of each Option Share underlying such portion of the Option that is unvested or unexercisable on the Dividend Record Date (such bonus, the "Designated Bonus") equal to the per share dividend that was actually paid to the Company stockholders in respect of each share of Company Common Stock outstanding on the Dividend Record Date (which bonus shall be payable in the same form of consideration as is received by the Company stockholders in respect of such dividend). Any Designated Bonus will be paid (1) in the case of a Designated Bonus that relates to Tranche A Option Shares, in pro rata installments on each vesting date for such Tranche A Option Shares that follows the Dividend Record Date, subject to Optionee's continued Employment through and including such applicable vesting date, commencing with the first vesting date following the Dividend Record Date, or (2) in the case of a Designated Bonus that relates to Tranche B, C or D Option Shares, on the date the applicable portion of the Option becomes exercisable (if at all), based on the number of Option Shares for which the Option so becomes exercisable on such date, subject to the Optionee's continued Employment through and including such applicable vesting date. If it is determined that any adjustment or payment referred to in this Section 12 does not comply with Section 409A of the Code, or would cause any tax to become due under Section 409A, or adversely effects the Option, the Company and the Optionee shall use their reasonable efforts and take reasonable actions necessary to put the Optionee in the same position she would have been in if the payment was permitted or would not cause a tax to become due under Section 409A, to the extent reasonably practicable. It is the intent of the parties that any adjustment or payment under this Section 12 comply with the requirements of Section 409A of the Code.

13. Definitions. The initially capitalized terms used herein shall have the meanings set forth in the Plan and:

"Aggregate Consideration" means, as of any determination date after the Grant Date, the sum of (a) the cumulative total of all proceeds from sale, exchange, or other disposition, including pledge or hypothecation of Company securities, actually received after the Grant Date and on or prior to such determination date by the Investors in the form of (i) cash or cash equivalents in each case in respect of the Investor Shares and (ii) securities or other property other than cash in respect of the Investor Shares plus (b) the value of any previous dividends or other distributions to Investors in respect of their Investor Shares. The amount of Aggregate Consideration shall be equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure. Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Investors in respect of Investor Shares, excluding, for the avoidance of doubt, any management, consulting, monitoring, advisory, transaction or similar fee or payment of expenses received by the Investors or any of its affiliates; and

(ii) insofar as it consists of securities or other property other than cash, be computed at the fair market value thereof at the time of receipt, as determined in good faith by the Board.

"Applicable Percentage" shall mean (a) if an Applicable Qualifying CIC Liquidity Event has occurred, one hundred percent (100%), and (b) otherwise, fifty percent (50%).

"Applicable Qualifying CIC Liquidity Event" means in the case of Tranche A Option Shares, a Qualifying CIC Liquidity Event A, in the case of Tranche B Option Shares, a Qualifying CIC Liquidity Event B, in the case of Tranche C Option Shares, a Qualifying CIC Liquidity Event C, and in the case of Tranche D Option Shares, a Qualifying CIC Liquidity Event D.

"Applicable Qualifying Liquidity Event" means in the case of Tranche B Option Shares, a Qualifying Liquidity Event B, in the case of Tranche C Option Shares, a Qualifying Liquidity Event C, and in the case of Tranche D Option Shares, a Qualifying Liquidity Event D.

"Cause" shall have the meaning ascribed to it in the Employment Agreement.

"Disability" shall have the meaning ascribed to it in the Employment Agreement.

"Fair Market Value" in the event of the exercise of the call option under Section 5 of the Stockholders Agreement, shall have the meaning set forth in the Plan; provided, however, that, prior to the existence of a Public Market, in the event that the Optionee delivers a written notice to the Company disputing the Company's determination of Fair Market Value within five days of receiving such determination, the Fair Market Value will be determined by a mutually

acceptable, nationally recognized independent investment bank ranking among the top twenty financial advisors in the Thomson Reuters Mergers and Acquisitions (US Target Completed) league tables (or, if such tables are no longer prepared, the equivalent thereof) for the quarter completed immediately prior to such determination (a "Qualified Investment Bank"), and such value will be based on the standards set forth in the Plan. In the event the Company and the Optionee are unable to reach agreement upon a mutually acceptable "Qualified Investment Bank" within 20 days of such notice, the Company and the Optionee shall each select a Qualified Investment Bank within 25 days of such notice, which two investment banks shall select a third Qualified Investment Bank to make such determination within five (5) days of their selection. The costs and expenses of such investment banks shall be shared equally by the Company and the Optionee.

"Good Reason" shall have the meaning ascribed to it in the Employment Agreement.

"Initial Public Offering" shall have the meaning ascribed to it in the Stockholders Agreement.

"Investors" shall have the meaning ascribed to it in the Stockholders Agreement.

"Investor Shares" shall have the meaning ascribed to it in the Stockholders Agreement.

"Qualifying CIC Liquidity Event A" means the occurrence of a Change in Control.

"Qualifying CIC Liquidity Event B" means the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $5.00 multiplied by the number of Investor Shares.

"Qualifying CIC Liquidity Event C" means the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $7.50 multiplied by the number of Investor Shares.

"Qualifying CIC Liquidity Event D" means the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $10.00 multiplied by the number of Investor Shares.

"Qualifying Liquidity Event" shall mean the first to occur of an Initial Public Offering or a Change in Control.

"Qualifying Liquidity Event B" means (i) the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $5.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) multiplied by the number of Investor Shares or (ii) following an Initial Public Offering, the volume-weighted average Trading Price during the applicable period described below (such average Trading Price to be determined using a volume-weighted average of the Trading Price for each Trading Day occurring during such period) is equal to or more than $5.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) less an amount per share equal to the quotient obtained by dividing (x) the Aggregate Consideration received by the Investors prior to the applicable Measurement

Date (as defined below) by (y) the Investor Shares, measured, in each case, as of the date that is six (6) months following an Initial Public Offering and on each Trading Day thereafter (each such date, a "Measurement Date") with the Trading Price calculated for the applicable immediately preceding six-month period (until the earlier of the expiration of the Option by its terms hereunder or the attainment of such Trading Price on the terms provided for herein).

"Qualifying Liquidity Event C" means (i) the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $7.50 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) multiplied by the number of Investor Shares or (ii) following an Initial Public Offering, the volume-weighted average Trading Price during the applicable period described below (such average Trading Price to be determined using a volume-weighted average of the Trading Price for each Trading Day occurring during such period) is equal to or more than $7.50 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) less an amount per share equal to the quotient obtained by dividing (x) the Aggregate Consideration received by the Investors prior to the applicable Measurement Date by (y) the Investor Shares, measured, in each case, on each Measurement Date with the Trading Price calculated for the applicable immediately preceding six-month period (until the earlier of the expiration of the Option by its terms hereunder or the attainment of such Trading Price on the terms provided for herein).

"Qualifying Liquidity Event D" means (i) the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $10.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) multiplied by the number of Investor Shares or (ii) following an Initial Public Offering, the volume-weighted average Trading Price during the applicable period described below (such average Trading Price to be determined using a volume-weighted average of the Trading Price for each Trading Day occurring during such period) is equal to or more than $10.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) less an amount per share equal to the quotient obtained by dividing (x) the Aggregate Consideration received by the Investors prior to the applicable Measurement Date divided by (y) the Investor Shares, measured, in each case, on each Measurement Date with the Trading Price calculated for the applicable immediately preceding six-month period (until the earlier of the expiration of the Option by its terms hereunder or the attainment of such Trading Price on the terms provided for herein).

"Trading Day" means each business day during such calendar quarter in which the Trading Price of the Stock is reported by the principal securities exchange on which such security is then listed or admitted to trade.

"Trading Price" means the closing price on such Trading Day of a share of Stock as reported on the principal securities exchange on which shares of Stock are then listed or admitted to trade. In the event that the price of a share of Stock is not so reported, the Trading Price will be determined by the Board in good faith.

IN WITNESS WHEREOF, the Company has caused this Option to be executed under its corporate seal by its duly authorized officer. This Option shall take effect as a sealed instrument.

KANGAROO HOLDINGS, INC.

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Dated:

Acknowledged and Agreed

/s/ Elizabeth S. Smith
Name: Elizabeth Smith

Address of Principal Residence:

KANGAROO HOLDINGS, INC.

AMENDMENT TO OPTION AGREEMENT

Amendment to the Option Agreement (this "Amendment") made and entered into this 31st day of December, 2009 by and between Elizabeth A. Smith (the "Optionee") and Kangaroo Holdings, Inc., a Delaware corporation (the "Company"). Unless otherwise expressly provided for herein, capitalized terms used but not defined herein shall have the meanings set forth in the Company's 2007 Equity Incentive Plan (the "Plan").

WHEREAS, in connection with the Optionee's employment, on November 16, 2009, the Company granted the Optionee an option to purchase 4,350,000 shares of Company common stock under the Plan with an exercise price equal to $3.00 per share (the "Option") on the terms and conditions contained in that certain Option Agreement between the Company and the Optionee dated as of that same date (the "Option Agreement"); and

WHEREAS, the Company deems it advisable and in the best interest of the Company to increase the exercise price of the Option to $6.50 per share.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, terms, provisions, and conditions set forth in this Agreement, the parties hereby agree:

1. Sections 1(a), (b), (c) and (d) of the Option Agreement are hereby amended in their entirety to read as follows:

"(a) 1,087,500 Shares at $6.50 per Option Share (the "Tranche A Option Shares");

(b) 1,087,500 Shares at $6.50 per Option Share (the "Tranche B Option Shares");

(c) 1,087,500 Shares at $6.50 per Option Share (the "Tranche C Option Shares"); and

(d) 1,087,500 Shares at $6.50 per Option Share (the "Tranche D Option Shares")."

2. Except as expressly modified by this Amendment, the Option Agreement shall remain in full force and effect in accordance with its terms.

[*The remainder of the page intentionally left blank.*]

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by each of the Company, by its respective duly authorized representatives, and by the Executive, as of the date first above written.

THE EXECUTIVE:

By: /s/ Elizabeth A. Smith
Elizabeth A. Smith

THE COMPANY:

By: /s/ Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.41

Execution Copy

OPTION AGREEMENT

Optionee: Elizabeth A. Smith

This Option and any securities issued upon exercise of this Option are subject to restrictions on voting and transfer and requirements of sale and other provisions as set forth in the Stockholders Agreement among Kangaroo Holdings, Inc. and certain investors, dated as of June 14, 2007 (as amended from time to time, the "Stockholders Agreement") and in the Registration Rights Agreement among Kangaroo Holdings, Inc. and certain investors, dated as of June 14, 2007 (as amended from time to time, the "Registration Rights Agreement"). This Option and any securities issued upon exercise of this Option constitute Management Shares as defined in the Stockholders Agreement.

KANGAROO HOLDINGS, INC.

OPTION AGREEMENT

The option described in this agreement (the "Agreement") is granted by Kangaroo Holdings, Inc., a Delaware corporation (the "Company"), to the undersigned (the "Optionee"), pursuant to the Company's 2007 Equity Incentive Plan (as amended from time to time, the "Plan"), which is incorporated herein by reference, and of which the Optionee hereby acknowledges receipt. Unless otherwise expressly provided for herein, capitalized terms used but not defined herein shall have the meanings set forth in the Plan. The terms "Cause," "Good Reason" and "Disability" shall have the meaning set forth in the Optionee's Employment Agreement with OSI Restaurant Partners, LLC and the Company (with respect to certain sections only) dated November 2, 2009, effective November 16, 2009 and as amended and restated as of December 31, 2009 (the "Employment Agreement"). For the purpose of this Agreement, the "Grant Date" shall mean July 1, 2011.

1. Grant of Option. The Agreement evidences the grant by the Company on the Grant Date to the Optionee of an option to purchase (the "Option"), in whole or in part, on the terms provided herein and in the Plan, 550,000 of shares of Common Stock of the Company (the "Option Shares"), subject to adjustment pursuant to Section 7 of the Plan in respect of transactions occurring after the date hereof, with an exercise price of $10.03 per Option Share.

The Option evidenced by this Agreement is a non-statutory option (that is, an option that is not treated as a stock option described in subsection (b) of Section 422 of the Code) and is granted to the Optionee in connection with the Optionee's Employment by the Company and its qualifying subsidiaries. For purposes of the immediately preceding sentence, "qualifying subsidiary" means a subsidiary of the Company as to which the Company has a "controlling interest" as described in Treas. Reg. §1.409A-1(b)(5)(iii)(E)(1).

2. Vesting. Shares subject to the Option, unless earlier terminated or forfeited, will become vested and exercisable as follows:

(a) The Option Shares shall vest and become exercisable in five (5) equal installments (each with respect to 20% of the Option Shares) on each of the first, second, third, fourth, and fifth anniversary of the Grant Date, subject, in each case, to the Optionee remaining in continuous Employment on each applicable vesting date.

(b) Special Rules. Notwithstanding any contrary provision of subsection (a) of this Section 2, (i) the Option Shares, to the extent then outstanding, shall become fully vested and exercisable upon a termination of Employment by the Optionee for any reason on or after the first anniversary of a Change in Control, and (ii) in the event of termination of the Optionee's Employment (X) by the Company without Cause or (Z) by the Optionee for Good Reason, the Applicable Percentage of the Option Shares that have not yet vested as of the date of such Employment termination shall vest immediately upon such termination of Employment, and shall become exercisable immediately.

3. Exercise of Option. Each election to exercise this Option shall be subject to the terms and conditions of the Plan and the Agreement and shall be in writing, signed by the Optionee, or by her executor or administrator, or by the person or persons to whom this Option is transferred by will or the applicable laws of descent and distribution (the "Legal Representative"), and made pursuant to and in accordance with the terms and conditions set forth in the Plan. The latest date on which this Option may be exercised (the "Final Exercise Date") is the date which is the tenth (10th) anniversary of the Grant Date, subject to earlier termination in accordance with the terms and provisions of the Plan and this Agreement.

4. Cessation of Employment. Unless the Administrator determines otherwise, the following will apply if the Optionee's Employment ceases:

(a) To the extent the Option is not vested prior to, or does not become vested and exercisable as a result of, the termination of the Optionee's Employment, the Option will be forfeited immediately by the Optionee and will terminate with no consideration due to the Optionee.

(b) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding for one year following such termination of Employment in the case of a termination of Employment on account of the Optionee's death or Disability.

(c) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding for ninety (90) days following such termination of Employment in the case of a termination of Employment by the Optionee for any reason other than Good Reason that occurs prior to the occurrence of a Qualifying Liquidity Event.

(d) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding following such termination of Employment in the case of a termination of Employment by the Company without Cause or by the Optionee for Good Reason, in each case, that occurs prior to the occurrence of a Qualifying Liquidity Event for one hundred and eighty (180) days following such termination of Employment.

(e) To the extent the Option is vested prior to termination of Employment, or becomes vested as a result of such termination of Employment, the Option will remain outstanding following such termination of Employment in the case of a termination of Employment by the Company without Cause or by the Optionee for any reason, including Good Reason, in each case, that occurs on or following the occurrence of a Qualifying Liquidity Event, for ninety (90) days following such termination of Employment.

(f) To the extent that the Optionee is prohibited from exercising the Option or from selling Option Shares at any time during the applicable exercise period described above as a result of, (x) in connection with an Initial Public Offering, a lock-up agreement entered into by the Optionee with the underwriter(s) of the Initial Public Offering or (y) a requirement of applicable securities law (as reasonably determined by the Company) (in either case, a "Restricted Period"), then the period of time during which the Optionee may exercise the Option shall be tolled during the Restricted Period (it being understood that this provision shall not increase the aggregate number of days outside a Restricted Period during which the Optionee shall be entitled to exercise the Option under this Section 4).

(g) The Option will immediately terminate if the Optionee's Employment is terminated by the Company for Cause.

(h) In no event shall the Option be exercisable after the Final Exercise Date.

5. Representations and Warranties of the Parties. Each of the Company and the Optionee represent and warrant to each other that:

(a) Authorization. Such party has full legal capacity, power and authority to execute and deliver this Agreement, and to perform such party's obligations hereunder. This Agreement has been duly executed and delivered by such party, and is the legal, valid and binding obligation of such party, enforceable against such party in accordance with the terms hereof.

(b) No Conflicts. The execution, delivery and performance by such party of this Agreement, and the consummation by such party of the transactions contemplated hereby, will not, with or without the giving of notice or lapse of time, or both (i) violate any provision of law, statute, rule or regulation to which such party is subject, (ii) violate

in any material respect any order, judgment or decree applicable to such party or (iii) conflict with, or result in a breach or default under, any term or condition of any agreement or other instrument to which such party is a party or by which such party is bound.

(c) No Other Agreements. Except as provided by this Agreement, the Stockholders Agreement, the Registration Rights Agreement and the Plan, such party is not a party to or subject to any agreement or arrangement with respect to the voting or transfer of this Option or the shares of Stock issued upon exercise hereof.

(d) Thorough Review, Etc. Optionee has thoroughly reviewed the Plan and this Agreement in their entirety. Optionee has had an opportunity to obtain the advice of independent counsel (other than counsel to the Company or its Affiliates) prior to executing this Agreement, and fully understands all provisions of the Plan and this Agreement.

6. Other Agreements. Optionee acknowledges and agrees that the shares of Stock received upon exercise of this Option shall be subject to the Stockholders Agreement and the Registration Rights Agreement in accordance with their respective terms, and to the transfer and other restrictions, rights and obligations set forth therein; provided, however, that with respect to the Management Call Option (as defined in the Stockholders Agreement) as applied to the Optionee's Option Shares:

(a) Section 5.1.1(c) of the Stockholders Agreement, as applied to the Optionee's Option Shares, is modified as follows: If a termination of Employment is the result of a termination of Employment by the Optionee, then the Company may purchase all or any portion of the Option Shares at a per Share price equal to the Fair Market Value of such Shares.

(b) Section 5.1.2 of the Stockholders Agreement, as applied to the Optionee's Option Shares, is modified as follows: a Management Call Option may be exercised by delivery of the Management Call Notice (as defined in the Stockholders Agreement) to Optionee no later than the 90th day (or, in the case of termination of Employment by the Company other than for Cause or by the Optionee for Good Reason, no earlier than the 181st day and no later than the 210th day) after the later of (a) effectiveness of the applicable termination of Employment and (b) the date on which any Option Shares are purchased by the Optionee. The Management Call Notice shall state that the Company has elected to exercise the Management Call Option, and the number and price of the Shares with respect to which the Management Call Option is being exercised.

By executing this Agreement, Optionee hereby becomes a party to and bound by the Stockholders Agreement and Registration Rights Agreement as a Manager (as such term is defined in the Stockholders Agreement), without any further action on the part of Optionee, the Company or any other person.

7. Legends. Certificates evidencing any shares issued upon exercise of the Option granted hereby shall bear such legends as are required by the Stockholders Agreement, and as may be determined by the Administrator prior to issuance.

8. Withholding; Satisfaction of Exercise Price. No Stock will be transferred pursuant to the exercise of this Option unless and until the person exercising this Option shall have remitted to the Company an amount sufficient to satisfy any federal, state or local withholding tax requirements, or shall have made other arrangements satisfactory to the Company with respect to such taxes. Notwithstanding anything to the contrary herein or in the Plan, the Administrator shall permit the Optionee (or her permitted transferees, if applicable), at the Optionee's (or her permitted transferees') election, to exercise all or any portion of her then-exercisable Option through net-physical settlement (i.e. withholding of shares of Stock equal in value to the exercise price in lieu of delivery by the Optionee of the exercise price) or by delivery of shares of Stock owned by the Optionee (to satisfy both the exercise price and any applicable withholding taxes), to the extent permitted under Section 409A of the Code.

9. Nontransferability of Option. This Option is not transferable by the Optionee other than by will or the applicable laws of descent and distribution, and is exercisable during the Optionee's lifetime only by the Optionee.

10. Effect on Employment. Neither the grant of this Option, nor the issuance of Stock upon exercise of this Option, shall give the Optionee any right to be retained in the employ of the Company or its Affiliates, affect the right of the Company or its Affiliates to discharge or discipline such Optionee at any time or affect any right of such Optionee to terminate her Employment at any time.

11. Provisions of the Plan. This Option is subject in its entirety to the provisions of the Plan, which are incorporated herein by reference. A copy of the Plan as in effect on the date of the grant of this Option has been furnished to the Optionee. By exercising all or any part of this Option, the Optionee agrees to be bound by the terms of the Plan and this Option. In the event of any conflict between the terms of this Option and the Plan, the terms of this Option shall control.

12. Dividends. In the event the Company pays a dividend (whether in cash or other property) to its stockholders: (a) with respect to the portion, if any, of the Option outstanding on the record date for such dividend (the " Dividend Record Date") that is vested and exercisable as of such Dividend Record Date, the Company shall pay to the Optionee (or her permitted transferees) on the date the dividend is actually paid, pursuant to a separate arrangement that shall in no way be contingent upon the exercise (in whole or in part) of the Option, a bonus in respect of each Option Share underlying such portion of the Option that is vested and exercisable on the Dividend Record Date equal to the per share dividend that was actually paid to the Company stockholders in respect of each share of Company Common Stock outstanding on the Dividend Record Date (which bonus shall be payable in the same form of consideration as is received by the Company stockholders in respect of such dividend); and (b) with respect to the portion, if any, of the Option outstanding on the Dividend Record Date that is unvested or unexercisable as of such Dividend Record Date, the Company shall pay to the Optionee (or her permitted transferees) on the applicable date or dates set forth in the immediately succeeding

sentence, pursuant to a separate arrangement that shall in no way be contingent upon the exercise (in whole or in part) of the Option, a bonus in respect of each Option Share underlying such portion of the Option that is unvested or unexercisable on the Dividend Record Date (such bonus, the " Designated Bonus") equal to the per share dividend that was actually paid to the Company stockholders in respect of each share of Company Common Stock outstanding on the Dividend Record Date (which bonus shall be payable in the same form of consideration as is received by the Company stockholders in respect of such dividend). Any Designated Bonus will be paid in pro rata installments on each vesting date for such Option Shares that follows the Dividend Record Date, subject to Optionee's continued Employment through and including such applicable vesting date, commencing with the first vesting date following the Dividend Record Date. If it is determined that any adjustment or payment referred to in this Section 12 does not comply with Section 409A of the Code, or would cause any tax to become due under Section 409A, or adversely effects the Option, the Company and the Optionee shall use their reasonable efforts and take reasonable actions necessary to put the Optionee in the same position she would have been in if the payment was permitted or would not cause a tax to become due under Section 409A, to the extent reasonably practicable. It is the intent of the parties that any adjustment or payment under this Section 12 comply with the requirements of Section 409A of the Code.

13. Definitions. The initially capitalized terms used herein shall have the meanings set forth in the Plan and:

"Applicable Percentage" shall mean (a) if a Change in Control has occurred, one hundred percent (100%), and (b) otherwise, fifty percent (50%).

"Cause" shall have the meaning ascribed to it in the Employment Agreement.

"Disability" shall have the meaning ascribed to it in the Employment Agreement.

"Fair Market Value" in the event of the exercise of the call option under Section 5 of the Stockholders Agreement, shall have the meaning set forth in the Plan; provided, however, that, prior to the existence of a Public Market, in the event that the Optionee delivers a written notice to the Company disputing the Company's determination of Fair Market Value within five days of receiving such determination, the Fair Market Value will be determined by a mutually acceptable, nationally recognized independent investment bank ranking among the top twenty financial advisors in the Thomson Reuters Mergers and Acquisitions (US Target Completed) league tables (or, if such tables are no longer prepared, the equivalent thereof) for the quarter completed immediately prior to such determination (a "Qualified Investment Bank"), and such value will be based on the standards set forth in the Plan. In the event the Company and the Optionee are unable to reach agreement upon a mutually acceptable "Qualified Investment Bank" within 20 days of such notice, the Company and the Optionee shall each select a Qualified Investment Bank within 25 days of such notice, which two investment banks shall select a third Qualified Investment Bank to make such determination within five (5) days of their selection. The costs and expenses of such investment banks shall be shared equally by the Company and the Optionee.

"Good Reason" shall have the meaning ascribed to it in the Employment Agreement.

"Initial Public Offering" shall have the meaning ascribed to it in the Stockholders Agreement.

"Qualifying Liquidity Event" shall mean the first to occur of an Initial Public Offering or a Change in Control.

IN WITNESS WHEREOF, the Company has caused this Option to be executed under its corporate seal by its duly authorized officer. This Option shall take effect as a sealed instrument.

KANGAROO HOLDINGS, INC.

By: /s/ Kelly Lefferts
Name: Kelly Lefferts
Title: Vice President

Dated: September 9, 2011

Acknowledged and Agreed

/s/ Elizabeth A. Smith
Name: Elizabeth A. Smith

Address of Principal Residence:

Exhibit 10.42

OPTION AGREEMENT

Optionee:

This Option and any securities issued upon exercise of this Option are subject to restrictions on voting and transfer and requirements of sale and other provisions as set forth in the Stockholders Agreement among Kangaroo Holdings, Inc. and certain investors, dated as of June 14, 2007 (as amended from time to time, the "Stockholders Agreement") and in the Registration Rights Agreement among Kangaroo Holdings, Inc. and certain investors, dated as of June 14, 2007 (as amended from time to time, the " Registration Rights Agreement"). This Option and any securities issued upon exercise of this Option constitute Management Shares as defined in the Stockholders Agreement.

KANGAROO HOLDINGS, INC.

OPTION AGREEMENT

This option (the "Agreement") is granted by Kangaroo Holdings, Inc., a Delaware corporation (the " Company"), to the undersigned (the "Optionee"), pursuant to the Company's 2007 Equity Incentive Plan (as amended from time to time, the " Plan"), which is incorporated herein by reference, and of which the Optionee hereby acknowledges receipt. For the purpose of this Agreement, the " Grant Date" shall mean .

1. Grant of Option. The Agreement evidences the grant by the Company on the Grant Date to the Optionee of an option to purchase (the " Option"), in whole or in part, on the terms provided herein and in the Plan, that total number of shares set forth on Schedule A hereto (the "Option Shares") of Stock with an exercise price of $. per share, equal to the Fair Market Value of a share of Stock on the Grant Date.

2. Vesting. During the Optionee's Employment, this Option shall vest and become exercisable with respect to 20% of the Option Shares on and for an additional 20% of the Option Shares on each thereafter (the "Vest Date").

3. Exercise of Option. Each election to exercise this Option shall be subject to the terms and conditions of the Plan and shall be in writing, signed by the Optionee, or by his or her executor or administrator, or by the person or persons to whom this Option is transferred by will or the applicable laws of descent and distribution (the "Legal Representative"), and made pursuant to and in accordance with the terms and conditions set forth in the Plan. The latest date on which this Option may be exercised (the "Final Exercise Date") is the date which is the tenth anniversary of the Grant Date, subject to earlier termination in accordance with the terms and provisions of the Plan and this Agreement.

4. Cessation of Employment. Unless the Administrator determines otherwise, the following will apply if the Optionee's Employment ceases:

(a) To the extent the Option is not vested and exercisable prior to the cessation of Employment, the Option will be forfeited immediately by the Optionee and will terminate.

(b) To the extent the Option is vested and exercisable prior to cessation of Employment, the Option will remain exercisable (i) for one year in the case of a termination of Employment resulting from death or Disability, or (ii) for 90 days following a termination of Employment for any other reason.

(c) Notwithstanding Section 4(b) above, the Option will immediately terminate if the Optionee's Employment is terminated by the Company for Cause.

(d) For the avoidance of doubt, the deemed termination of Employment that would result if the Optionee's employment or other service relationship is with an Affiliate and that entity ceases to be an Affiliate of the Company, will be considered "termination of employment" under Section 5.1 of the Stockholders Agreement.

5. Representations and Warranties of the Parties. Each of the Company and the Optionee represent and warrant to each other that:

(a) Authorization. Such party has full legal capacity, power and authority to execute and deliver this Agreement, and to perform such party's obligations hereunder. This Agreement has been duly executed and delivered by such party, and is the legal, valid and binding obligation of such party, enforceable against such party in accordance with the terms hereof.

(b) No Conflicts. The execution, delivery and performance by such party of this Agreement, and the consummation by such party of the transactions contemplated hereby, will not, with or without the giving of notice or lapse of time, or both (i) violate any provision of law, statute, rule or regulation to which such party is subject, (ii) violate in any material respect any order, judgment or decree applicable to such party or (iii) conflict with, or result in a breach of default under, any term or condition of any agreement or other instrument to which such party is a party or by which such party is bound.

(c) No Other Agreements. Except as provided by this Agreement, the Stockholders Agreement, the Registration Rights Agreement and the Plan, such party is not a party to or subject to any agreement or arrangement with respect to the voting or transfer of this Option or the shares of Stock issued upon exercise hereof.

(d) Thorough Review, Etc. Optionee has thoroughly reviewed the Plan and this Agreement in their entirety. Optionee has had an opportunity to obtain the advice of independent counsel (other than counsel to the Company or its Affiliates) prior to executing this Agreement, and fully understands all provisions of the Plan and this Agreement.

6. Other Agreements. Optionee acknowledges and agrees that the shares of Stock received upon exercise of this Option shall be subject to the Stockholders Agreement and the Registration Rights Agreement in accordance with their respective terms, and to the transfer and other restrictions, rights and obligations set forth therein. By executing this Agreement, Optionee hereby becomes a party to and bound by the Stockholders Agreement and Registration Rights Agreement as a Manager (as such term is defined in the Stockholders Agreement), without any further action on the part of Optionee, the Company or any other person.

7. [Intentionally Omitted.]

8. Legends. Certificates evidencing any shares issued upon exercise of the Option granted hereby shall bear such legends as are required by the Stockholders Agreement, and as may be determined by the Administrator prior to issuance.

9. Withholding; Satisfaction of Exercise Price. No Stock will be transferred pursuant to the exercise of this Option unless and until the person exercising this Option shall have remitted to the Company an amount sufficient to satisfy any federal, state or local withholding tax requirements, or shall have made other arrangements satisfactory to the Company with respect to such taxes. Notwithstanding anything to the contrary herein or in the Plan, the Administrator shall permit the Optionee (or his or her permitted transferees, if applicable), at the Optionee's (or his or her permitted transferees') election, to exercise all or any portion of his or her then-exercisable Option through net-physical settlement or by delivery of shares of Stock owned by the Optionee (to satisfy both the exercise price and any applicable withholding taxes), to the extent permitted under Section 409A of the Code.

10. Nontransferability of Option. This Option is not transferable by the Optionee other than by will or the applicable laws of descent and distribution, and is exercisable during the Optionee's lifetime only by the Optionee.

11. Effect on Employment. Neither the grant of this Option, nor the issuance of Stock upon exercise of this Option, shall give the Optionee any right to be retained in the employ of the Company or its Affiliates, affect the right of the Company or its Affiliates to discharge or discipline such Optionee at any time or affect any right of such Optionee to terminate his or her Employment at any time.

12. Provisions of the Plan. This Option is subject in its entirety to the provisions of the Plan, which are incorporated herein by reference. A copy of the Plan as in effect on the date of the grant of this Option has been furnished to the Optionee. By exercising all or any part of this Option, the Optionee agrees to be bound by the terms of the Plan and this Option. In the event of any conflict between the terms of this Option and the Plan, the terms of this Option shall control.

13. Dividends. In the event the Company pays a cash dividend to its stockholders, (a) with respect to vested and exercisable Options then outstanding on the date such dividend is paid (the "Payment Date"), the Company shall pay to the Optionee (or his or her permitted transferees) on the Payment Date, pursuant to a separate arrangement that shall in no way relate to the exercise of any of the Options, a cash bonus equal to his or her proportionate share of the Company if he or she owned the Stock underlying such vested and exercisable Options as of the record date for such dividend, and (b) with respect to any unvested Options then outstanding on the Payment Date, the Company shall either (i) adjust the exercise price and/or number of shares of Stock subject to such unvested Options to prevent dilution or enlargement of rights, or (ii) pay to each Optionee (or his or her permitted transferees), pursuant to a separate arrangement that

shall in no way relate to the exercise of any of the Options, a cash bonus equal to his or her proportionate share of the Company if he or she owned the Stock underlying such unvested and unexercisable Options as of the record date for such dividend the amount that he or she would have received if he or she owned the Shares underlying such unvested and unexercisable Options as of the record date for such dividend. Any cash bonus referred to in clause (ii) of the preceding sentence will be paid in pro rata installments over the remaining vesting period of the unvested Options to which such bonus relates on each vesting date that follows the Payment Date, commencing with the first vesting date following the Payment Date. If it is determined that any bonus payment referred to in this Section 13 does not comply with Section 409A of the Code, or would cause any tax to become due under Section 409A, or adversely effects the Options, the Company and the Optionee shall use their reasonable efforts and take reasonable actions necessary to put the Option holder in the same position he or she would have been in if the payment was permitted or would not cause a tax to become due under Section 409A, to the extent reasonably practicable.

14. Definitions. The initially capitalized terms used herein shall have the meanings set forth in the Plan and:

"Fair Market Value" in the event of the exercise of the call option under Section 5 of the Stockholders Agreement, shall have the meaning set forth in the Plan; *provided*, *however*, that, prior to the existence of a Public Market, in the event that the Optionee delivers a written notice to the Company disputing the Company's determination of Fair Market Value within five days of receiving such determination, the Fair Market Value will be determined by a mutually acceptable "bulge bracket" independent investment bank, and such value will be based on the standards set forth in the Plan. In the event the Company and the Optionee are unable to reach agreement upon a mutually acceptable "bulge bracket" investment bank within 20 days of such notice, the Company and the Optionee shall each select a "bulge bracket" investment bank within 25 days of such notice, which two investment banks shall select a third "bulge bracket" investment bank to make such determination within 5 days of their selection. The costs and expenses of such investment banks shall be shared equally by the Company and the Optionee.

IN WITNESS WHEREOF, the Company has caused this Option to be executed under its corporate seal by its duly authorized officer. This Option shall take effect as a sealed instrument.

KANGAROO HOLDINGS, INC.

By: _____
Name:
Title:

Dated:

Acknowledged and Agreed

_____
Optionee:

Address of Principal Residence:

_____

_____

_____

Schedule A to
Option Agreement
Grant No.

Grant of Option in Kangaroo Holdings, Inc.

Name of Optionee	Number of Option Shares

Exhibit 10.44

RETENTION BONUS AGREEMENT

RETENTION BONUS AGREEMENT (this "Agreement") made and entered into this 2nd day of November, 2009 by and between Elizabeth A. Smith (the "Executive") and Kangaroo Holdings, Inc., a Delaware corporation ("KHI"). This Agreement shall be effective as of the Effective Date of the Employment Agreement (as defined below).

WHEREAS, the Executive and OSI Restaurant Partners, LLC, a Delaware corporation (the "Company") desire to enter into an employment agreement on the date hereof (the "Employment Agreement"); and

WHEREAS, KHI desires to grant a cash retention bonus to the Executive to induce the Executive to execute the Employment Agreement and to commit to employment with the Company for the term set forth in the Employment Agreement and Executive desires to receive a cash retention bonus on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises, terms, provisions, and conditions set forth in this Agreement, the parties hereby agree:

1. Meaning of Terms. Except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as in the Employment Agreement.

2. Retention Bonus.

   a. KHI hereby grants to the Executive a retention bonus (the "Retention Bonus"), which, subject to the requirements of Section 2(b) below, shall vest on each of the first, second, third and fourth anniversaries of the Effective Date (each such date, a "Vesting Date") in the following amounts: One Million Eight Hundred Thousand Dollars ($1,800,000) on the first anniversary of the Effective Date; Three Million Dollars ($3,000,000) on the second anniversary of the Effective Date; Three Million Six Hundred Thousand Dollars ($3,600,000) on the third anniversary of the Effective Date; and Three Million Six Hundred Thousand Dollars ($3,600,000) on the fourth anniversary of the Effective Date.

   b. In order to receive the portion of the Retention Bonus that vests on an applicable Vesting Date, except as otherwise provided in Section 2(c) below, the Executive must remain continuously employed by the Company through the applicable Vesting Date. Any portion of the Retention Bonus that vests as provided in this Section 2(b) shall be paid to the Executive within thirty (30) days following the applicable Vesting Date, subject to the Executive providing the necessary directions to the Bank as provided for in Section 2(d).

   c. Notwithstanding anything in this Agreement or the Employment Agreement to the contrary, in the event the Executive's employment with

the Company is terminated by the Company without Cause or by the Executive for Good Reason, the Executive shall be entitled to receive any then unpaid amounts of the Retention Bonus, whether vested or unvested, which amounts shall be reduced (but not below zero) by the Severance Amount (the "Restoration Payment"). KHI shall calculate the amount of the Restoration Payment and shall notify the Executive in writing of such amount no later than the date on which KHI gives written notice to the Executive of the related Withholding Amount. The Restoration Payment shall be paid to the Executive in a lump sum on the date that is sixty (60) days following the date of termination of employment. Any obligation of KHI to the Executive to pay the Restoration Payment under this Section 2(c) is conditioned on (i) the Executive signing and returning an effective Release of Claims and (ii) the Executive's continued compliance with the Compliance Condition. The Executive agrees that, in the event of her failure to comply with Compliance Condition, KHI shall have the immediate right to cease making the Restoration Payment.

d. As soon as commercially practicable following the Effective Date, but in no event later than four (4) months following such date, or, if later, execution by the Executive and the Bank (as defined below) of the Security Documentation (as defined below) (the " Deposit Date"), KHI shall deposit an amount equal to Twelve Million Dollars cash ($12,000,000) (the " Cash Collateral") into a deposit account (the "Account") at a financial institution (the "Bank") reasonably acceptable to the Executive and KHI to secure the maximum amount of KHI's payment obligation to the Executive hereunder, and shall grant to the Executive a first priority perfected security interest in the Account, it being understood that such security interest shall be created under a separate security agreement (the " Security Agreement") and perfected pursuant to a deposit account control agreement (the " Control Agreement," together with the Security Agreement and any other security documentation for the Cash Collateral, the " Security Documentation"). KHI and the Executive agree to make good faith efforts to finalize the Security Agreement (and, subject to the Bank's agreement, the Control Agreement) within thirty (30) days after the Effective Date. The Security Documentation shall be in form and substance sufficient to provide the Executive with "control" (within the meaning of the Uniform Commercial Code) over the Account and consistent with the terms set forth herein and otherwise reasonably acceptable to the Executive and KHI (and, with respect to the Control Agreement, the Bank), and, without limiting KHI's rights under Section 2(e) below, KHI shall be solely responsible for all charges, fees, and other costs imposed by the Bank in connection with the Bank's custody, operation, maintenance and administration of the Account. The parties hereby agree that: (i) within ten (10) business days following the date that a vested portion of the Retention Bonus or the Restoration Payment becomes due and payable to the Executive in accordance with the terms of this Agreement, KHI shall notify the Executive in writing of the amount of

any taxes or other amounts required to be withheld under applicable law with respect to the amount that is so due and payable hereunder (the "Withholding Amount"); (ii) after receipt of such information from KHI, the Executive shall direct the Bank to transfer from the Account to appropriate Federal, state and local deposit accounts specified by KHI the Withholding Amount, which amount shall constitute, and be reported by KHI as, withholding of Federal, state and local income tax of the Executive; (iii) at any time that is at least one (1) business day after completion of the transfer of the applicable Withholding Amount with respect to that portion of the vested Retention Bonus or Restoration Payment that is due and payable hereunder, the Executive may direct the Bank to transfer from the Account to an account specified by the Executive such remaining amount of the vested Retention Bonus or the Restoration Payment that has become due and payable to the Executive; (iv) if KHI fails to provide the Withholding Amount within the time provided above, the Executive shall be entitled to obtain the Withholding Amount, at KHI's expense, from the Company's regular outside auditor (or if such firm fails to deliver such information within an additional fifteen (15) days, a nationally recognized accounting firm that has not been retained by the Executive in the past twelve (12) months and is otherwise independent of the Executive); (v) if KHI fails to provide wiring instructions for deposit of the Withholding Amount in the time provided above, Executive shall direct the Bank to retain the Withholding Amount pending receipt of such instructions and the Executive may then direct the Bank to transfer from the Account to an account specified by the Executive such remaining amount of the vested Retention Bonus or the Restoration Payment that has become due and payable to the Executive; and (vi) if such instructions are not received by the time for payment of taxes in respect of the vested Retention Bonus or Restoration Payment that is due and payable hereunder, as applicable, the Executive shall direct the Bank to pay the Withholding Amount to the applicable taxing authorities as payment of the Executive's applicable Federal, state and local income taxes in respect of the vested Retention Bonus or Restoration Payment, as applicable. In the event that a Restoration Payment becomes due and payable in accordance with the terms of this Agreement, amounts remaining in the Account shall only be used for the purpose of satisfying such Restoration Payment (including the related Withholding Amount) and in no event shall be used to satisfy any severance obligations that may be owed by the Company to the Executive under the Employment Agreement. Notwithstanding the above, in no event shall the Executive be entitled to direct the Bank to transfer the Restoration Payment until the date that is sixty (60) days following the date of her termination of employment (the "Restoration Payment Date") and then only if, as of such date, she has signed and returned an effective Release of Claims as required under Section 2(c) above and is otherwise in compliance with the Compliance Condition. The Executive shall direct the Bank, at the same

time as the Executive directs the Bank to transfer the amount of the Restoration Payment (net of any related Withholding Amount) to any account specified by the Executive, to transfer all other amounts in the Account, if any, to an account specified by KHI. The Security Agreement shall also provide that if at any time there remains in the Account cash in excess of the amount of the then remaining portion of the Retention Bonus or Restoration Payment that may become payable on a future date, the Executive shall direct the Bank to transfer from the Account to an account specified by KHI, upon its written request, which shall be made no more often than quarterly, any such excess amount and shall further provide that any cash that remains in the Account at any time after the date on which the Executive has received all amounts payable to her under this Agreement shall be distributed to KHI, upon its written request, or if KHI does not so request, the Control Agreement and any other Security Documentation shall be terminated and sole discretion over the Account shall be returned to KHI.

e. The Executive agrees that she shall not withdraw any amounts from the Account (notwithstanding her ability to do so as a result of her first priority perfected security interest in the Account) prior to the date she is entitled to do so hereunder. If the Executive withdraws any amounts from the Account in breach of the terms of this Agreement, including without limitation this Section 2(e), or if the Executive fails to direct or instruct the Bank as provided under Section 2(d) above with respect to any Withholding Amount, any such action shall constitute "Cause" for purposes of the Employment Agreement without any requirement as to notice or an opportunity to cure, except in the case of any such withdrawal or failure to direct or instruct the Bank with respect to such Withholding Amount while a good faith dispute between the Executive and the Company regarding the nature of the Executive's termination of employment (a " Termination Dispute") is pending, in which case any such action shall not constitute "Cause" unless KHI provides the Executive written notice of such breach within fifteen (15) days of its knowledge of such breach and the Executive fails to cure such breach within three (3) business days of receipt by the Executive of such notice by returning such amounts to the Bank or directing or instructing the Bank as required under Section 2(d) above with respect to such Withholding Amount. In addition, if any such breach by the Executive is not cured as provided above (or is not subject to an opportunity to cure as provided above), Executive shall reimburse KHI for any losses, damages, liabilities, costs or other expenses ("Costs") incurred or suffered by it or any of its affiliates as a result of the Executive's breach of this Agreement (as determined by a court of competent jurisdiction by entry of a final, nonappealable judgment) or in connection with enforcing KHI's rights under this Agreement in the event of such breach; provided Costs shall not include any claim 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 (it being acknowledged and agreed by the Executive that in no event will the amount of any improper distributions or withdrawals out of the Account or any costs or expenses associated with collecting or otherwise recouping any such amounts be considered to be special, indirect, consequential or punitive damages). At any time that the Executive believes she is entitled to payment of the vested portion of the Retention Bonus or Restoration Payment under the terms of this Agreement, subject, in the case of any Restoration Payment, to the expiration of the sixty (60) day period described in Section 2(d) above and continued compliance with the Compliance Condition during that period, she may so notify KHI in writing, and KHI shall within twenty (20) days of its receipt of such notice confirm or deny in writing her entitlement thereto. If KHI (i) fails to respond within such period, or confirms in writing the Executive's entitlement to the vested portion of the Retention Bonus or Restoration Payment, as applicable, and (ii) does not provide, in the case of the Restoration Payment, written notice to the Executive on or prior to the Restoration Payment Date that the Executive has failed to comply with the Compliance Condition (it being understood that any such failure to provide notice shall not constitute a waiver of any rights the Company may have under the Employment Agreement), then the Executive shall be entitled to withdraw from the Account the vested Portion of the Retention Bonus or the Restoration Payment, as applicable (net of any related Withholding Amount), and shall not be subject to termination for "Cause" or payment of Costs as a result of any such withdrawal. Notwithstanding anything to the contrary in this Section 2, in the event of a Termination Dispute or any other dispute between KHI and the Executive to enforce this Agreement, the prevailing party in such dispute shall bear all of the legal fees and expenses and out-of-pocket expenses of the losing party (including attorney, expert and witness fees) to the extent a court of competent jurisdiction determines that the claim, defense or position of the losing party in connection with such dispute was frivolous, or without reasonable foundation, or not asserted in good faith or was wrongfully intended to injure or oppress the prevailing party.

3. Timing of Payments and Section 409A.

a. Notwithstanding anything to the contrary in this Agreement or the Employment Agreement, if at the time of the Executive's termination of employment, the Executive is a "specified employee," as defined below, any and all amounts payable under this Agreement on account of such separation from service that would (but for this provision) be payable within six (6) months following the date of termination, shall instead be paid on the next business day following the expiration of such six (6) month period or, if earlier, upon the Executive's death; except to the extent of amounts that do not constitute a deferral of compensation within the meaning of Treasury regulation Section 1.409A-1(b).

b. For purposes of this Agreement, all references to "termination of employment" and correlative phrases shall be construed to require a "separation from service" (as defined in Section 1.409A-1(h) of the Treasury regulations after giving effect to the presumptions contained therein), and the term "specified employee" means an individual determined by the Company to be a specified employee under Treasury regulation Section 1.409A-1(i).

c. Each payment made under this Agreement shall be treated as a separate payment and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.

4. Withholding; Tax Treatment. All amounts payable under this Agreement shall be reduced by any tax or other amounts required to be withheld under applicable law. The Executive acknowledges and agrees that KHI shall not have any liability, obligation or responsibility with respect to the amount or timing of any taxes payable by the Executive arising out of this Agreement or the transactions contemplated hereby.

5. Good Reason. The parties agree that a material breach by KHI of its obligations under this Agreement (including without limitation failure by KHI to deposit the Cash Collateral in the Account on or prior to the Deposit Date), without the Executive's consent, shall constitute Good Reason under the Employment Agreement; provided that the Executive complies with the notice and other requirements set forth in the definition of Good Reason in the Employment Agreement.

6. Assignment. Neither KHI nor the Executive may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other; provided, however, that KHI may assign its rights and obligations under this Agreement, without the consent of the Executive, to an Affiliate (that will manage the assets and carry on the historic business of the Company following such assignment) or a successor that expressly assumes and agrees in writing to perform this Agreement in the same manner and to the same extent as KHI, including in the event that KHI shall hereafter affect a reorganization, consolidate with, or merge into, any other Person, or transfer all or substantially all of its properties, stock, or assets to any other Person. This Agreement shall inure to the benefit of and be binding upon KHI and the Executive, their respective successors, executors, administrators, heirs and permitted assigns.

7. Severability. If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

9. Notices. Any and all notices, requests, demands and other communications provided for by this Agreement shall be in writing and shall be effective when delivered in person, consigned to a reputable national courier service or deposited in the United States mail, postage prepaid, registered or certified, and addressed to the Executive at her last known address on the books of the Company or KHI, with a copy to Stephan G. Bachelder, Bachelder & Dowling, 120 Exchange St., Portland, Maine 04112 or, in the case of KHI, at its principal place of business, attention of the Corporate Secretary of KHI, with a copy to Ropes & Gray LLP, One International Place, Boston, MA 02110, Attention: Newcomb Stillwell and Renata Ferrari or to such other address as either party may specify by notice to the other actually received.

10. Entire Agreement. This Agreement, together with the Employment Agreement and any other agreements specifically referred to herein or therein, constitutes the entire agreement between the parties and supersedes and terminates all prior communications, agreements and understandings, written or oral, with respect to the subject matter contained herein.

11. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Executive and by an expressly authorized representative of KHI.

12. Headings. The headings and captions in this Agreement are for convenience only and in no way define or describe the scope or content of any provision of this Agreement.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

14. Governing Law. This is a Florida contract and shall be construed and enforced under and be governed in all respects by the laws of the State of Florida, without regard to the conflict of laws principles thereof. In the event of any alleged breach or threatened breach of this Agreement, the Executive hereby consents and submits to the jurisdiction of the federal and state courts in and of the State of Florida.

15. <u>WAIVER OF JURY TRIAL</u>. THE PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE OUT OF THIS AGREEMENT WILL INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES.

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED—FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

THE PARTIES INTEND THAT THIS WAIVER OF THE RIGHT TO A JURY TRIAL BE AS BROAD AS POSSIBLE. BY THEIR SIGNATURES BELOW, THE PARTIES PROMISE, WARRANT AND REPRESENT THAT THEY WILL NOT PLEAD FOR, REQUEST OR OTHERWISE SEEK TO HAVE A JURY TO RESOLVE ANY AND ALL DISPUTES THAT MAY ARISE BY, BETWEEN OR AMONG THEM.

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IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by KHI, by its duly authorized representative, and by the Executive, as of the date first above written.

THE EXECUTIVE:

By: /s/Elizabeth A. Smith
Elizabeth A. Smith

KANGAROO HOLDINGS, INC.

By: /s/Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.45

KANGAROO HOLDINGS, INC.

BONUS AGREEMENT

Bonus Agreement (this "Agreement") made and entered into this 31st day of December, 2009 by and between Elizabeth A. Smith (the " Executive") and Kangaroo Holdings, Inc., a Delaware corporation (the " Company").

WHEREAS, the Executive, OSI Restaurant Partners, LLC, a Delaware corporation (" OSI"), and the Company (with respect to certain sections only) entered into an employment agreement dated November 2, 2009 and effective November 16, 2009 (the " Employment Agreement").

WHEREAS, the Company desires to provide the Executive with certain additional bonus opportunities on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, terms, provisions, and conditions set forth in this Agreement, the parties hereby agree:

1. Bonus Opportunity. The Executive shall be entitled to earn and be paid the cash bonuses (collectively, the " Bonuses") described below on the terms and conditions set forth in this Agreement.

(a) $3,806,250 ("Bonus A");

(b) $3,806,250 ("Bonus B");

(c) $3,806,250 ("Bonus C"); and

(d) $3,806,250 ("Bonus D").

2. Vesting and Payment. Bonuses, unless earlier forfeited, will become vested and will be paid as follows:

(a) Time-Based Vesting. Each of Bonus A, Bonus B, Bonus C and Bonus D shall become time-based vested in five (5) equal installments (each with respect to 20% of the total amount of such Bonus) on each of November 16, 2010, November 16, 2011, November 16, 2012, November 16, 2013 and November 16, 2014, subject, in each case, to the Executive remaining continuously employed by the Company until each applicable vesting date and further subject, in the case of Bonus B, Bonus C and Bonus D, to Section 2(b)(vii) below. The Bonus, to the extent vested under this Section 2(a), shall only be paid to the extent provided under Sections 2(b) and 3 below.

(b) Performance-Based Vesting; Payment.

(i) Subject to the provisions of Section 3 of this Agreement, Bonus A shall only be paid to the Executive if a Qualifying Liquidity Event occurs or if the conditions set forth in this Section 2(b)(i) are satisfied. Subject to the provisions of Section 3 of this Agreement, the portion of Bonus A that is time-based vested (if any) at the time of the earlier to occur of (A) a Qualifying Liquidity Event and (B) November 16, 2019 shall be paid to the Executive within ten (10) days of such Qualifying Liquidity Event or such date, as applicable, subject, in each case, to the Executive remaining continuously employed by the Company until the applicable Qualifying Liquidity Event or date. The portion of Bonus A that is not yet time-based vested as of a Qualifying Liquidity Event and which thereafter becomes time-based vested under Section 2(a) above as a result of the Executive's continued employment with the Company, shall be paid to the Executive within ten (10) days of the date that it becomes time-based vested as provided for in Section 2(a) above (unless it has been forfeited under Section 3 below).

(ii) Bonus B shall only be paid to the Executive if a Qualifying Liquidity Event B occurs on or prior to November 16, 2019, subject to the terms and conditions of this Agreement. The portion of Bonus B that is time-based vested at the time of the occurrence of a Qualifying Liquidity Event B (if any) shall be paid to the Executive within ten (10) days of such Qualifying Liquidity Event B, subject to the Executive remaining continuously employed by the Company until such Qualifying Liquidity Event B. The portion of Bonus B which is not yet time-based vested as of a Qualifying Liquidity Event B and which thereafter becomes time-based vested under Section 2(a) above as a result of the Executive's continued employment with the Company, shall be paid to the Executive within ten (10) days of the date that it becomes time-based vested as provided for in Section 2(a) above (unless it has been forfeited under Sections 2(b)(vii) or 3 below).

(iii) Bonus C shall only be paid to the Executive if a Qualifying Liquidity Event C occurs on or prior to November 16, 2019, subject to the terms and conditions of this Agreement. The portion of Bonus C that is time-based vested at the time of the occurrence of a Qualifying Liquidity Event C (if any) shall be paid to the Executive within ten (10) days of such Qualifying Liquidity Event C, subject to the Executive remaining continuously employed by the Company until such Qualifying Liquidity Event C. The portion of Bonus C which is not yet time-based vested as of a Qualifying Liquidity Event C and which thereafter becomes time-based vested under Section 2(a) above as a result of the Executive's continued employment with the Company shall be paid to the Executive within ten (10) days of the date that it becomes time-based vested as provided for in Section 2(a) above (unless it has been forfeited under Sections 2(b)(vii) or 3 below).

(iv) Bonus D shall only be paid to the Executive if a Qualifying Liquidity Event D occurs on or prior to November 16, 2019, subject to the terms and conditions of this Agreement. The portion of Bonus D that is time-based vested at the time of the occurrence of a Qualifying Liquidity Event D (if any) shall be paid to the Executive within ten (10) days of such Qualifying Liquidity Event D, subject to the Executive remaining continuously employed by the Company until such Qualifying Liquidity Event D. The portion of Bonus D which is not yet time-based vested as of a Qualifying Liquidity Event D and which thereafter becomes time-based vested under Section 2(a) above as a result of the Executive's continued employment with the Company, shall be paid to the Executive within ten (10) days of the date that it becomes time-based vested as provided for in Section 2(a) above (unless it has been forfeited under Sections 2(b)(vii) or 3 below).

(v) Notwithstanding any contrary provision of subsections (i), (ii) (iii) or (iv) of this Section 2(b), (A) the portion of Bonus A that remains unpaid on the first anniversary of a Change in Control shall be paid to the Executive within ten (10) days of such date, subject to the Executive's remaining continuously employed by the Company or its affiliates on the first anniversary of such Change in Control and (B) the portion of Bonus B, Bonus C, and/or Bonus D, to the extent then outstanding, that remains unpaid on the first anniversary of an Applicable Qualifying CIC Liquidity Event shall be paid to the Executive within ten (10) days of such date, subject to the Executive's remaining continuously employed by the Company on the first anniversary of such Applicable Qualifying CIC Liquidity Event.

(vi) In the event of termination of the Executive's employment with the Company (A) by the Company without Cause or (B) by the Executive for Good Reason, the Applicable Percentage of each Bonus that has not yet become time-based vested as of the date of such termination of employment shall become time-based vested immediately upon such termination of employment, to the extent such Bonus is then outstanding, and shall be paid to the Executive in accordance with, and subject to the terms of, Section 3 below.

(vii) For the avoidance of doubt, upon the occurrence of a Change in Control that does not meet the requirements of a Qualifying CIC Liquidity Event B, a Qualifying CIC Liquidity Event C, or a Qualifying CIC Liquidity Event D, any Bonus B, Bonus C or Bonus D that does not become payable as a result of such Change in Control shall be immediately forfeited upon such Change in Control without any consideration due to the Executive. To illustrate the foregoing, upon the occurrence of a Qualifying CIC Liquidity Event B which does not also constitute a Qualifying CIC Liquidity Event C, Bonus C and Bonus D shall be immediately forfeited in their entirety without any consideration due to Executive.

3. Cessation of Employment. Except as expressly provided in this Section 3, the Executive must remain employed on the vesting and payment dates described in Section 2(a) and subsections (i) – (v) of Section 2(b) above in order to earn and be paid a Bonus under this Agreement. To the extent a Bonus (or portion thereof) is not time-based vested prior to, or does not become time-based vested under the terms of this Agreement as a result of, the termination of the Executive's employment with the Company, the Bonus (or portion thereof) will be forfeited immediately with no consideration due to the Executive.

(a) If the Executive's employment with the Company terminates on account of her death or Disability, (i) the portion of Bonus A that is time-based vested at the time of her termination of employment and that has not yet been paid to Executive shall be paid to her (or to her estate, in the event of a termination due to her death) in a lump sum within ten (10) days following the date of termination without regard to whether a Qualifying Liquidity Event has then occurred, (ii) if such termination of employment occurs prior to the occurrence of a Qualifying Liquidity Event, if an Applicable Qualifying Liquidity Event occurs within the one (1) year period following the date of the Executive's termination of employment, the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of her termination of employment and that becomes payable upon the occurrence of the Applicable Qualifying Liquidity Event will be paid to her (or to her estate, in the event of a termination due to her death) within ten (10) days of the occurrence of the Applicable Qualifying Liquidity Event and (iii) if such termination of employment occurs after an Initial Public Offering but before an Applicable Qualifying IPO Liquidity Event, if an Applicable Qualifying IPO Liquidity Event occurs within the one (1) year period following the date of the Executive's termination of employment, the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of her termination of employment and that becomes payable upon the occurrence of the Applicable Qualifying IPO Liquidity Event will be paid to her (or to her estate, in the event of a termination due to her death) within ten (10) days of the occurrence of the Applicable Qualifying IPO Liquidity Event.

(b) If the Executive's employment with the Company is terminated by the Executive for any reason other than Good Reason prior to the occurrence of a Qualifying Liquidity Event, (i) if a Qualifying Liquidity Event occurs within the three (3) year period following the date of the Executive's termination of employment, the portion of Bonus A that is time-based vested at the time of her termination of employment will be paid to her within ten (10) days of the occurrence of such Qualifying Liquidity Event and (ii) if an Applicable Qualifying Liquidity Event occurs within the one hundred eighty (180) day period following the date of the Executive's termination of employment, the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of her termination of employment and that becomes payable upon the occurrence of the Applicable Qualifying Liquidity Event will be paid to her within ten (10) days of the occurrence of the Applicable Qualifying Liquidity Event.

(c) If the Executive's employment with the Company is terminated by the Company without Cause or by the Executive for Good Reason prior to the occurrence of a Qualifying Liquidity Event (i) the portion of Bonus A that is time-based vested at the time of her termination of employment (after giving effect to any acceleration of time-based vesting in connection with such termination of employment as provided in Section 2(b)(vi) above) shall be paid to the Executive in a lump sum within ten (10) days following the date of termination without regard to whether a Qualifying Liquidity Event has then occurred and (ii) the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of her termination of employment (after giving effect to any acceleration of time-based vesting in connection with such termination of employment as provided in Section 2(b)(vi) above) shall be paid in accordance with, and subject to, the following terms and conditions:

(i) if an Applicable Qualifying Liquidity Event occurs prior to the first anniversary of the date of the Executive's termination of employment, 100% of the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of the Executive's termination of employment and that becomes payable upon the occurrence of the Applicable Qualifying Liquidity Event will be paid to her within ten (10) days of the occurrence of the Applicable Qualifying Liquidity Event;

(ii) if an Applicable Qualifying Liquidity Event occurs on or after the first anniversary of the date of the Executive's termination of employment and prior to the second anniversary of such date, 66.67% of the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of the Executive's termination of employment and that becomes payable upon the occurrence of the Applicable Qualifying Liquidity Event will be paid to her within ten (10) days of the occurrence of the Applicable Qualifying Liquidity Event; and

(iii) if an Applicable Qualifying Liquidity Event occurs on or after the second anniversary of the date of the Executive's termination of employment and on or prior to the third anniversary of such date, 33.33% of the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of the Executive's termination of employment and that becomes payable upon the occurrence of the Applicable Qualifying Liquidity Event will be paid to her within ten (10) days of the occurrence of the Applicable Qualifying Liquidity Event.

(d) If the Executive's employment with the Company is terminated by the Company without Cause or by the Executive for Good Reason after the occurrence of a Qualifying Liquidity Event, the portion of Bonus A that is time-based vested at the time of her termination of employment (after giving effect to any acceleration of time-based vesting in connection with such termination of employment as provided in Section 2(b)(vi) above) and that has not yet been paid to Executive shall be paid to her in a lump sum within ten (10) days following the date of

termination. If the Executive's employment with the Company is terminated by the Company without Cause or by the Executive for Good Reason after the occurrence of a Qualifying Liquidity Event that is also an Applicable Qualifying Liquidity Event, the portion of Bonus B, Bonus C and/or Bonus D, to the extent then outstanding and payable as a result of the occurrence of the Applicable Qualifying Liquidity Event, that is time-based vested at the time of the Executive's termination of employment (after giving effect to any acceleration of time-based vesting in connection with such termination of employment as provided in Section 2(b)(vi) above) and that has not yet been paid to Executive shall be paid to her in a lump sum within ten (10) days following the date of termination. If the Executive's employment with the Company is terminated by the Company without Cause or by the Executive for Good Reason after the occurrence of an Initial Public Offering but before the occurrence of an Applicable Qualifying IPO Liquidity Event, if an Applicable Qualifying IPO Liquidity Event occurs within the ninety (90) day period following the date of the Executive's termination of employment, the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of her termination of employment (after giving effect to any acceleration of time-based vesting in connection with such termination of employment as provided in Section 2(b)(vi) above) and that becomes payable upon the occurrence of the Applicable Qualifying IPO Liquidity Event will be paid to her within ten (10) days of the occurrence of the Applicable Qualifying IPO Liquidity Event.

(e) If the Executive's employment is terminated by the Executive for any reason other than Good Reason after the occurrence of an Initial Public Offering but before the occurrence of an Applicable Qualifying IPO Liquidity Event, if an Applicable Qualifying IPO Liquidity Event occurs within the ninety (90) day period following the date of the Executive's termination of employment, the portion of Bonus B, Bonus C and/or Bonus D that is time-based vested at the time of the Executive's termination of employment and that becomes payable upon the occurrence of the Applicable Qualifying IPO Liquidity Event will be paid to her within ten (10) days of the occurrence of the Applicable Qualifying IPO Liquidity Event.

(f) The Bonuses will immediately be forfeited in full if the Executive's Employment is terminated by the Company for Cause.

(g) Notwithstanding anything in this Agreement to the contrary, no Bonus shall be paid under this Agreement following November 16, 2019 and any Bonus (or portion thereof) that is outstanding at the end of such date shall immediately terminate without any consideration due to the Executive; provided, however, that any obligation to pay a Bonus (or portion thereof) that has been earned and is payable on November 16, 2009 but that remains unpaid on such date shall survive the expiration of this Agreement.

(h) Any Bonus (or portion thereof) that remains vested and payable following a termination of the Executive's employment with the Company under the terms of

this Agreement and that does not become payable within the time periods set forth in this Section 3 shall, upon expiration of the relevant period, be immediately forfeited in its entirety without any consideration due to Executive.

4. Withholding. All payments made by the Company under this Agreement shall be reduced by any tax or other amounts required to be withheld by the Company under applicable law.

5. Effect on Employment. Neither the award of the Bonuses nor this Agreement shall give the Executive any right to be retained in the employ of the Company or its affiliates, affect the right of the Company or its affiliates to discharge or discipline such Executive at any time or affect any right of such Executive to terminate her Employment at any time.

6. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and terminates all prior communications, agreements and understandings, written or oral, with respect to the subject matter contained herein.

7. Section 409A.

(a) Notwithstanding anything to the contrary in this Agreement, if at the time of the Executive's termination of employment, the Executive is a "specified employee," as defined below, any and all amounts payable under this Agreement on account of such separation from service that would (but for this provision) be payable within six (6) months following the date of termination, shall instead be paid on the next business day following the expiration of such six (6) month period or, if earlier, upon the Executive's death; except to the extent of amounts that do not constitute a deferral of compensation within the meaning of Treasury regulation Section 1.409A-1(b).

(b) For purposes of this Agreement, all references to "termination of employment" and correlative phrases shall be construed to require a "separation from service" (as defined in Section 1.409A-1(h) of the Treasury regulations after giving effect to the presumptions contained therein), and the term "specified employee" means an individual determined by the Company to be a specified employee under Treasury regulation Section 1.409A-1(i).

(c) Each payment made under this Agreement shall be treated as a separate payment and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.

8. Other. The parties agree to negotiate in good faith an amendment to that certain Retention Bonus Agreement between the Company and the Executive entered into as of November 2, 2009 and effective as of November 16, 2009 (the " Retention Bonus Agreement") (and any corresponding amendments to this Agreement) to provide that if there are amounts that remain in the Account (as such term is defined in the Retention Bonus Agreement) following a termination of the Executive's employment with the Company by the Company without Cause or by the Executive for Good Reason and following the satisfaction of all obligations of the Company under such Retention Bonus Agreement, any amounts remaining in the Account may

be used to satisfy the Company's obligations hereunder solely with respect to the portion of Bonus A (if any) that becomes payable to the Executive under Section 3 of this Agreement upon a termination of the Executive's employment without Cause or for Good Reason (and any tax obligations related to the foregoing); it being understood that nothing contained herein shall require the Company to enter into any such amendment if the terms of such amendment would adversely impact the Company or its affiliates under any existing credit arrangement.

9. Definitions. The initially capitalized terms used herein shall have the following meaning:

"Aggregate Consideration" means, as of any determination date after November 16, 2009, the sum of (a) the cumulative total of all proceeds from sale, exchange, or other disposition, including pledge or hypothecation of Company securities, actually received after November 16, 2009 and on or prior to such determination date by the Investors in the form of (i) cash or cash equivalents in each case in respect of the Investor Shares and (ii) securities or other property other than cash in respect of the Investor Shares plus (b) the value of any previous dividends or other distributions to Investors in respect of their Investor Shares. The amount of Aggregate Consideration shall be equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure. Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Investors in respect of Investor Shares, excluding, for the avoidance of doubt, any management, consulting, monitoring, advisory, transaction or similar fee or payment of expenses received by the Investors or any of its affiliates; and

(ii) insofar as it consists of securities or other property other than cash, be computed at the fair market value thereof at the time of receipt, as determined in good faith by the Board.

"Applicable Percentage" shall mean (a) if an Applicable Qualifying CIC Liquidity Event has occurred, one hundred percent (100%), and (b) otherwise, fifty percent (50%).

"Applicable Qualifying CIC Liquidity Event" means in the case of Bonus A, a Qualifying CIC Liquidity Event A, in the case of Bonus B, a Qualifying CIC Liquidity Event B, in the case of Bonus C, a Qualifying CIC Liquidity Event C, and in the case of Bonus D, a Qualifying CIC Liquidity Event D.

"Applicable Qualifying IPO Liquidity Event" means in the case of Bonus B, a Qualifying IPO Liquidity Event B, in the case of Bonus C, a Qualifying IPO Liquidity Event C, and in the case of Bonus D, a Qualifying IPO Liquidity Event D.

"Applicable Qualifying Liquidity Event" means in the case of Bonus B, a Qualifying Liquidity Event B, in the case of Bonus C, a Qualifying Liquidity Event C, and in the case of Bonus D, a Qualifying Liquidity Event D.

"Board" means the board of directors of the Company.

"Cause" shall have the meaning ascribed to it in the Employment Agreement.

"Change in Control" shall have the meaning ascribed to it in the Company's 2007 Equity Incentive Plan, as amended from time to time.

"Disability" shall have the meaning ascribed to it in the Employment Agreement.

"Good Reason" shall have the meaning ascribed to it in the Employment Agreement.

"Initial Public Offering" shall have the meaning ascribed to it in the Stockholders Agreement.

"Investors" shall have the meaning ascribed to it in the Stockholders Agreement.

"Investor Shares" shall have the meaning ascribed to it in the Stockholders Agreement.

"Qualifying CIC Liquidity Event A" means the occurrence of a Change in Control.

"Qualifying CIC Liquidity Event B" means the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $5.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) multiplied by the number of Investor Shares.

"Qualifying CIC Liquidity Event C" means the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $7.50 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) multiplied by the number of Investor Shares.

"Qualifying CIC Liquidity Event D" means the occurrence of a Change in Control as a result of which the Investors shall have received Aggregate Consideration equal to or in excess of $10.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) multiplied by the number of Investor Shares.

"Qualifying IPO Liquidity Event B" means, following an Initial Public Offering, the volume-weighted average Trading Price during the applicable period described below (such average Trading Price to be determined using a volume-weighted average of the Trading Price for each Trading Day occurring during such period) is equal to or more than $5.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) less an amount per share equal to the quotient obtained by dividing (x) the Aggregate Consideration received by the Investors prior to the applicable Measurement Date (as defined below) by (y) the Investor Shares, measured, in each case, as of the date that is six (6) months following an Initial Public Offering and on each Trading Day thereafter (each such date, a "Measurement Date") with the Trading Price calculated for the applicable immediately preceding six-month period (until the earlier of the forfeiture of Bonus B by its terms hereunder or the attainment of such Trading Price on the terms provided for herein).

"Qualifying IPO Liquidity Event C" means, following an Initial Public Offering, the volume-weighted average Trading Price during the applicable period described below (such

average Trading Price to be determined using a volume-weighted average of the Trading Price for each Trading Day occurring during such period) is equal to or more than $7.50 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) less an amount per share equal to the quotient obtained by dividing (x) the Aggregate Consideration received by the Investors prior to the applicable Measurement Date by (y) the Investor Shares, measured, in each case, on each Measurement Date with the Trading Price calculated for the applicable immediately preceding six-month period (until the earlier of the forfeiture of Bonus C by its terms hereunder or the attainment of such Trading Price on the terms provided for herein).

"Qualifying IPO Liquidity Event D" means, following an Initial Public Offering, the volume-weighted average Trading Price during the applicable period described below (such average Trading Price to be determined using a volume-weighted average of the Trading Price for each Trading Day occurring during such period) is equal to or more than $10.00 per share (as equitably adjusted by the Board for any stock splits or other changes in the Company's capital structure) less an amount per share equal to the quotient obtained by dividing (x) the Aggregate Consideration received by the Investors prior to the applicable Measurement Date divided by (y) the Investor Shares, measured, in each case, on each Measurement Date with the Trading Price calculated for the applicable immediately preceding six-month period (until the earlier of the forfeiture of Bonus D by its terms hereunder or the attainment of such Trading Price on the terms provided for herein).

"Qualifying Liquidity Event" shall mean the first to occur of an Initial Public Offering or a Change in Control.

"Qualifying Liquidity Event B" shall mean a Qualifying CIC Liquidity Event B or a Qualifying IPO Liquidity Event B.

"Qualifying Liquidity Event C" shall mean a Qualifying CIC Liquidity Event C or a Qualifying IPO Liquidity Event C.

"Qualifying Liquidity Event D" shall mean a Qualifying CIC Liquidity Event D or a Qualifying IPO Liquidity Event D.

"Stockholders Agreement" means the Stockholders Agreement among Kangaroo Holdings, Inc. and certain investors, dated as of June 14, 2007, as amended from time to time.

"Trading Day" means each business day during such calendar quarter in which the Trading Price of the Stock is reported by the principal securities exchange on which such security is then listed or admitted to trade.

"Trading Price" means the closing price on such Trading Day of a share of Stock as reported on the principal securities exchange on which shares of Stock are then listed or admitted to trade. In the event that the price of a share of Stock is not so reported, the Trading Price will be determined by the Board in good faith.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by each of the Company, by its respective duly authorized representatives, and by the Executive, as of the date first above written.

THE EXECUTIVE:

By: /s/Elizabeth A. Smith
Elizabeth A. Smith

THE COMPANY:

By: /s/Joseph J. Kadow
Name: Joseph J. Kadow
Title: Executive Vice President

Exhibit 10.46

OSI RESTAURANT PARTNERS, LLC
HCE DEFERRED COMPENSATION PLAN

OSI Restaurant Partners, LLC, a Delaware limited liability company, on behalf of itself and its Subsidiaries (the "Company"), hereby establishes this HCE Deferred Compensation Plan (the "Plan"), effective October 1, 2007, for the purpose of attracting, retaining and rewarding high quality executives and promoting in its key executives increased efficiency and an interest in the successful operation of the Company. The benefits provided under the Plan shall be provided in consideration for services to be performed after the effective date of the Plan, but prior to the executive's retirement. The Plan is intended and shall be interpreted to comply in all respects with Internal Revenue Code ("Code") Section 409A and those provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), applicable to an unfunded plan maintained primarily to provide deferred compensation benefits for a select group of "management or highly compensated employees."

ARTICLE 1
Definitions

1.1 *Account(s)* shall mean the bookkeeping account or accounts established for a particular Participant pursuant to Article 3 of the Plan.

1.2 *Administrator* shall mean the person or persons appointed by the Company to administer the Plan pursuant to Article 8 of the Plan.

1.3 *Base Salary* shall mean the Participant's base annual salary excluding incentive and discretionary bonuses and other non-regular forms of compensation, before reductions for contributions to or deferrals under any pension, deferred compensation or benefit plans sponsored by the Company.

1.4 *Beneficiary* shall mean the person or entity designated as such in accordance with Article 7 of the Plan.

1.5 *Bonus* shall mean any amount paid to the Participant by the Company in the form of a discretionary or incentive compensation or any other bonus designated by the Administrator before reductions for contributions to or deferrals under any pension, deferred compensation or benefit plans sponsored by the Company.

1.6 *Code* shall mean the Internal Revenue Code of 1986, , as amended, and Treasury regulations and applicable authorities promulgated thereunder.

1.7 *Company* shall mean OSI Restaurant Partners, LLC acting on behalf of itself and designated Subsidiaries. Any action required by the Company under the terms of the Plan may be taken by the Administrator or such other person(s) or entity(ies) duly authorized by OSI Restaurant Partners, LLC to act on its behalf.

1.8 *Company Contribution(s)* shall mean the contributions by the Company to a Participant's Account pursuant to Article 2 of the Plan.

1.9 *Company Contribution Account* shall mean an Account established for a Company Contribution pursuant to Section 3.1.

1.10 *Crediting Rate* shall mean the notional gains and losses credited on the Participant's Account balance pursuant to Section 3.3 of the Plan.

1.11 *Disabled, or Disability* shall mean, consistent with the requirements of Code Section 409A, that the Participant (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Participant's employer. The Administrator may require that the Participant submit evidence of such qualification for disability benefits in order to determine Disability under this Plan.

1.12 *Eligible Employee* shall mean a key management level or highly compensated employee of the Company who is designated by the Administrator to be eligible to participate in the Plan.

1.13 *ERISA* shall mean the Employee Retirement Income Security Act of 1974, as amended, including Department of Labor and Treasury regulations and applicable authorities promulgated thereunder.

1.14 *Participant* shall mean an Eligible Employee who has elected to participate and has executed a Participation Election Form pursuant to Article 2 of the Plan.

1.15 *Participation Election Farm* shall mean the written agreement to make a deferral submitted by the Participant to the Administrator on a timely basis pursuant to Article 2 of the Plan. The Participant Election Form may take the form of an electronic communication followed by appropriate written confirmation according to specifications established by the Administrator.

1.16 *Plan Year* shall mean the calendar year

1.17 *Retirement Account* shall mean an Account established pursuant to Section 3.1 which is scheduled to commence on Termination of Employment.

1.18 *Scheduled Distribution* shall mean a distribution elected by the Participant pursuant to Article 4 of the Plan.

1.19 *Scheduled Distribution Account* shall mean an Account established pursuant to Sections 3.2 which is scheduled to commence distribution an a scheduled date elected under Section 4.1.

1.20 *Settlement Date* shall mean the date by which a lump sum payment shall be made or the date by which installment payments shall commence. Unless otherwise specified, the

Settlement Date shall be the later of (i) January of the Plan Year following the Plan year in which the event triggering payout occurs or (ii) ninety (90) days following Termination of Employment. If the event triggering payout is death, the Administrator shall be provided with the documentation reasonably necessary to establish the fact of the Participant's death. Notwithstanding the foregoing or any other provision of the Plan, in the event that at the time of payout any stock of the Company is publicly traded on an established securities market and the Participant is a "key employee" (as defined in Code Section 416(i) (without regard to paragraph (5) thereof) of the Company, the Settlement Date following a Termination of Employment shall be no earlier than the earlier of (i) the last day of the sixth (6th) complete calendar month following the Participant's Termination of Employment, or (ii) the Participant's death, consistent with the provisions of Code Section 409A. Any payments delayed by reason of the preceding sentence shall be caught up and paid in a single lump sum on the first day such payment is permissible consistent with the provisions of Code Section 409A.

1.21 *Subsidiaries* shall mean a majority owned subsidiaries or other entities in which OSI Restaurant Partners, LLC. or any of its majority owned subsidiaries owns a majority partnership or other equity interest or serves as general partner, as may from time to time be designated as participating employers in the Plan by the Administrator and on behalf of which OSI Restaurant Partners, LLP. and the Administrator shall act as agents for purposes of adoption, amendment and administration of the Plan and all associated matters or documentation.

1.22 *Termination of Employment* shall mean, with respect to a given Participant, the date when, for any reason, including by reason of Retirement, death or Disability, the level of services provided by such Participant to the Company (or any affiliate under common ownership aggregated with the Company for purposes of Code Section 409A) in any capacity has permanently decreased to a level equal to no more than 20 percent of the average level of services performed by such Participant for the Company during the immediately preceding 36-month period (or the Participant's full period of services to the Company if a lesser period).

1.23 *Unforeseeable Emergency* shall mean a severe financial hardship to the Participant resulting from an illness or accident involving the Participant, the Participant's spouse, or the Participant's dependent (as defined in Code Section 152 (a)), loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstance arising as a result of events beyond the control of the Participant (but shall in all events correspond to the meaning of the term "unforeseeable emergency" in Code Section 409A).

1.24 *Valuation Date* shall mean either (i) the date through which earnings are credited or (ii) the date on which the value of an Account balance is established, and shall be as close to the payout or other event triggering valuation as is administratively feasible; provided, however, that in no event shall the Valuation Date occur earlier than the last day of the month preceding the month in which the payout or other event triggering valuation occurs.

1.25 *Years of Participation* shall mean the cumulative consecutive Plan Years the Participant has participated in the Plan, beginning with the first complete Plan Year coinciding with or beginning after the Participant's election to participate in the Plan. A Participant shall be considered a Participant in the Plan for purposes of accumulating Years of Participation at all times prior to Termination of Employment during which the Participant possesses a positive Account balance even if the Participant is not making any deferrals during such period.

1.26 *Years of Service* shall mean the cumulative consecutive years of continuous full-time employment with the Company, beginning on the first day of the calendar year in which the Participant first began service with the Company and counting each anniversary thereof.

ARTICLE 2
Participation

2.1 Elective Deferral. Each year a Participant may elect to defer any whole percentage between five percent (5%) and ninety percent (90%) of Base Salary and/or any whole percentage between five percent (5%) and one hundred percent (100%) of Bonus or in excess of a specified dollar amount of Bonus earned by the Participant for the applicable Plan Year. The Administrator may further limit the minimum or maximum amount deferred by an Participant or group of Participants, or waive the foregoing limits for any Participant or group of Participants, for any reason.

2.2 Participation Election Form. In order to make a deferral, an Eligible Executive must submit a Participation Election Form to the Administrator during the enrollment period established by the Administrator prior to the beginning of the Plan Year during which the services are performed for which such Base Salary or Bonus are earned. Notwithstanding the foregoing, within 30 days after an Eligible Executive first becomes eligible to participate in the Plan (if the Eligible Executive is not already participating in any Company sponsored deferral arrangement which is aggregated with this Plan for purposes of Code Section 409A) the Administrator may establish a special enrollment period for such Eligible Executive to allow deferrals of Base Salary or Bonus attributable to services performed during the balance of such Plan Year. Each Participant shall be required to submit a new Participant Election Form on a timely basis each Plan Year in order to make a deferral election for such subsequent Plan Year. An election to defer Base Salary or Bonus shall be irrevocable upon termination of the enrollment period except as provided in Section 5.6 in the event the Participant becomes Disabled or Section 5.5 in the case of an Unforeseeable Emergency.

2.3 Elections Regarding Time and Form of Payout. At the time that a Participant makes a deferral election with respect to a Plan Year, the Participant shall also designate the time and form that such deferral shall be distributed (together with any discretionary Company Contributions made for such Plan Year pursuant to Section 2.4 and all notional earnings on the deferral and any Company Contributions). All elections must provide for distribution to be made at a time and in a form that is consistent with the distribution options made available under the Plan. Except as expressly provided herein, an election with respect to the time and form of benefit payouts may not be changed, nor may any distribution be accelerated. A subsequent election that delays payment or changes the form of payment is permitted only if all of the following requirements are met:

(1) the new election does not take effect until at least twelve (12) months after the date on which the new election is made;

(2) in the case of payments made on account of Termination of Employment (other than by reason of death or Disability)or according to a Scheduled Distribution, the new election delays payment for at least five (5) years from the date that payment would otherwise have been made, absent the new election; and

(3) in the case of payments made according to a Scheduled Distribution, the new election is not made less than twelve (12) months before the date on which payment would have been made (or, in the case of installment payments, the first installment payment would have been made) absent the new election.

Election changes made pursuant to this Section shall be made on written forms provided by the Administrator, and in accordance with rules established by the Administrator and shall comply with all requirement of Code Section 409A and applicable Treasury Regulations.

2.4 Company Contributions. From time to time, the Company may make a discretionary Company Contribution to the Plan on behalf of an Eligible Employee or existing Participant. Company Contributions shall be made in the complete and sole discretion of the Company. Company Contributions shall be notional credits to the Accounts of Participants, with the amount actually credited to the Account being net of all employment taxes required to be withheld on the Company Contribution, as conclusively determined by the Administrator. Company Contributions shall vest at the time or according to the schedule specified by the Administrator at the time the contributions is made. No Participant or other employee of the Company shall have a right to receive a Company Contribution in any particular year or in any particular amount based on the fact that Company Contributions are made at such time or in such amount on behalf of another Participant.

ARTICLE 3
Accounts

3.1 Participant Accounts. A separate Retirement Account or Scheduled Distribution Account shall be maintained for each Plan Year for which a Participant has made a deferral election pursuant to this Plan, and shall be credited with the Participant's deferrals directed by the Participant to such Account at the time such amounts would otherwise have been paid to the Participant. A separate Account shall be maintained for each Company Contribution made on behalf of each Participant and shall be credited with the Company Contribution at the time specified by the Administrator. Accounts shall be deemed to be credited with notional gains or losses as provided in Section 3.3 from the date the deferral or the Company Contribution is credited to an Account through the Valuation Date.

3.2 Vesting of Accounts. All voluntary deferrals and notional earnings thereon credited to a Participant's Accounts shall be fully vested at all times. Company Contributions and earnings thereon shall vest as specified by the Administrator at the time the Company Contributions is made.

3.3 Crediting Rate. The Crediting Rate on amounts in a Participant's Account shall be based on the Participant's choice among the investment alternatives made available from time to time by the Administrator. The Administrator shall establish a procedure by which a

Participant may elect to have the Crediting Rate based on one or more investment alternatives and by which the Participant may change investment elections daily and may rebalance Account investments monthly. Notwithstanding the preceding sentence, the Administrator may impose the following restrictions on changing investment elections daily and/or rebalancing Account investments monthly: (i) in the case of any investment alternative that guarantees a fixed interest return, limitations on the ability to transfer out of such investment alternative and nonrecognition of that investment alternative in implementing any monthly rebalancing of the Account; and (ii) in the case of all investment- alternatives, limitations designed to prevent- excessive short term trading in the Account or otherwise deemed necessary or desirable by the Administrator. The Participant's Account balance shall reflect the investments selected by the Participant. If an investment selected by a Participant sustains a loss, the Participant's Account shall be reduced to reflect such loss. The Participant's choice among investments shall be solely for purposes of calculation of the Crediting Rate. If the Participant fails to elect an investment alternative, the Crediting Rate shall be based on a default investment alternative selected for this purpose by the Administrator. The Company shall have no obligation to set aside or invest funds as directed by the Participant and, if the Company elects to invest funds as directed by the Participant, the Participant shall have no more right to such investments than any other unsecured general creditor

3.4 Statement of Accounts. The Administrator shall provide each Participant with statements at least annually setting forth the Participant's Account balance as of the end of each year.

ARTICLE 4
Scheduled Distributions

4.1 Election. The Participant may make an election on the Participant Election Form at the time of malting a deferral to take a Scheduled Distribution from the Account established by the Participant for such purpose, including any earnings credited thereon. The Participant may elect to receive the Scheduled Distribution in January of any Plan Year on or after the third (3rd) Plan Year following the enrollment period in which such Scheduled Distribution is elected and may elect to have the Scheduled Distribution distributed over a period of up to four (4) years.

4.2 Timing of Scheduled Distribution. The Scheduled Distribution shall commence in January of the Plan Year elected by the Participant in the Participant Election Form unless preceded by a Termination of Employment. In the event of a Termination of Employment prior to the date elected for a Scheduled Distribution, all outstanding amounts credited to the participant's Scheduled Distribution Accounts shall be paid in the form provided in Section 5.2 of the Plan. In the event such Termination of Employment is a result of the Participant's death, outstanding Scheduled Distribution Accounts shall be paid as provided in Section 5.4 of the Plan.

ARTICLE 5
Benefits

5.1 Termination Benefits. In the event of the Participant's Termination of Employment other than by reason of Disability or death, the Participant shall be entitled to receive an amount equal to the total balance of all of the Participant's Accounts, credited with

notional earnings as provided in Article 3 through the Valuation Date. The benefits shall be paid in a single lump sum unless the Participant has completed either five (5) Years of Participation or ten (10) Years of Service as of the date of Termination of Employment, in which case, the Account shall be paid as elected by the Participant pursuant to Section 2.3. The Participant may elect to receive such retirement benefits in substantially equal annual installments over a specified period of two to fifteen (15) years. Retirement benefits shall commence on the Settlement Date next following Termination of Employment.

5.2 Early Termination Benefit. Upon Termination of Employment other than by reason of Disability or death prior to completion of either five (5) Years of Participation or ten (10) Years of Service, the Company shall pay to the Participant a termination benefit equal to the balance on Termination of Employment of all of the Participant's Accounts credited with notional earnings as provided in Article 3 through the Valuation Date. The early termination benefits shall be paid in a single lump sum on the Settlement Date following Termination of Employment.

5.3 Death Benefits. If the Participant dies prior to commencement of benefits from a particular Account, the Company shall pay to the Participant's Beneficiary a death benefit equal to the total balance on death of the Participant's Account credited with notional earnings as provided in Article 3 through the Valuation Date in the form of a single lump on the Settlement Date following the Participant's death. If the Participant dies after benefits have commenced from a particular Account, the Company shall pay to the Participant's Beneficiary an amount equal to the remaining benefits payable to the Participant from such Account over the same period such benefits would have been paid to the Participant, subject to Section 5.6.

5.4 Distributions For Unforeseeable Emergency Upon a fording that the Participant (or, after the Participant's death, the Beneficiary) has suffered an Unforeseeable Emergency, the Administrator may at the request of the Participant, and subject to compliance with Code Section 409A, approve cessation of current deferrals or accelerate distribution of benefits under the Plan in an amount reasonably necessary to alleviate such Unforeseeable Emergency. The amount distributed pursuant to this Section with respect to an emergency shall not exceed the amount necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause an Unforeseeable Emergency).

5.5 Disability. In the event a Participant becomes Disabled, deferral elections shall cease. In the event of Termination of Employment by reason of Disability, prior to commencement of benefits from a particular Account, the Participant shall be entitled to receive the total balance of the Participant's Account credited with notional earnings as provided in Article 3 through the Valuation Date in the form of a single lump on the Settlement Date following the Participant's Termination of Employment. If the Participant's Termination of Employment by reason of Disability occurs after benefits have commenced from a particular Account, the Company shall pay the remaining benefits to the Participant from such Account over the same period such benefits would have been paid to the Participant, subject to Section 5.6.

5.6 Small Benefit Exception. Notwithstanding the foregoing, in the event the sum of all benefits payable to the Participant from all of the Participant's Accounts at the time of the Participant's Termination of Employment (and all other amounts payable to the Participant under other arrangements which are aggregated with this Plan under Section Code 409A) is less than the applicable dollar amount under Code Section 402(g)(1)(B) for the calendar year of payment, the Administrator may, in its complete and sole discretion, pay all benefits to the Participant under the Plan in a single lump sum on the Settlement Date following Termination of Employment.

ARTICLE 6
Amendment and Termination of Plan

6.1 Amendment or Termination of Plan. The Company may, at any time, direct the Administrator to amend or terminate the Plan, except that no such amendment or termination may reduce a Participant's Account balance or accelerate benefits under the Plan in violation of Code Section 409A. For purposes of applying the change in timing of payment rules under Code Section 409A to any amendment of the Plan, each installment payment from each Account shall be treated as a separate payment. If the Company terminates the Plan, the Company shall pay to each Participant the balance of the Participant's Accounts at the time and in the form such amounts would have been paid absent such Plan termination. Notwithstanding the foregoing, to the extent permitted under Code Section 409A and applicable authorities, the Company may, in its complete and sole discretion, accelerate distributions under the Plan in the event of (i) "change in the ownership or effective control of the corporation," (ii) "change in the ownership of a substantial portion of the assets of the corporation," (iii) liquidation or bankruptcy of the Company, or (iv) any other circumstances permitted under Code Section 409A.

ARTICLE 7
Beneficiaries

7.1 Beneficiary Designation. The Participant shall, at the commencement of participation in the Plan, designate any person as the Beneficiary to whom payment under the Plan shall be made in the event of the Participant's death. The Beneficiary designation shall be effective upon being submitted in writing to, and received by, the Administrator during the Participant's lifetime on a form prescribed by the Administrator. The Beneficiary designation may be changed by the Participant at any time. Notwithstanding the foregoing, a Beneficiary designation, or any change thereto, shall not be valid unless a Participant has complied with any applicable laws in selecting the Beneficiary other than the Participant's spouse.

7.2 Revision of Designation. The submission of a new Beneficiary designation shall cancel all prior Beneficiary designations. Any finalized divorce or marriage (other than a common law marriage) of a Participant subsequent to the date of a Beneficiary designation shall revoke such designation, unless in the case of divorce the previous spouse was not designated as Beneficiary and unless in the case of marriage the Participant's new spouse has previously been designated as Beneficiary.

7.3 Successor Beneficiary. If the primary Beneficiary dies prior to complete distribution of the benefits provided in Article 4, the remaining Account balance shall be paid to the contingent Beneficiary selected by the Participant.

7.4 Absence of Valid Designation. If a Participant fails to designate a Beneficiary as provided above, or if the Beneficiary designation is revoked by marriage, divorce or otherwise without execution of a new designation, or if every person designated as Beneficiary predeceases the Participant or dies prior to complete distribution of the Participant's benefits, then the Administrator shall direct the distribution of such benefits to the Participant's estate.

ARTICLE 8
Administration/Claims Procedures

8.1 Administration. The Plan shall be administered by the Administrator, which shall have the exclusive right and full discretion (i) to interpret the Plan, (ii) to decide any and all matters arising hereunder (including the right to remedy possible ambiguities, inconsistencies or omissions), (iii) to make, amend and rescind such rules as it deems necessary for the proper administration of the Plan, (iv) to appoint agents, and (v) to make all other determinations and resolve all questions of fact necessary or advisable for the administration of the Plan, including determinations regarding eligibility for benefits payable under the Plan. All interpretations of the Administrator with respect to any matter hereunder shall be final, conclusive and binding on all persons affected thereby. No member of the Administrator shall be liable for any determination, decision, or action made in good faith with respect to the Plan. The Administrator may delegate any of its rights, powers and duties regarding the Plan to any person(s) or entity(ies). The Company will indemnify and hold harmless the members of the Administrator from and against any and all liabilities, costs, and expenses incurred by such persons as a result of any act, or omission, in connection with the performance of such persons' duties, responsibilities, and obligations under the Plan, other than such liabilities, costs, and expenses as may result from the bad faith, willful misconduct, or criminal acts of such persons.

8.2 Claims Procedure. Any Participant, former Participant or Beneficiary may file a written claim with the Administrator setting forth the nature of the benefit claimed, the amount thereof, and the basis for claiming entitlement to such benefit. The Administrator shall determine the validity of the claim and communicate a decision to the claimant promptly and, in any event, not later than 90 days after the date of the claim. The claim may be deemed by the claimant to have been denied for purposes of further review described below in the event a decision is not furnished to the claimant within such period. Every claim for benefits which is denied shall be denied by written notice setting forth in a manner calculated to be understood by the claimant (i) the specific reason or reasons for the denial, (ii) specific reference to any provisions of the Plan (including any internal rules, guidelines, protocols, criteria, etc.) on which the denial is based, (iii) a description of any additional material or information that is necessary to process the claim, (iv) an explanation of the procedure for further reviewing the denial of the claim, and (v) if applicable, an explanation of the claimant's right to submit the claim for binding arbitration in the event of an adverse determination on review.

8.3 Review Procedures. Within 60 days after the receipt of a denial on a claim, a claimant or his/her authorized representative may file a written request for review of such denial.

Such review shall be undertaken by the Administrator and shall be a full and fair review. The claimant shall have the right to review all pertinent documents. The claimant may submit written comments, documents, records and other information relating to the claim for benefits, and such information shall be taken into account for purposes of the review without regard to whether such information was submitted or considered in the initial benefit determination. The Administrator shall issue a decision not later than 60 days after receipt of a request for review from a claimant unless special circumstances require a longer period of time for processing, in which case written notice of the extension, indicating the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review, shall be furnished to the claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The decision on review shall be in writing and shall include specific reasons for the decision written in a manner calculated to be understood by the claimant, with specific reference to any provisions of the Plan on which the decision is based, and an explanation of the claimant's right to submit the claim for binding arbitration in the event of an adverse determination on review.

ARTICLE 9
Conditions Related to Benefits

9.1 Nonassignability. The benefits provided under the Plan may not be alienated, assigned, transferred, pledged or hypothecated by any person, at any time, or to any person whatsoever. Those benefits shall be exempt from the claims of creditors or other claimants of the Participant or Beneficiary and from all orders, decrees, levies, garnishment or executions to the fullest extent allowed by law. Notwithstanding the foregoing, the Administrator shall have full power and authority to the extent consistent with Code Section 409A and other applicable laws to comply with all liens by the Internal Revenue Service and any bona fide domestic relations orders and to adjust any amounts otherwise payable under the Plan accordingly.

9.2 No Right to Company Assets. The benefits paid under the Plan shall be paid from the general funds of the Company, and the Participant and any Beneficiary shall be no more than unsecured general creditors of the Company with no special or prior right to any assets of the Company for payment of any obligations hereunder.

9.3 Protective Provisions. The Participant shall cooperate with the Company by furnishing any and all information requested by the Administrator, in order to facilitate the payment of benefits hereunder, taking such physical examinations as the Administrator may deem necessary and taking such other actions as may be requested by the Administrator. If the Participant refuses to so cooperate, the Company shall have no further obligation to the Participant under the Plan. If the Participant fails to cooperate or makes any material misstatement of information, then no benefits shall be payable to the Participant under the Plan, except that benefits may be payable in a reduced amount in the sole discretion of the Administrator.

9.4 Withholding. The Participant shall make appropriate arrangements with the Company for satisfaction of any federal, state or local income tax withholding requirements, Social Security and other employee tax or other requirements applicable to the granting, crediting, vesting or payment of benefits under the Plan. If no arrangement is made, the

Company may provide, at its discretion, for such withholding, tax, and other payments as may be required, including, without limitation, the reduction of amounts otherwise payable to the Participant. If the Company pays such amounts on behalf of the Participant or Beneficiary, the Company shall be entitled to recover such amounts on demand with interest at the Wall Street Journal Prime Rate compounded monthly.

9.5 Assumptions and Methodology. The Administrator shall establish the assumptions and method of calculation used in determining the -benefits, earnings, payments, fees, expenses or any other amounts required to be calculated under the terms of the Plan. Such assumptions and methodology shall be established by the Administrator and made available to Participants and may be changed from time to time by the Administrator.

9.6 Trust. The Company shall be responsible for the payment of all benefits under the Plan. At its discretion, the Company may establish one or more grantor trusts for the purpose of providing for payment of benefits under the Plan. Such trust or trusts may be irrevocable, but the assets thereof shall be subject to the claims of the Company's creditors. Neither such trust or trusts, nor the assets thereof, however, shall be located outside of the United States. Benefits paid to the Participant from any such trust or trusts shall be considered paid by the Company for purposes of meeting the obligations of the Company under the Plan.

ARTICLE 10
Miscellaneous

10.1 Successors of the Company. The rights and obligations of the Company under the Plan shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Company.

10.2 Employment Not Guaranteed. Nothing contained in the Plan nor any action taken hereunder shall be construed as a contract of employment or as giving any Participant any right to continued employment with the Company.

10.3 Gender. Singular and Plural. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, or neuter, as the identity of the person or persons may require. As the context may require, the singular may be read as the plural and the plural as the singular.

10.4 Captions. The captions of the articles, paragraphs and sections of the Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

10.5 Validity. In the event any provision of the Plan is held invalid, void or unenforceable, the same shall not affect, in any respect whatsoever, the validity of any other provisions of the Plan.

10.6 Waiver of Breach. The waiver by the Company of any breach of any provision of the Plan shall not operate or be construed as a waiver of any subsequent breach by that Participant or any other Participant.

10.7 Notice. Any notice or filing required or permitted to be given to the Company or the Participant under this Agreement shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, in the case of the Company, to the principal office of the Company, directed to the attention of the Administrator, and in the case of the Participant, to the last known address of the Participant indicated on the employment records of the Company. Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification. Notices to the Company may be permitted by electronic communication according to specifications established by the Administrator.

10.8 Inability to Locate Participant or Beneficiary. It is the responsibility of a Participant to apprise the Administrator of any change in address of the Participant or Beneficiary. In the event that the Administrator is unable to locate a Participant or Beneficiary for a period of three (3) years, the Participant's Account shall be forfeited to the Company.

10.9 Errors in Benefit Statement or Distributions. In the event an error is made in a benefit statement, such error shall be corrected on the next benefit statement following the date such error is discovered. In the event that an error is made in withholding of a deferral, it shall be corrected immediately upon discovery of such error by payment of compensation or withholding of other compensation payable from the Company within the same taxable year in compliance with corrections procedures established under Section 409A or applicable Internal Revenue Service amnesty programs. In the event of an error in a distribution, the Participant's Account shall, immediately upon the discovery of such error, be adjusted to reflect such under or over payment and, if possible, the next distribution shall be adjusted upward or downward to correct such prior error in compliance with corrections procedures established under Section 409A or applicable Internal Revenue Service amnesty programs. If the remaining balance of a Participant's Account is insufficient to cover an erroneous overpayment, the Company may, at its discretion and if permitted under Code Section 40.9A., offset other amounts payable to the Participant from the Company (including but not limited to salary, bonuses, expense reimbursements, severance benefits or other employee compensation benefit arrangements, as allowed by law) to recoup the amount of such overpayment(s).

10.10 ERISA Plan. The Plan is intended to be an unfunded plan maintained primarily to provide deferred compensation benefits for a select group of "management or highly compensated employees" within the meaning of Sections 201, 301 and 401 of ERISA and therefore to be exempt from Parts 2, 3 and 4 of Title I of ERISA.

10.11 Applicable Law. In the event any provision of, or legal issue relating to, this Plan is not fully preempted by ERISA, such issue or provision shall be governed by the laws of the State of Florida.

11.12 Arbitration. Any claim, dispute or other matter in question of any kind relating to this Plan which is not resolved by the claims procedures under this Plan shall be settled by arbitration in accordance with the applicable employment dispute resolution rules of the American Arbitration Association. Notice of demand for arbitration shall be made in writing to the opposing party and to the American Arbitration Association within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall a demand for

arbitration be made after the date when the applicable statute of limitations would bar the institution of a legal or equitable proceeding based on such claim, dispute or other matter in question. The decision of the arbitrators shall be final and may be enforced in any court of competent jurisdiction. The arbitrators may award reasonable fees and expenses to the prevailing party in any dispute hereunder and shall award reasonable fees and expenses in the event that the arbitrators find that the losing party acted in bad faith or with intent to harass, hinder or delay the prevailing party in the exercise of its rights in connection with the matter under dispute.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed this 11th day of November, 2008.

OSI RESTAURANT PARTNERS, LLC

By: /s/ Joseph J. Kadow
Joseph J. Kadow

Its: Executive Vice President

Exhibit 10.47

SPLIT-DOLLAR AGREEMENT

THIS AGREEMENT made and entered into this 12th day of August, 2008, by and between OSI RESTAURANT PARTNERS, LLC (formerly known as OUTBACK STEAKHOUSE, INC.), with principal offices and place of business in the State of Florida (hereinafter referred to as the "Company") and DIRK A. MONTGOMERY, TRUSTEE OF THE DIRK A. MONTGOMERY REVOCABLE TRUST DATED APRIL 12, 2001 (hereinafter referred to as the "Employee"),

WITNESSETH THAT:

WHEREAS, the Employee is employed by the Company;

WHEREAS, the Employee wishes to provide life insurance protection for his family in the event of his death, under life insurance policy number 90848003, insuring the life of the Employee, with a face amount of $5,162,949, as of January 31, 2008 (the "Policy"), which is described in Exhibit A attached hereto and by this reference made a part hereof, and which was issued by John Hancock Variable Life Insurance Company (the "Insurer");

WHEREAS, the Company is willing to pay the premiums due on the Policy as an additional employment benefit for the Employee, on the terms and conditions hereinafter set forth;

WHEREAS, the Company is the owner of the Policy and, as such, possesses all incidents of ownership in and to the Policy, except as otherwise provided herein; and

WHEREAS, the Company wishes to retain such ownership rights, in order to secure the repayment of the amount due it hereunder;

NOW, THEREFORE, in consideration of the premises and of the mutual promises contained herein, the parties hereto agree as follows:

1. **Purchase of Policy**. The Company has purchased the Policy from the Insurer in the total face amount of $5,162,949 (as of January 31, 2008) and Increasing Death Benefit Option (as such term is defined in the Policy). The parties hereto have taken all necessary action to cause the Insurer to issue the Policy, and shall take any further action which may be necessary to cause the Policy to conform to the provisions of this Agreement. The parties hereto agree that the Policy shall be subject to the terms and conditions of this Agreement and of the endorsement to the Policy or beneficiary designation filed with the Insurer in accordance herewith.

2. **Ownership of Policy**. The Company shall be the sole and absolute owner of the Policy, and may exercise all ownership rights granted to the owner thereof by the terms of the Policy, except as may otherwise be provided herein.

3. **Designation of Policy Beneficiary/Endorsement**. The Company has executed a beneficiary designation for and/or an endorsement to the Policy, using the form required by the Insurer, naming itself as the beneficiary of the Policy death proceeds in an amount equal to the greater of the total amount of the premiums paid by it hereunder or the cash value of the Policy (excluding surrender charges or other similar charges or reductions), and naming the beneficiary or beneficiaries selected by the Employee as the beneficiary or beneficiaries of any balance of the death proceeds provided under the Policy.

4. **Election of Settlement Option**. The Employee may select the beneficiary or beneficiaries to receive the portion of policy proceeds to which the Employee is entitled hereunder, as well as the settlement option for payment of the death benefit provided under the Policy in excess of the amount due the Company hereunder, by specifying the same in a written notice to the Company. Upon receipt of such notice, the Company shall promptly execute and deliver to the Insurer the endorsement or beneficiary designation for such Policy under the form used by the Insurer thereunder, to elect the requested settlement option and to designate the

requested person, persons or entity as the beneficiary or beneficiaries to receive the death proceeds of the Policy in excess of the amount to which the Company is entitled hereunder. The parties hereto agree to take all action necessary to cause the beneficiary designation and settlement option provisions of the Policy to conform to the provisions hereof. The Company shall not terminate, alter or amend such endorsement or beneficiary designation without the express written consent of the Employee.

5. **Payment of Premiums**. On or before the due date of each Policy premium, or within the grace period provided therein, the Company shall pay the full amount of the annual premium on the Policy to the Insurer, and shall, upon request, promptly furnish the Employee evidence of timely payment of such premium. Subject to the acceptance of such amount by the Insurer, the Company may, in its discretion, at anytime and from time to time, make additional premium payments on the Policy. The Company shall annually furnish the Employee a statement of the amount of income reportable by the Employee for any Federal, state or local taxes, as applicable, as a result of the insurance protection provided the Policy beneficiary or beneficiaries hereunder.

6. **Additional Payment to Employee**. Upon the Employee reaching 65 years of age and while this Agreement is still in existence, the Company shall pay to the Employee, on or before March 15th of each year, as additional compensation, an amount equal to the estimated Federal, state and local taxes, as applicable, on the amount of income reportable by the Employee as a result of the insurance protection provided the Policy beneficiary or beneficiaries hereunder for the immediately preceding calendar year assuming the highest Federal, state and local tax, income tax bracket for a married individual or single individual as the case may be.

7. **Limitations on Company's Rights in Policy**.

a. Notwithstanding any other provision hereof or of the Policy, the Company shall not change the beneficiary designation of the Policy, the Death Benefit Option provision, or decrease the face Amount of Insurance Death Benefit, without, in any such case, the express written consent of the Trust.

b. In addition, in the event Employee completes seven (7) years of continuous employment with the Company as Chief Financial Officer commencing on January 1, 2006, the Company shall not thereafter sell, assign, transfer, surrender or cancel the Policy.

8. **Policy Loans**.

a. The Company may pledge or assign the Policy, subject to the terms and conditions of this Agreement, for the sole purpose of securing a loan from the Insurer or from a third party. The amount of such loan, including accumulated interest thereon, shall not exceed the lesser of (i) the cumulative amount of premiums on the Policy paid by the Company hereunder, less any portion thereof previously recovered by the Company through a loan from or against or a withdrawal from the Policy permitted hereunder; or (ii) the cash surrender value of the Policy (as defined therein) as of the date to which premiums have been paid. Interest charges on such loan shall be paid by the Company. If the Company so encumbers the Policy, other than by a policy loan from the Insurer, then, upon the death of the Employee or upon the election of the Employee hereunder to purchase the Policy from the Company, the Company shall promptly repay such loan from the death proceeds of the Policy or the amount received from the Employee for the purchase of the Policy, as the case may be, and thereafter shall promptly take all action necessary to secure the release or discharge of such encumbrance.

b. The Company may make withdrawals from the Policy, subject to the terms and conditions hereof. The amount of any such withdrawal shall not exceed the lesser of: (i) the

amount of the premiums on the Policy paid by the Company hereunder, less any portion thereof previously recovered by the Company through a loan from or against or a withdrawal permitted hereunder; or (ii) the cash surrender value of the Policy (as defined therein) as of the date to which premiums have been paid, and shall reduce the amount to which the Company would otherwise be entitled hereunder.

9. **Collection of Death Proceeds**.

a. Upon the death of the Employee, the Company shall cooperate with the beneficiary or beneficiaries designated by the Company at the direction of the Employee to take whatever action is necessary to collect the death benefit provided under the Policy; when such benefit has been collected and paid as provided herein, this Agreement shall thereupon terminate.

b. Upon the death of the Employee, the Company shall have the unqualified right to receive a portion of such death benefit equal to the greater of: (1) the total amount of the premiums paid by it hereunder reduced by any indebtedness against the Policy incurred by the Company hereunder existing at the death of the Employee, including any interest due on such indebtedness, or any withdrawals made by the Company from the Policy; (2) or the cash value of the Policy, net of any loans from the Insurer or withdrawals permitted hereunder (excluding surrender charges or other similar charges or reductions) immediately before the death of the Employee. The balance of the death benefit provided under the Policy, if any, shall be paid directly to the beneficiary or beneficiaries designated by the Company at the direction of the Employee, in the manner and in the amount or amounts provided in the endorsement or beneficiary designation provision of the Policy. In no event shall the amount payable to the Company hereunder exceed the death proceeds payable under the Policy at the death of the Employee. No amount shall be paid from such death benefit to the beneficiary or beneficiaries designated by the Company at the direction of the Employee, until the full amount due the Company hereunder has been paid. The parties hereto agree that the beneficiary designation provision of the Policy shall conform to the provisions hereof.

c. Notwithstanding any provision hereof to the contrary, in the event that, for any reason whatsoever, no death benefit is payable under the Policy upon the death of the Employee and in lieu thereof the Insurer refunds all or any part of the premiums paid for the Policy, the Company and the Employee's beneficiary or beneficiaries shall have the unqualified right to share such premiums based on their respective cumulative contributions thereto.

10. **Termination of the Agreement During the Employee's Lifetime**.

a. This Agreement shall terminate, during the Employee's lifetime, without notice, upon (a) bankruptcy, receivership or dissolution of the Company, or (b) upon termination of Employee's employment with the Company prior to completion of seven (7) years of continuous employment as Chief Financial Officer commencing January 1, 2006.

b. In addition, either party may terminate this Agreement while no premium under the Policy is overdue, by written notice to the other party; provided that the Company shall have no power to terminate this Agreement upon completion by Employee of seven (7) years of continuous employment with Company as Chief Financial Officer commencing January 1, 2006. Such termination shall be effective as of the date of such notice.

11. **Disposition of the Policy on Termination of the Agreement During the Employee's Lifetime** .

a. For sixty (60) days after the date of the termination of this Agreement during the Employee's lifetime, the Employee shall have the assignable option to purchase the Policy from the Company. The purchase price for the Policy shall be the greater of (i) the cumulative amount of the premium payments made by the Company hereunder, less any portion thereof previously recovered by the Company as a result of a loan from or against or a withdrawal from the Policy permitted hereunder, or (ii) the then cash value of the Policy, net of any loans from the Insurer or withdrawals (excluding surrender charges or other similar charges or reductions), less any indebtedness incurred by the Company secured by the Policy which remains outstanding as of the date of such termination, including any interest due on such indebtedness, or any withdrawals made by the Company from the Policy. In no event shall the amount payable to the Company hereunder exceed the death proceeds payable under the Policy at the death of the Employee. Upon receipt of such amount, the Company shall transfer all of its right, title and interest in and to the Policy to the Employee or his assignee, by the execution and delivery of an appropriate instrument of transfer.

b. If the Employee or its assignee fails to exercise such option within such sixty (60) day period, then, the Company may enforce its right to be repaid the amount due it hereunder by surrendering or canceling the Policy for its cash surrender value, or it may change the beneficiary designation provisions of the Policy, naming itself or any other person or entity as revocable beneficiary thereof, or exercise any other ownership rights in and to the Policy, without regard to the provisions hereof. Thereafter, neither the Employee nor his assigns or beneficiaries shall have any further interest in and to the Policy, either under the terms thereof or under this Agreement.

12. **Insurer Not a Party**. The Insurer shall be fully discharged from its obligations under the Policy by payment of the Policy death benefit to the beneficiary or beneficiaries named in the Policy, subject to the terms and conditions of the Policy. In no event shall the Insurer be considered a party to this Agreement, or any modification or amendment hereof. No provision of this Agreement, nor of any modification or amendment hereof, shall in any way be construed as enlarging, changing, varying, or in any other way affecting the obligations of the Insurer as expressly provided in the Policy, except insofar as the provisions hereof are made a part of the Policy by the beneficiary designation executed by the Company and filed with the Insurer in connection herewith.

13. **Assignment by Employee**. Notwithstanding any provision hereof to the contrary, the Employee shall have the right to absolutely and irrevocably assign by gift all of his right, title and interest in and to this Agreement and the rights it provides in and to the Policy to an assignee. This right shall be exercisable by the execution and delivery to the Corporation of a written assignment, in substantially the form attached hereto as Exhibit B, which by this reference is made a part hereof. Upon receipt of such written assignment executed by the Employee and duly accepted by the assignee thereof, the Corporation shall consent thereto in writing, and shall thereafter treat the Employee's assignee as the sole owner of all of the Employee's right, title and interest in and to this Agreement and in and to the Policy. Thereafter, the Employee shall have no right, title or interest in and'to this Agreement or the Policy, all such rights being vested in and exercisable only by such assignee.

14. **Named Fiduciary, Determination of Benefits, Claims Procedure and Administration** .

a. **Named Fiduciary**. The Company is hereby designated as the named fiduciary under this Agreement. The named fiduciary shall have authority to control and manage the operation and administration of this Agreement, and it shall be responsible for establishing and carrying out a funding policy and method consistent with the objectives of this Agreement.

b. **Claim**. A person who believes that he or she is being denied a benefit to which he or she is entitled (hereinafter referred to as "Claimant"), or his or her duly authorized representative, may file a written request for such benefit with the Chief Legal Officer of the Company (the "First Level Reviewer") setting forth his or her claim. Such claim must be addressed to the Chief Legal Officer of the Company, at its then principal place of business.

c. **Claim Decision**. Upon receipt of a claim, the First Level Reviewer shall advise the Claimant that a reply will be forthcoming within a reasonable period of time, but ordinarily not later than ninety (90) days, and shall, in fact, deliver such reply within such period. However, the First Level Reviewer may extend the reply period for an additional ninety (90) days for reasonable cause. If the reply period will be extended, the First Level Reviewer shall advise the Claimant in writing during the initial ninety (90) day period indicating the special circumstances requiring an extension and the date by which the First Level Reviewer expects to render the benefit determination.

If the claim is denied in whole or in part, the First Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation as to why such material or such information is necessary;

(4) appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review; and

(5) the time limits for requesting a review of the denial under Section14(c) hereof and for the actual review of the denial under Section 14(d) hereof.

d. **Request for Review**. Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Chairman of the Compensation Committee of the Board of Directors of the Company (the "Second Level Reviewer") review the First Level Reviewer's prior determination. Such request must be addressed to the Chairman of the Compensation Committee of the Board of Directors of the Company, at its then principal place of business. The Claimant or his or her duly authorized representative may submit written comments, documents, records or other information relating to the denied claim, which such information shall be considered in the review under this subsection without regard to whether such information was submitted or considered in the initial benefit determination.

The Claimant or his or her duly authorized representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the First Level Reviewer in making its initial claims decision, (ii) was submitted, considered or generated in the course of the First Level Reviewer making its initial claims decision, without regard to whether such instrument was actually relied upon by the First Level Reviewer in making its decision or (iii) demonstrates compliance by the First Level Reviewer with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with

this Agreement and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants. If the Claimant does not request a review of the First Level Reviewer's determination within such sixty (60) day period, he or she shall be barred and estopped from challenging such determination.

e. **Review of Decision**. Within a reasonable period of time, ordinarily not later than sixty (60) days, after the Second Level Reviewer's receipt of a request for review, it will review the First Level Reviewer's prior determination. If special circumstances require that the sixty (60) day time period be extended, the Second Level Reviewer will so notify the Claimant within the initial sixty (60) day period indicating the special circumstances requiring an extension and the date by which the Second Level Reviewer expects to render its decision on review, which shall be as soon as possible but not later than 120 days after receipt of the request for review. In the event that the Second Level Reviewer extends the determination period on review due to a Claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall not take into account the period beginning on the date on which notification of extension is sent to the Claimant and ending on the date on which the Claimant responds to the request for additional information.

The Second Level Reviewer has discretionary authority to determine a Claimant's eligibility for benefits and to interpret the terms of this Agreement. Benefits under this Agreement will be paid only if the Second Level Reviewer decides in its discretion that the Claimant is entitled to such benefits. The decision of the Second Level Reviewer shall be final and non-reviewable, unless found to be arbitrary and capricious by a court of competent review. Such decision will be binding upon the Company and the Claimant.

If the Second Level Reviewer makes an adverse benefit determination on review, the Second Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the Second Level Reviewer in making its decision, (ii) was submitted, considered or generated in the course of the Second Level Reviewer making its decision, without regard to whether such instrument was actually relied upon by the Second Level Reviewer in making its decision or (iii) demonstrates compliance by the Second Level Reviewer with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with this Agreement, and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants; and

(4) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following the adverse benefit determination on such review.

15. **Amendment**. This Agreement may not be amended, altered or modified, except by a written instrument signed by the parties hereto, or their respective successors or assigns, and may not be otherwise terminated except as provided herein.

16. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and the Employee, his successors, assigns, and beneficiaries.

17. **Notices**. Any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail, postage prepaid, addressed to such party's last known address as shown on the records of the Company. The date of such mailing shall be deemed the date of notice, consent or demand.

18. **Governing Law**. This Agreement, and the rights of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Florida.

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

OSI RESTAURANT PARTNERS, LLC

By: /s/ A. William Allen, III
Name: A. William Allen, III
Title: Chief Executive Officer

ATTEST:

/s/ Joseph J. Kadow
Joseph J. Kadow,
Secretary

"COMPANY"

DIRK A. MONTGOMERY REVOCABLE TRUST
DATED APRIL 12, 2001

By: /s/ Dirk A. Montgomery
Dirk A. Montgomery, Trustee

"TRUST"

EXHIBIT A

The following life insurance Policy is subject to the Split-Dollar Agreement to which this Exhibit is attached:

Insurer John Hancock Variable Life Insurance Company

Insured Dirk A. Montgomery

Policy Number 90848003

Date of Issue March 30, 2006

face Amount $5,162,949 (as of January 31, 2008)

Death Benefit Option Increasing Death Benefit Option

EXHIBIT B

THIS ASSIGNMENT, dated this day of , 20 .

WITNESSETH THAT:

WHEREAS, the undersigned (the "Assignor") is the Employee under that certain Split-Dollar Agreement effective as of March 30, 2006 (the "Split-Dollar Agreement") between OSI RESTAURANT PARTNERS, LLC (formerly known as Outback Steakhouse, Inc.) with principal offices and place of business in the State of Florida (the "Company") and DIRK A. MONTGOMERY, TRUSTEE OF THE DIRK A. MONTGOMERY REVOCABLE TRUST DATED APRIL 12, 2001, which Split-Dollar Agreement confers upon the undersigned certain rights and benefits with regard to one or more policies of insurance insuring the Assignor's life; and

WHEREAS, pursuant to the provisions of said Split-Dollar Agreement, the Assignor retained the right, exercisable by the execution and delivery to the Corporation of a written form of assignment, to absolutely and irrevocably assign all of the Assignor's right, title and interest in and to said Split-Dollar Agreement to an assignee; and

WHEREAS, the Assignor desires to exercise said right;

NOW, THEREFORE, the Assignor, without consideration, and intending to make a gift, hereby absolutely and irrevocably assigns, gives, grants and transfers to (the "Assignee"), all of the Assignor's right, title and interest in and to the Split-Dollar Agreement and said policies of insurance, intending that, from and after this date, the Split-Dollar Agreement be solely between the Corporation and the Assignee and that hereafter the Assignor shall neither have nor retain any right, title or interest therein.

DIRK A. MONTGOMERY REVOCABLE
TRUST DATED APRIL 12, 2001

By: _____
Dirk A. Montgomery, Trustee

Assignor

ACCEPTANCE OF ASSIGNMENT

The undersigned Assignee hereby accepts the above assignment of all right, title and interest of the Assignor therein in and to the Split-Dollar Agreement, and the undersigned hereby agrees to be bound by all of the terms and conditions of said Split-Dollar Agreement, as if the original Employee thereunder.

, Trustee

Assignee

Dated: , 20

CONSENT TO ASSIGNMENT

The undersigned Company hereby consents to the foregoing assignment of all of the right, title and interest of the Assignor in and to the Split-Dollar Agreement, to the Assignee designated therein. The undersigned Company hereby agrees that, from and after the date hereof, the undersigned Company shall look solely to such Assignee for the performance of all obligations under said Split-Dollar Agreement which were heretofore the responsibility of the

Assignor, shall allow all rights and benefits provided therein to the Assignor to be exercised only by said Assignee, and shall hereafter treat said Assignee in all respects as if the original Employee thereunder.

OSI RESTAURANT PARTNERS, LLC

By: _____

Name: _____

Title: _____

Dated: , 20

Exhibit 10.48

SPLIT-DOLLAR AGREEMENT

THIS AGREEMENT made and entered into this 12th day of August, 2008, effective as of March 30, 2006 by and between OSI RESTAURANT PARTNERS, LLC (formerly known as OUTBACK STEAKHOUSE, INC)., with principal offices and place of business in the State of Florida (hereinafter referred to as the "Company") and JOSEPH J. KADOW (hereinafter referred to as the "Employee"),

WITNESSETH THAT:

WHEREAS, the Employee is employed by the Company;

WHEREAS, the Employee wishes to provide life insurance protection for his family in the event of his death, under life insurance policy number 90848002, insuring the life of the Employee, with a face amount of $5,236,268 as of January 31, 2008 (the "Policy"), which is described in Exhibit A attached hereto and by this reference made a part hereof, and which was issued by John Hancock Variable Life Insurance Company (the "Insurer");

WHEREAS, the Company is willing to pay the premiums due on the Policy as an additional employment benefit for the Employee, on the terms and conditions hereinafter set forth;

WHEREAS, the Company is the owner of the Policy and, as such, possesses all incidents of ownership in and to the Policy, except as otherwise provided herein; and

WHEREAS, the Company wishes to retain such ownership rights, in order to secure the repayment of the amount due it hereunder;

NOW, THEREFORE, in consideration of the premises and of the mutual promises contained herein, the parties hereto agree as follows:

1. **Purchase of Policy**. The Company has purchased the Policy from the Insurer in the total face amount of $5,236,268 (as of January 31, 2008) and Increasing Death Benefit Option (as such term is defined in the Policy). The parties hereto have taken all necessary action to cause the Insurer to issue the Policy, and shall take any further action which may be necessary to cause the Policy to conform to the provisions of this Agreement. The parties hereto agree that the Policy shall be subject to the terms and conditions of this Agreement and of the endorsement to the Policy or beneficiary designation filed with the Insurer in accordance herewith.

2. **Ownership of Policy**. The Company shall be the sole and absolute owner of the Policy, and may exercise all ownership rights granted to the owner thereof by the terms of the Policy, except as may otherwise be provided herein.

3. **Designation of Policy Beneficiary/Endorsement**. The Company has executed a beneficiary designation for and/or an endorsement to the Policy, using the form required by the Insurer, naming itself as the beneficiary of the Policy death proceeds in an amount equal to the greater of the total amount of the premiums paid by it hereunder or the cash value of the Policy (excluding surrender charges or other similar charges or reductions), and naming the beneficiary or beneficiaries selected by the Employee as the beneficiary or beneficiaries of any balance of the death proceeds provided under the Policy.

4. **Election of Settlement Option**. The Employee may select the beneficiary or beneficiaries to receive the portion of policy proceeds to which the Employee is entitled hereunder, as well as the settlement option for payment of the death benefit provided under the Policy in excess of the amount due the Company hereunder, by specifying the same in a written notice to the Company. Upon receipt of such notice, the Company shall promptly execute and deliver to the Insurer the endorsement or beneficiary designation for such Policy under the form

used by the Insurer thereunder, to elect the requested settlement option and to designate the requested person, persons or entity as the beneficiary or beneficiaries to receive the death proceeds of the Policy in excess of the amount to which the Company is entitled hereunder. The parties hereto agree to take all action necessary to cause the beneficiary designation and settlement option provisions of the Policy to conform to the provisions hereof. The Company shall not terminate, alter or amend such endorsement or beneficiary designation without the express written consent of the Employee.

5. **Payment of Premiums**. On or before the due date of each Policy premium, or within the grace period provided therein, the Company shall pay the full amount of the annual premium on the Policy to the Insurer, and shall, upon request, promptly furnish the Employee evidence of timely payment of such premium. Subject to the acceptance of such amount by the Insurer, the Company may, in its discretion, at anytime and from time to time, make additional premium payments on the Policy. The Company shall annually furnish the Employee a statement of the amount of income reportable by the Employee for any Federal, state or local taxes, as applicable, as a result of the insurance protection provided the Policy beneficiary or beneficiaries hereunder.

6. **Additional Payment to Employee**. Upon the Employee reaching 65 years of age and while this Agreement is still in existence, the Company shall pay to the Employee, on or before March 15' of each year, as additional compensation, an amount equal to the estimated Federal, state and local taxes, as applicable, on the amount of income reportable by the Employee as a result of the insurance protection provided the Policy beneficiary or beneficiaries hereunder for the immediately preceding calendar year assuming the highest Federal, state and local tax, income tax bracket for a married individual or single individual as the case may be.

7. **Limitations on Company's Rights in Policy**. Notwithstanding any other provision hereof or of the Policy, the Company shall not sell, assign, transfer, surrender or cancel the Policy, change the beneficiary designation of the Policy, change the Death Benefit Option provision, or decrease the Face Amount of Insurance Death Benefit, without, in any such case, the express written consent of the Employee.

8. **Policy Loans**.

a. The Company may pledge or assign the Policy, subject to the terms and conditions of this Agreement, for the sole purpose of securing a loan from the Insurer or from a third party. The amount of such loan, including accumulated interest thereon, shall not exceed the lesser of (i) the cumulative amount of premiums on the Policy paid by the Company hereunder, less any portion thereof previously recovered by the Company through a loan from or against or a withdrawal from the Policy permitted hereunder; or (ii) the cash surrender value of the Policy (as defined therein) as of the date to which premiums have been paid. Interest charges on such loan shall be paid by the Company. If the Company so encumbers the Policy, other than by a policy loan from the Insurer, then, upon the death of the Employee or upon the election of the Employee hereunder to purchase the Policy from the Company, the Company shall promptly repay such loan from the death proceeds of the Policy or the amount received from the Employee for the purchase of the Policy, as the case may be, and thereafter shall promptly take all action necessary to secure the release or discharge of such encumbrance.

b. The Company may make withdrawals from the Policy, subject to the terms and conditions hereof. The amount of any such withdrawal shall not exceed the lesser of: (i) the amount of the premiums on the Policy paid by the Company hereunder, less any portion thereof previously recovered by the Company through a loan from or against or a withdrawal permitted hereunder; or (ii) the cash surrender value of the Policy (as defined therein) as of the date to which premiums have been paid, and shall reduce the amount to which the Company would otherwise be entitled hereunder.

9. **Collection of Death Proceeds**.

a. Upon the death of the Employee, the Company shall cooperate with the beneficiary or beneficiaries designated by the Company at the direction of the Employee to take whatever action is necessary to collect the death benefit provided under the Policy; when such benefit has been collected and paid as provided herein, this Agreement shall thereupon terminate.

b. Upon the death of the Employee, the Company shall have the unqualified right to receive a portion of such death benefit equal to the greater of: (1) the total amount of the premiums paid by it hereunder reduced by any indebtedness against the Policy incurred by the Company hereunder existing at the death of the Employee, including any interest due on such indebtedness, or any withdrawals made by the Company from the Policy; (2) or the cash value of the Policy, net of any loans from the Insurer or withdrawals permitted hereunder (excluding surrender charges or other similar charges or reductions) immediately before the death of the Employee. The balance of the death benefit provided under the Policy, if any, shall be paid directly to the beneficiary or beneficiaries designated by the Company at the direction of the Employee, in the manner and in the amount or amounts provided in the endorsement or beneficiary designation provision of the Policy. In no event shall the amount payable to the Company hereunder exceed the death proceeds payable under the Policy at the death of the Employee. No amount shall be paid from such death benefit to the beneficiary or beneficiaries designated by the Company at the direction of the Employee, until the full amount due the Company hereunder has been paid. The parties hereto agree that the beneficiary designation provision of the Policy shall conform to the provisions hereof.

c. Notwithstanding any provision hereof to the contrary, in the event that, for any reason whatsoever, no death benefit is payable under the Policy upon the death of the Employee and in lieu thereof the Insurer refunds all or any part of the premiums paid for the Policy, the Company and the Employee's beneficiary or beneficiaries shall have the unqualified right to share such premiums based on their respective cumulative contributions thereto.

10. **Termination of the Agreement During the Employee's Lifetime**.

a. This Agreement shall terminate, during the Employee's lifetime, without notice, upon bankruptcy, receivership or dissolution of the Company.

b. In addition, either party may terminate this Agreement while no premium under the Policy is overdue, by written notice to the other party; provided that the Company shall have no power to terminate this Agreement.

11. **Disposition of the Policy on Termination of the Agreement During the Employee's Lifetime** .

a. For sixty (60) days after the date of the termination of this Agreement during the Employee's lifetime, the Employee shall have the assignable option to purchase the Policy from the Company. The purchase price for the Policy shall be (i) the cumulative amount of the premium payments made by the Company hereunder, less any portion thereof previously recovered by the Company as a result of a loan from or against or a withdrawal from the Policy permitted hereunder, or (ii) the then cash value of the Policy, net of any loans from the Insurer or withdrawals (excluding surrender charges or other similar charges or reductions), less any indebtedness incurred by the Company secured by the Policy which remains outstanding as of the

date of such termination, including any interest due on such indebtedness, or any withdrawals made by the Company from the Policy. In no event shall the amount payable to the Company hereunder exceed the death proceeds payable under the Policy at the death of the Employee. Upon receipt of such amount, the Company shall transfer all of its right, title and interest in and to the Policy to the Employee or his assignee, by the execution and delivery of an appropriate instrument of transfer.

b. If the Employee or its assignee fails to exercise such option within such sixty (60) day period, then, the Company may enforce its right to be repaid the amount due it hereunder by surrendering or canceling the Policy for its cash surrender value, or it may change the beneficiary designation provisions of the Policy, naming itself or any other person or entity as revocable beneficiary thereof, or exercise any other ownership rights in and to the Policy, without regard to the provisions hereof.

Thereafter, neither the Employee nor his assigns or beneficiaries shall have any further interest in and to the Policy, either under the terms thereof or under this Agreement.

12. **Insurer Not a Party**. The Insurer shall be fully discharged from its obligations under the Policy by payment of the Policy death benefit to the beneficiary or beneficiaries named in the Policy, subject to the terms and conditions of the Policy. In no event shall the Insurer be considered a party to this Agreement, or any modification or amendment hereof. No provision of this Agreement, nor of any modification or amendment hereof, shall in any way be construed as enlarging, changing, varying, or in any other way affecting the obligations of the Insurer as expressly provided in the Policy, except insofar as the provisions hereof are made a part of the Policy by the beneficiary designation executed by the Company and filed with the Insurer in connection herewith.

13. **Assignment by Employee**. Notwithstanding any provision hereof to the contrary, the Employee shall have the right to absolutely and irrevocably assign by gift all of his right, title and interest in and to this Agreement and the rights it provides in and to the Policy to an assignee. This right shall be exercisable by the execution and delivery to the Corporation of a written assignment, in substantially the form attached hereto as Exhibit B, which by this reference is made a part hereof. Upon receipt of such written assignment executed by the Employee and duly accepted by the assignee thereof, the Corporation shall consent thereto in writing, and shall thereafter treat the Employee's assignee as the sole owner of all of the Employee's right, title and interest in and to this Agreement and in and to the Policy. Thereafter, the Employee shall have no right, title or interest in and to this Agreement or the Policy, all such rights being vested in and exercisable only by such assignee.

14. **Named Fiduciary, Determination of Benefits, Claims Procedure and Administration** .

a. **Named Fiduciary**. The Company is hereby designated as the named fiduciary under this Agreement. The named fiduciary shall have authority to control and manage the operation and administration of this Agreement, and it shall be responsible for establishing and carrying out a funding policy and method consistent with the objectives of this Agreement.

b. **Claim**. A person who believes that he or she is being denied a benefit to which he or she is entitled (hereinafter referred to as "Claimant"), or his or her duly authorized representative, may file a written request for such benefit with the Chief Legal Officer of the Company (the "First Level Reviewer") setting forth his or her claim. Such claim must be addressed to the Chief Legal Officer of the Company, at its then principal place of business.

c. **Claim Decision**. Upon receipt of a claim, the First Level Reviewer shall advise the Claimant that a reply will be forthcoming within a reasonable period of time, but ordinarily not later than ninety (90) days, and shall, in fact, deliver such reply within such period. However, the First Level Reviewer may extend the reply period for an additional ninety (90) days for reasonable cause. If the reply period will be extended, the First Level Reviewer shall advise the Claimant in writing during the initial ninety (90) day period indicating the special circumstances requiring an extension and the date by which the First Level Reviewer expects to render the benefit determination.

If the claim is denied in whole or in part, the First Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation as to why such material or such information is necessary;

(4) appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review; and

(5) the time limits for requesting a review of the denial under Section 14(c) hereof and for the actual review of the denial under Section 14(d) hereof.

d. **Request for Review**. Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Chairman of the Compensation Committee of the Board of Directors of the Company (the "Second Level Reviewer") review the First Level Reviewer's prior determination. Such request must be addressed to the Chairman of the Compensation Committee of the Board of Directors of the Company, at its then principal place of business. The Claimant or his or her duly authorized representative may submit written comments, documents, records or other information relating to the denied claim, which such information shall be considered in the review under this subsection without regard to whether such information was submitted or considered in the initial benefit determination.

The Claimant or his or her duly authorized representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the First Level Reviewer in making its initial claims decision, (ii) was submitted, considered or generated in the course of the First Level Reviewer making its initial claims decision, without regard to whether such instrument was actually relied upon by the First Level Reviewer in making its decision or (iii) demonstrates compliance by the First Level Reviewer with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with this Agreement and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants. If the Claimant does not request a review of the First Level Reviewer's determination within such sixty (60) day period, he or she shall be barred and estopped from challenging such determination.

e. **Review of Decision**. Within a reasonable period of time, ordinarily not later than sixty (60) days, after the Second Level Reviewer's receipt of a request for review, it will review the First Level Reviewer's prior determination. If special circumstances require that the sixty (60) day time period be extended, the Second Level Reviewer will so notify the Claimant within the initial sixty (60) day period indicating the special circumstances requiring an extension and the date by which the Second Level Reviewer expects to render its decision on review, which shall be as soon as possible but not later than 120 days after receipt of the request for review. In the event that the Second Level Reviewer extends the determination period on review due to a Claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall not take into account the period beginning on the date on which notification of extension is sent to the Claimant and ending on the date on which the Claimant responds to the request for additional information.

The Second Level Reviewer has discretionary authority to determine a Claimant's eligibility for benefits and to interpret the terms of this Agreement. Benefits under this Agreement will be paid only if the Second Level Reviewer decides in its discretion that the Claimant is entitled to such benefits. The decision of the Second Level Reviewer shall be final and non-reviewable, unless found to be arbitrary and capricious by a court of competent review. Such decision will be binding upon the Company and the Claimant.

If the Second Level Reviewer makes an adverse benefit determination on review, the Second Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the Second Level Reviewer in making its decision, (ii) was submitted, considered or generated in the course of the Second Level Reviewer making its decision, without regard to whether such instrument was actually relied upon by the Second Level Reviewer in making its decision or (iii) demonstrates compliance by the Second Level Reviewer with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with this Agreement, and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants; and

(4) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following the adverse benefit determination on such review.

15. **Amendment**. This Agreement may not be amended, altered or modified, except by a written instrument signed by the parties hereto, or their respective successors or assigns, and may not be otherwise terminated except as provided herein.

16. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and the Employee, his successors, assigns, and beneficiaries.

17. **Notices**. Any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail, postage prepaid, addressed to such party's last known address as shown on the records of the Company. The date of such mailing shall be deemed the date of notice, consent or demand.

18. **Governing Law**. This Agreement, and the rights of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Florida.

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

OSI RESTAURANT PARTNERS, LLC

By: /s/ Dirk A. Montgomery
Name: Dirk A. Montgomery
Title: Chief Financial Officer

ATTEST:

/s/ Joseph J. Kadow
Joseph J. Kadow,
Secretary

"COMPANY"

/s/ Joseph J. Kadow
JOSEPH J. KADOW

"EMPLOYEE"

EXHIBIT A

The following life insurance Policy is subject to the Split-Dollar Agreement to which this Exhibit is attached:

Insurer John Hancock Variable Life Insurance Company

Insured Joseph J. Kadow

Policy Number 90848002

Date of Issue March 30, 2006

face Amount $5,236,268 (as of January 31, 2008)

Death Benefit Option Increasing Death Benefit Option

EXHIBIT B

THIS ASSIGNMENT, dated this day of , 20 .

WITNESSETH THAT:

WHEREAS, the undersigned (the "Assignor") is the Employee under that certain Split-Dollar Agreement effective as of March 30, 2006 (the "Split-Dollar Agreement"), between OSI RESTAURANT PARTNERS, LLC (formerly known as Outback Steakhouse, Inc.) with principal offices and place of business in the State of Florida (the "Company") and JOSEPH KADOW, which Split-Dollar Agreement confers upon the undersigned certain rights and benefits with regard to one or more policies of insurance insuring the Assignor's life; and

WHEREAS, pursuant to the provisions of said Split-Dollar Agreement, the Assignor retained the right, exercisable by the execution and delivery to the Corporation of a written form of assignment, to absolutely and irrevocably assign all of the Assignor's right, title and interest in and to said Split-Dollar Agreement to an assignee; and

WHEREAS, the Assignor desires to exercise said right;

NOW, THEREFORE, the Assignor, without consideration, and intending to make a gift, hereby absolutely and irrevocably assigns, gives, grants and transfers to (the "Assignee"), all of the Assignor's right, title and interest in and to the Split-Dollar Agreement and said policies of insurance, intending that, from and after this date, the Split-Dollar Agreement be solely between the Corporation and the Assignee and that hereafter the Assignor shall neither have nor retain any right, title or interest therein.

JOSEPH KADOW

Assignor

ACCEPTANCE OF ASSIGNMENT

The undersigned Assignee hereby accepts the above assignment of all right, title and interest of the Assignor therein in and to the Split-Dollar Agreement, and the undersigned hereby agrees to be bound by all of the terms and conditions of said Split-Dollar Agreement, as if the original Employee thereunder.

_____ , Trustee

Assignee

Dated: , 20

CONSENT TO ASSIGNMENT

The undersigned Company hereby consents to the foregoing assignment of all of the right, title and interest of the Assignor in and to the Split-Dollar Agreement, to the Assignee designated therein. The undersigned Company hereby agrees that, from and after the date hereof, the undersigned Company shall look solely to such Assignee for the performance of all obligations under said Split-Dollar Agreement which were heretofore the responsibility of the Assignor, shall allow all rights and benefits provided therein to the Assignor to be exercised only by said Assignee, and shall hereafter treat said Assignee in all respects as if the original Employee thereunder.

OSI RESTAURANT PARTNERS, LLC

By: _____

Name: _____

Title: _____

Dated: , 20

Exhibit 10.49

SPLIT-DOLLAR AGREEMENT

THIS AGREEMENT made and entered into this 19th day of August, 2008, effective as of August, 2005, by and between OSI RESTAURANT PARTNERS, LLC (formerly known as OUTBACK STEAKHOUSE, INC.), with principal offices and place of business in the State of Florida (hereinafter referred to as the "Company") and RICHARD DANKER, TRUSTEE OF ROBERT D. BASHAM IRREVOCABLE TRUST AGREEMENT OF 1999 DATED DECEMBER 20, 1999 (hereinafter referred to as the "Trust"),

WITNESSETH THAT:

WHEREAS, ROBERT D. BASHAM (the "Employee") is employed by the Company;

WHEREAS, the Trust entered into a split-dollar life insurance arrangement with the Company, effective as of November 7, 1999 (the "1999 Agreement") to govern the rights and obligations of the Trust and the Company with respect to life insurance policy number 58035001, insuring the life of the Employee, with a face amount of $12,399,785 as of January 31, 2008 (the "Policy"), issued by John Hancock Variable Life Insurance Company (the "Insurer");

WHEREAS, the Company had been paying all the premiums on the Policy as an additional employment benefit for the Employee;

WHEREAS, the Trust had collaterally assigned the Policy to the Company in order to secure the repayment of the premium payments made by the Company;

WHEREAS, because of the potential application of Section 402 of the Sarbanes-Oxley Act of 2002 (the "Act") to the 1999 Agreement, the Company suspended the payment of all premium advances due under the 1999 Agreement as of the effective date of the Act;

WHEREAS, in order to maintain a split-dollar life insurance arrangement for the Policy with the Company in light of the Act, the Trust has agreed to transfer ownership of the Policy to

the Company and to enter into this Agreement, to convert the 1999 Agreement from a collateral assignment split-dollar arrangement to an endorsement split-dollar arrangement, and in order to have its income and gift tax consequences of the arrangement determined under traditional split-dollar economic benefit concepts, rather than imputed interest, the Trust has agreed that, on termination of the arrangement (as provided herein), the Company will be entitled to recover the greater of its premium advances or the Policy's cash value, ignoring surrender or other similar charges;

WHEREAS, the Policy has been reissued, as described herein, to the Trust as the owner of the Policy and the Trust has transferred ownership of the Policy to the Company;

WHEREAS, after the Policy was transferred to the Company, the Company released its collateral assignment of the Policy with the Insurer;

WHEREAS, the parties acknowledge that the Company is entitled to repayment of the amounts it has paid toward the premiums on the Policy under the 1999 Agreement prior to the transfer of the Policy to the Company;

WHEREAS, the Company shall hereafter be the owner of the Policy and, as such, will possess all incidents of ownership in and to the Policy, except as otherwise provided herein; and

WHEREAS, the Company wishes to retain such ownership rights, in order to secure the repayment of the amount due it under the 1999 Agreement and hereunder;

NOW, THEREFORE, in consideration of the premises and of the mutual promises contained herein, the parties hereto agree as follows:

1. **Purchase of Policy**. The Trust had previously purchased the Policy from the Insurer; the Policy has been reissued in the total face amount of $12,399,785 (as of January 31, 2008) and Increasing Death Benefit Option (as such term is defined in the Policy). The parties

hereto will take all necessary action to cause the Policy to conform to the provisions of this Agreement. The parties hereto agree that the Policy shall be subject to the terms and conditions of this Agreement and of the endorsement to the Policy or beneficiary designation filed with the Insurer in accordance herewith.

2. **Ownership of Policy**. The Company shall be the sole and absolute owner of the Policy, and may exercise all ownership rights granted to the owner thereof by the terms of the Policy, except as may otherwise be provided herein.

3. **Designation of Policy Beneficiary/Endorsement**. The Company has executed a beneficiary designation for and/or an endorsement to the Policy, using the form required by the Insurer, naming itself as the beneficiary of the policy death proceeds in an amount equal to the greater of the total amount of the premiums paid by it hereunder (including all such premiums paid pursuant to the 1999 Agreement) or the cash value of the Policy (excluding surrender charges or other similar charges or reductions), and naming the Trust as the beneficiary of any balance of the policy death proceeds provided under the Policy.

4. **Election of Settlement Option**. The Trust may select the settlement option for payment of the death benefit provided under the Policy in excess of the amount due the Company hereunder, by specifying the same in a written notice to the Company. The Company shall promptly execute and deliver to the Insurer the forms necessary to elect the requested settlement option and to designate the Trust as the beneficiary to receive the death proceeds of the Policy in excess of the amount to which the Company is entitled hereunder. The parties hereto agree to take all action necessary to cause the beneficiary designation and settlement option provisions of the Policy to conform to the provisions hereof. The Company shall not terminate, alter or amend such designation or election without the express written consent of the Trust.

5. **Payment of Premiums**. On or before the due date of each Policy premium, or within the grace period provided therein, the Company shall pay the full amount of the annual premium on the Policy to the Insurer, and shall, upon request, promptly furnish the Trust evidence of timely payment of such premium. Subject to the acceptance of such amount by the Insurer, the Company may, in its discretion, at anytime and from time to time, make additional premium payments on the Policy. The Company shall annually furnish the Employee a statement of the amount of income reportable by the Employee for any Federal, state or local taxes, as applicable, as a result of the insurance protection provided the Trust as the Policy beneficiary.

6. **Additional Payment to Employee**. Upon the Employee reaching 65 years of age and while this Agreement is still in existence, the Company shall pay to the Employee, on or before March 15th of each year, as additional compensation, an amount equal to the estimated Federal, state and local taxes, as applicable, on the amount of income reportable by the Employee as a result of the insurance protection provided the Policy beneficiary or beneficiaries hereunder for the immediately preceding calendar year assuming the highest Federal, state and local tax, income tax bracket for a married individual or single individual as the case may be.

7. **Limitations on Company's Rights in Policy**. Notwithstanding any other provision hereof or of the Policy, the Company shall not sell, assign, transfer, surrender or cancel the Policy, change the beneficiary designation of the Policy, change the Death Benefit Option provision, or decrease the Face Amount of Insurance Death Benefit, without, in any such case, the express written consent of the Trust.

8. **Policy Loans**.

a. The Company may pledge or assign the Policy, subject to the terms and conditions of this Agreement, for the sole purpose of securing a loan from the Insurer or from a

third party. The amount of any such loan, including accumulated interest thereon, shall not exceed the lesser of (i) the cumulative amount of the premiums on the Policy paid by the Company hereunder (including all such premiums paid pursuant to the 1999 Agreement), less any portion thereof previously recovered by the Company through a loan from or against or a withdrawal from the Policy permitted hereunder; or (ii) the cash surrender value of the Policy (as defined therein) as of the date to which premiums have been paid. Interest charges on such loan shall be paid by the Company. If the Company so encumbers the Policy, other than by a policy loan from the Insurer, then, upon the death of the Employee or upon the election of the Trust hereunder to purchase the Policy from the Company, the Company shall promptly repay such loan from the death proceeds of the Policy or the amount received from the Employee for the purchase of the Policy, as the case may be, and thereafter shall promptly take all action necessary to secure the release or discharge of such encumbrance.

b. The Company may make withdrawals from the Policy, subject to the terms and conditions hereof, The amount of any such withdrawal shall not exceed the lesser of: (i) the cumulative amount of the premiums on the Policy paid by the Company hereunder (including all such premiums paid pursuant to the 1999 Agreement), less any portion thereof previously recovered by the Company through a loan from or against or a withdrawal from the Policy permitted hereunder; or (ii) the cash surrender value of the Policy (as defined therein) as of the date to which premiums have been paid, and shall reduce the amount to which the Company would otherwise be entitled hereunder.

9. **Collection of Death Proceeds**.

a. Upon the death of the Employee, the Company shall cooperate with the Trust to take whatever action is necessary to collect the death benefit provided under the Policy; when such benefit has been collected and paid as provided herein, this Agreement shall thereupon terminate.

b. Upon the death of the Employee, the Company shall have the unqualified right to receive a portion of such death benefit equal to the greater of: (1) the total amount of the premiums paid by it hereunder (including all such premiums paid pursuant to the 1999 Agreement) reduced by any indebtedness against the Policy incurred by the Company hereunder existing at the death of the Employee, including any interest due on such indebtedness, or any withdrawals made by the Company from the Policy; (2) or the cash value of the Policy, net of any loans from the Insurer or withdrawals permitted hereunder (excluding surrender charges or other similar charges or reductions) immediately before the death of the Employee. The balance of the death benefit provided under the Policy, if any, shall be paid directly to the Trust, in the manner and in the amount or amounts provided in the beneficiary designation provision of the Policy. In no event shall the amount payable to the Company hereunder exceed the death proceeds payable under the Policy at the death of the Employee. No amount shall be paid from such death benefit to the beneficiary or beneficiaries designated by the Company at the direction of the Trust, until the full amount due the Company hereunder has been paid. The parties hereto agree that the beneficiary designation provision of the Policy shall conform to the provisions hereof.

c. Notwithstanding any provision hereof to the contrary, in the event that, for any reason whatsoever, no death benefit is payable under the Policy upon the death of the Employee and in lieu thereof the Insurer refunds all or any part of the premiums paid for the Policy, the Company and the Trust shall have the unqualified right to share such premiums based on their respective cumulative contributions thereto.

10. **Termination of the Agreement During the Employee's Lifetime**.

a. This Agreement shall terminate, during the Employee's lifetime, without notice, upon bankruptcy, receivership or dissolution of the Company.

b. In addition, either party may terminate this Agreement while no premium under the Policy is overdue, by written notice to the other party, provided that the Company shall have no power to terminate this Agreement. Such termination shall be effective as of the date of such notice.

11. **Disposition of the Policy on Termination of the Agreement during the Employee's Lifetime** .

a. For sixty (60) days after the date of the termination of this Agreement during the Employee's lifetime, the Trust shall have the assignable option to purchase the Policy from the Company. The purchase price for the Policy shall be (i) the cumulative amount of the premium payments made by the Company hereunder, less any portion thereof previously recovered by the Company as a result of a loan from or against or a withdrawal from the Policy permitted hereunder, or (ii) the then cash value of the Policy, net of any loans from the Insurer or withdrawals (excluding surrender charges or other similar charges or reductions), less any indebtedness incurred by the Company secured by the Policy which remains outstanding as of the date of such termination, including any interest due on such indebtedness, or any withdrawals made by the Company from the Policy. In no event shall the amount payable to the Company hereunder exceed the death proceeds payable under the Policy at the death of the Employee. Upon receipt of such amount, the Company shall transfer all of its right, title and interest in and to the Policy to the Trust or its assignee, by the execution and delivery of an appropriate instrument of transfer.

b. If the Trust or its assignee fails to exercise such option within such sixty (60) day period, then, the Company may enforce its right to be repaid the amount due it hereunder by surrendering or canceling the Policy for its cash surrender value, or it may change the beneficiary designation provisions of the Policy, naming itself or any other person or entity as revocable beneficiary thereof, or exercise any other ownership rights in and to the Policy, without regard to the provisions hereof. Thereafter, neither the Trust nor its assigns or beneficiaries shall have any further interest in and to the Policy, either under the terms thereof or under this Agreement.

12. **Insurer Not a Party**. The Insurer shall be fully discharged from its obligations under the Policy by payment of the Policy death benefit to the beneficiary or beneficiaries named in the Policy, subject to the terms and conditions of the Policy. In no event shall the Insurer be considered a party to this Agreement, or any modification or amendment hereof. No provision of this Agreement, nor of any modification or amendment hereof, shall in any way be construed as enlarging, changing, varying, or in any other way affecting the obligations of the Insurer as expressly provided in the Policy, except insofar as the provisions hereof are made a part of the Policy by the beneficiary designation executed by the Company and filed with the Insurer in connection herewith.

13. **Named Fiduciary, Determination of Benefits, Claims Procedure and Administration** .

a. **Named Fiduciary**. The Company is hereby designated as the named fiduciary under this Agreement. The named fiduciary shall have authority to control and manage the operation and administration of this Agreement, and it shall be responsible for establishing and carrying out a funding policy and method consistent with the objectives of this Agreement.

b. **Claim**. A person who believes that he or she is being denied a benefit to which he or she is entitled (hereinafter referred to as "Claimant"), or his or her duly authorized representative, may file a written request for such benefit with the Chief Legal Officer of the Company (the "First Level Reviewer") setting forth his or her claim. Such claim must be addressed to the Chief Legal Officer of the Company, at its then principal place of business.

c. **Claim Decision**. Upon receipt of a claim, the First Level Reviewer shall advise the Claimant that a reply will be forthcoming within a reasonable period of time, but ordinarily not later than ninety (90) days, and shall, in fact, deliver such reply within such period. However, the First Level Reviewer may extend the reply period for an additional ninety (90) days for reasonable cause. If the reply period will be extended, the First Level Reviewer shall advise the Claimant in writing during the initial ninety (90) day period indicating the special circumstances requiring an extension and the date by which the First Level Reviewer expects to render the benefit determination. If the claim is denied in whole or in part, the First Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation as to why such material or such information is necessary;

(4) appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review; and

(5) the time limits for requesting a review of the denial under Section 13(c) hereof and for the actual review of the denial under Section 13(d) hereof.

d. **Request for Review**. Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Chairman of the Compensation Committee of the Board of Directors of the Company (the "Second Level Reviewer") review the First Level Reviewer's prior determination. Such request must be addressed to the Chairman of the Compensation Committee of the Board of Directors of the Company, at its then principal place of business. The Claimant or his or her duly authorized representative may submit written comments, documents, records or other information relating to the denied claim, which such information shall be considered in the review under this subsection without regard to whether such information was submitted or considered in the initial benefit determination.

The Claimant or his or her duly authorized representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the First Level Reviewer in making its initial claims decision, (ii) was submitted, considered or generated in the course of the First Level Reviewer making its initial claims decision, without regard to whether such instrument was actually relied upon by the First Level Reviewer in making its decision or (iii) demonstrates compliance by the First Level Reviewer with its administrative processes and safeguards

designed to ensure and to verify that benefit claims determinations are made in accordance with this Agreement and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants. If the Claimant does not request a review of the First Level Reviewer's determination within such sixty (60) day period, he or she shall be barred and estopped from challenging such determination.

e. **Review of Decision**. Within a reasonable period of time, ordinarily not later than sixty (60) days, after the Second Level Reviewer's receipt of a request for review, it will review the First Level Reviewer's prior determination. If special circumstances require that the sixty (60) day time period be extended, the Second Level Reviewer will so notify the Claimant within the initial sixty (60) day period indicating the special circumstances requiring an extension and the date by which the Second Level Reviewer expects to render its decision on review, which shall be as soon as possible but not later than 120 days after receipt of the request for review. In the event that the Second Level Reviewer extends the determination period on review due to a Claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall not take into account the period beginning on the date on which notification of extension is sent to the Claimant and ending on the date on which the Claimant responds to the request for additional information.

The Second Level Reviewer has discretionary authority to determine a Claimant's eligibility for benefits and to interpret the terms of this Agreement. Benefits under this Agreement will be paid only if the Second Level Reviewer decides in its discretion that the Claimant is entitled to such benefits. The decision of the Second Level Reviewer shall be final and non-reviewable, unless found to be arbitrary and capricious by a court of competent review. Such decision will be binding upon the Company and the Claimant.

If the Second Level Reviewer makes an adverse benefit determination on review, the Second Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the Second Level Reviewer in making its decision, (ii) was submitted, considered or generated in the course of the Second Level Reviewer making its decision, without regard to whether such instrument was actually relied upon by the Second Level Reviewer in making its decision or (iii) demonstrates compliance by the Second Level Reviewer with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with this Agreement, and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants; and

(4) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following the adverse benefit determination on such review.

14. **Amendment**. This Agreement may not be amended, altered or modified, except by a written instrument signed by the parties hereto, or their respective successors or assigns, and may not be otherwise terminated except as provided herein.

15. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and the Trust, its successors, assigns, administrators and beneficiaries.

16. **Notices**. Any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail, postage prepaid, addressed to such party's last known address as shown on the records of the Company. The date of such mailing shall be deemed the date of notice, consent or demand.

17. **Governing Law**. This Agreement, and the rights of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Florida.

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

OSI RESTAURANT PARTNERS, LLC

By: /s/ A. William Allen, III
Name: A. William Allen, III
Title: Chief Executive Officer

ATTEST:

/s/ Joseph J. Kadow
Joseph J. Kadow,
Secretary

"COMPANY"

ROBERT D. BASHAM IRREVOCABLE TRUST AGREEMENT OF 1999 DATED DECEMBER 20, 1999

By: /s/ Richard Danker
Richard Danker, Trustee

"TRUST"

EXHIBIT A

The following life insurance Policy is subject to the Split-Dollar Agreement to which this Exhibit is attached:

Insurer John Hancock Variable Life Insurance Company

Insured Robert D. Basham

Policy Number 58035001

Date of Issue November 7, 1999

face Amount $12,399,785 (as of January 31, 2008)

Death Benefit Option Increasing Death Benefit Option

Exhibit 10.50

SPLIT DOLLAR AGREEMENT

THIS AGREEMENT made and entered into this 18th day of December, 2008, effective as of August 18, 2005, by and between OSI RESTAURANT PARTNERS, LLC (formerly known as OUTBACK STEAKHOUSE, INC.), with principal offices and place of business in the State of Florida (hereinafter referred to as the "Company"), SHAMROCK PTC, LLC, TRUSTEE OF THE CHRIS SULLIVAN 2008 INSURANCE TRUST DATED JULY 17, 2008 (hereinafter referred to as the "Trust"), and WILLIAM T. SULLIVAN, TRUSTEE OF THE CHRIS SULLIVAN NON-EXEMPT IRREVOCABLE TRUST DATED JANUARY 5, 2000 and THE CHRIS SULLIVAN EXEMPT IRREVOCABLE TRUST DATED JANUARY 5, 2000 (collectively the "Prior Trusts").

WITNESSETH THAT:

WHEREAS, Chris T. Sullivan (the "Employee") is employed by the Company;

WHEREAS, the Prior Trusts entered into a split-dollar life insurance arrangement with the Company, effective as of November 7, 1999 (the "1999 Agreement") to govern the rights and obligations of the Trust and the Company with respect to life insurance policy numbers 58050001 and 58051001, each insuring the life of the Employee, each with face amounts of $6,219,128 as of January 31, 2008 (individually a "Policy" and collectively the "Policies"), both issued by John Hancock Variable Life Insurance Company (the "Insurer");

WHEREAS, the Company had been paying all the premiums on the Policies as an additional employment benefit for the Employee;

WHEREAS, the Prior Trusts had collaterally assigned the Policies to the Company in order to secure the repayment of the premium payments made by the Company;

WHEREAS, because of the potential application of Section 402 of the Sarbanes-Oxley Act of 2002 (the "Act") to the 1999 Agreement, the Company suspended the payment of all premium advances due under the 1999 Agreement as of the effective date of the Act;

WHEREAS, in order to maintain a split-dollar life insurance arrangement for the Policies with the Company in light of the Act, the Prior Trusts agreed to transfer ownership of the Policies to the Company and to enter into this Agreement, to convert the 1999 Agreement from a collateral assignment split-dollar arrangement to an endorsement split-dollar arrangement, and in order to have the income and gift tax consequences of the arrangement determined under traditional split-dollar economic benefit concepts, rather than imputed interest, the Prior Trusts agreed that, on termination of the arrangement (as provided herein), the Company will be entitled to recover the greater of its premium advances or the Policies' respective cash values, ignoring surrender or other similar charges;

WHEREAS, the Policies have been reissued, as described herein, to the Company as the owner of each;

WHEREAS, after the Policies were transferred to the Company, the Company released its collateral assignments of each of the Policies with the Insurer and the Company designated the Prior Trusts as the beneficiary of the Policies to the extent of any proceeds remaining after repayment of the amount due the Company;

WHEREAS, due to the pending termination of the Prior Trusts, the Trustee of the Prior Trusts has agreed to substitute the Trust as a party to this Agreement, in place of the Prior Trusts;

WHEREAS, the parties acknowledge that the Company is entitled to repayment of the amounts it has paid toward the premiums on each of the Policies under the 1999 Agreement prior to the transfer of the Policies to the Company;

WHEREAS, the Company is the owner of each of the Policies and, as such, possesses all incidents of ownership in and to the Policies, except as otherwise provided herein; and

WHEREAS, the Company wishes to retain such ownership rights, in order to secure the repayment of the amount due it under the 1999 Agreement and hereunder;

NOW, THEREFORE, in consideration of the premises and of the mutual promises contained herein, the parties hereto agree as follows:

1. **Purchase of Policies**. The Trust had previously purchased the Policies from the Insurer; the Policies have been reissued to the Company as the owner, each with face amounts of $6,219,128 (as of January 31, 2008) and Increasing Death Benefit Option (as such term is defined in the Policies). The parties hereto will take all necessary action to cause both of the Policies to conform to the provisions of this Agreement. The parties hereto agree that the Policies shall be subject to the terms and conditions of this Agreement and of the endorsement to each of the Policies or beneficiary designation filed with the Insurer in accordance herewith.

2. **Ownership of Policies**. The Company shall be the sole and absolute owner of both of the Policies, and may exercise all ownership rights granted to the owner thereof by the terms of each of the Policies, except as may otherwise be provided herein.

3. **Designation of Policies Beneficiary/Endorsement**. The Company has executed a beneficiary designation for and/or an endorsement to each of the Policies, using the form required by the Insurer, naming itself as the beneficiary of the policy death proceeds in an amount equal to the greater of the total amount of the premiums paid by it hereunder (including all such premiums paid pursuant to the 1999 Agreement) or the cash value of each of the Policies (excluding surrender charges or other similar charges or reductions), and naming the Trust as the beneficiary of any balance of the policy death proceeds provided under each of the Policies.

4. **Election of Settlement Option**. The Trust may select the settlement option for payment of the death benefit provided under each of the Policies in excess of the amount due the Company hereunder, by specifying the same in a written notice to the Company. The Company

shall promptly execute and deliver to the Insurer the forms necessary to elect the requested settlement option and to designate the Trust as the beneficiary to receive the death proceeds of each of the Policies in excess of the amount to which the Company is entitled hereunder. The parties hereto agree to take all action necessary to cause the beneficiary designation and settlement option provisions of the Policies to conform to the provisions hereof. The Company shall not terminate, alter or amend such designation or election without the express written consent of the Trust.

5. **Payment of Premiums**. On or before the due date of each Policy premium, or within the grace period provided therein, the Company shall pay the full amount of the annual premium on each of the Policies to the Insurer, and shall, upon request, promptly furnish the Trust evidence of timely payment of such premium. Subject to the acceptance of such amount by the Insurer, the Company may, in its discretion, at anytime and from time to time, make additional premium payments on each of the Policies. The Company shall annually furnish the Employee a statement of the amount of income reportable by the Employee for any Federal, state or local taxes, as applicable, as a result of the insurance protection provided the Trust as the Policies' beneficiary.

6. **Additional Payment to Employee**. Upon the Employee reaching 65 years of age and while this Agreement is still in existence, the Company shall pay to the Employee, on or before March 15th of each year, as additional compensation, an amount equal to the estimated Federal, state and local taxes, as applicable, on the amount of income reportable by the Employee as a result of the insurance protection provided the Policy beneficiary or beneficiaries hereunder for the immediately preceding calendar year assuming the highest Federal, state and local tax, income tax bracket for a married individual or single individual as the case may be.

7. **Limitations on Company's Rights in Policies**. Notwithstanding any other provision hereof or either of the Policies, the Company shall not sell, assign, transfer, surrender or cancel either of the Policies, change the beneficiary designation of either of the Policies, change the Death Benefit Option provision, or decrease the Face Amount of Insurance Death Benefit, without, in any such case, the express written consent of the Trust.

8. **Policy Loans**.

a. The Company may pledge or assign either of the Policies, subject to the terms and conditions of this Agreement, for the sole purpose of securing a loan from the Insurer or from a third party. The amount of any such loan, including accumulated interest thereon, shall not exceed the lesser of (i) the cumulative amount of the premiums on such Policy paid by the Company hereunder (including all such premiums paid pursuant to the 1999 Agreement), less any portion thereof previously recovered by the Company through a loan from or against or a withdrawal from such Policy permitted hereunder; or (ii) the cash surrender value of such Policy (as defined therein) as of the date to which premiums have been paid. Interest charges on such loan shall be paid by the Company. If the Company so encumbers a Policy, other than by a policy loan from the Insurer, then, upon the death of the Employee or upon the election of the Trust hereunder to purchase such Policy from the Company, the Company shall promptly repay such loan from the death proceeds of such Policy or the amount received from the Employee for the purchase of such Policy, as the case may be, and thereafter shall promptly take all action necessary to secure the release or discharge of such encumbrance.

b. The Company may make withdrawals from a Policy, subject to the terms and conditions hereof. The amount of any such withdrawal shall not exceed the lesser of: (i) cumulative amount of the premiums on such Policy paid by the Company hereunder (including all such premiums paid pursuant to the 1999 Agreement), less any portion thereof previously

recovered by the Company through a loan from or against a withdrawal from such Policy permitted hereunder; or (ii) the cash surrender value of such Policy (as defined therein) as of the date to which premiums have been paid, and shall reduce the amount to which the Company would otherwise be entitled hereunder.

9. **Collection of Death Proceeds**.

a. Upon the death of the Employee, the Company shall cooperate with the Trust to take whatever action is necessary to collect the death benefit provided under the Policies; when such benefit has been collected and paid as provided herein, this Agreement shall thereupon terminate.

b. Upon the death of the Employee, the Company shall have the unqualified right to receive a portion of such death benefit equal to the greater of: (1) the total amount of the premiums paid by it hereunder (including all such premiums paid pursuant to the 1999 Agreement) reduced by any indebtedness against either of the Policies incurred by the Company hereunder existing at the death of the Employee, including any interest due on such indebtedness, or any withdrawals made by the Company from either of the Policies; (2) or the cash value of the Policies, net of any loans from the Insurer or withdrawals permitted hereunder (excluding surrender charges or other similar charges or reductions) immediately before the death of the Employee. The balance of the death benefit provided under the Policies, if any, shall be paid directly to the Trust, in the manner and in the amount or amounts provided in the beneficiary designation provision of each of the Policies. In no event shall the amount payable to the Company hereunder exceed the death proceeds payable under the Policies at the death of the Employee. No amount shall be paid from such death benefit to the beneficiary or beneficiaries designated by the Company at the direction of the Trust, until the full amount due the Company hereunder has been paid. The parties hereto agree that the beneficiary designation provision of each of the Policies shall conform to the provisions hereof.

c. Notwithstanding any provision hereof to the contrary, in the event that, for any reason whatsoever, no death benefit is payable under either of the Policies upon the death of the Employee and in lieu thereof the Insurer refunds all or any part of the premiums paid for either of the Policies, the Company and the Trust shall have the unqualified right to share such premiums based on their respective cumulative contributions thereto.

10. **Termination of the Agreement During the Employee's Lifetime**.

a. This Agreement shall terminate, during the Employee's lifetime, without notice, upon bankruptcy, receivership or dissolution of the Company.

b. In addition, either party may terminate this Agreement while no premium under either Policy is overdue, by written notice to the other party, provided that the Company shall have no power to terminate this Agreement. Such termination shall be effective as of the date of such notice.

11. **Disposition of the Policies on Termination of the Agreement During the Employee's Lifetime**.

a. For sixty (60) days after the date of the termination of this Agreement during the Employee's lifetime, the Trust shall have the assignable option to purchase the Policies from the Company. The purchase price for the Policies shall be (i) the total amount of the premium payments made by the Company hereunder (including all such premiums paid pursuant to the 1999 Agreement), less any portion thereof previously recovered by the Company as a result of a loan from or against or a withdrawal from the Policy permitted hereunder, or (ii) the then cash value of the Policies, net of any loans from the Insurer or withdrawals (excluding surrender charges or other similar charges or reductions), less any indebtedness incurred by the

Company secured by either Policy which remains outstanding as of the date of such termination, including any interest due on such indebtedness, or any withdrawals made by the Company from either Policy. In no event shall the amount payable to the Company hereunder exceed the death proceeds available under the Policy at the death of the Employee. Upon receipt of such amount, the Company shall transfer all of its right, title and interest in and to the Policies to the Trust or its assignee, by the execution and delivery of an appropriate instrument of transfer.

b. If the Trust or its assignee fails to exercise such option within such sixty (60) day period, then, the Company may enforce its right to be repaid the amount due it hereunder by surrendering or canceling the Policies for its cash surrender value, or it may change the beneficiary designation provisions of the Policies, naming itself or any other person or entity as revocable beneficiary thereof, or exercise any other ownership rights in and to the Policies, without regard to the provisions hereof. Thereafter, neither the Trust nor its assigns or beneficiaries shall have any further interest in and to either of the Policies, either under the terms thereof or under this Agreement.

12. **Insurer Not a Party**. The Insurer shall be fully discharged from its obligations under the Policies by payment of the death benefits of the Policies to the beneficiary or beneficiaries named in the Policies, subject to the terms and conditions of each of the Policies. In no event shall the Insurer be considered a party to this Agreement, or any modification or amendment hereof. No provision of this Agreement, nor of any modification or amendment hereof, shall in any way be construed as enlarging, changing, varying, or in any other way affecting the obligations of the Insurer as expressly provided in the Policies, except insofar as the provisions hereof are made a part of each of the Policies by the beneficiary designation executed by the Company and filed with the Insurer in connection herewith.

13. **Named Fiduciary, Determination of Benefits, Claims Procedure and Administration** .

a. **Named Fiduciary**. The Company is hereby designated as the named fiduciary under this Agreement. The named fiduciary shall have authority to control and manage the operation and administration of this Agreement, and it shall be responsible for establishing and carrying out a funding policy and method consistent with the objectives of this Agreement.

b. **Claim**. A person who believes that he or she is being denied a benefit to which he or she is entitled (hereinafter referred to as "Claimant"), or his or her duly authorized representative, may file a written request for such benefit with the Chief Legal Officer of the Company (the "First Level Reviewer") setting forth his or her claim. Such claim must be addressed to the Chief Legal Officer of the Company, at its then principal place of business.

c. **Claim Decision**. Upon receipt of a claim, the First Level Reviewer shall advise the Claimant that a reply will be forthcoming within a reasonable period of time, but ordinarily not later than ninety (90) days, and shall, in fact, deliver such reply within such period. However, the First Level Reviewer may extend the reply period for an additional ninety (90) days for reasonable cause. If the reply period will be extended, the First Level Reviewer shall advise the Claimant in writing during the initial ninety (90) day period indicating the special circumstances requiring an extension and the date by which the First Level Reviewer expects to render the benefit determination.

If the claim is denied in whole or in part, the First Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation as to why such material or such information is necessary;

(4) appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review; and

(5) the time limits for requesting a review of the denial under Section 13(c) hereof and for the actual review of the denial under Section 13(d) hereof.

d. **Request for Review**. Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Chairman of the Compensation Committee of the Board of Directors of the Company (the "Second Level Reviewer") review the First Level Reviewer's prior determination. Such request must be addressed to the Chairman of the Compensation Committee of the Board of Directors of the Company, at its then principal place of business. The Claimant or his or her duly authorized representative may submit written comments, documents, records or other information relating to the denied claim, which such information shall be considered in the review under this subsection without regard to whether such information was submitted or considered in the initial benefit determination.

The Claimant or his or her duly authorized representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the First Level Reviewer in making

its initial claims decision, (ii) was submitted, considered or generated in the course of the First Level Reviewer making its initial claims decision, without regard to whether such instrument was actually relied upon by the First Level Reviewer in making its decision or (iii) demonstrates compliance by the First Level Reviewer with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with this Agreement and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants. If the Claimant does not request a review of the First Level Reviewer's determination within such sixty (60) day period, he or she shall be barred and estopped from challenging such determination.

e. **Review of Decision**. Within a reasonable period of time, ordinarily not later than sixty (60) days, after the Second Level Reviewer's receipt of a request for review, it will review the First Level Reviewer's prior determination. If special circumstances require that the sixty (60) day time period be extended, the Second Level Reviewer will so notify the Claimant within the initial sixty (60) day period indicating the special circumstances requiring an extension and the date by which the Second Level Reviewer expects to render its decision on review, which shall be as soon as possible but not later than 120 days after receipt of the request for review. In the event that the Second Level Reviewer extends the determination period on review due to a Claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall not take into account the period beginning on the date on which notification of extension is sent to the Claimant and ending on the date on which the Claimant responds to the request for additional information.

The Second Level Reviewer has discretionary authority to determine a Claimant's eligibility for benefits and to interpret the terms of this Agreement. Benefits under this Agreement will be paid only if the Second Level Reviewer decides in its discretion that the

Claimant is entitled to such benefits. The decision of the Second Level Reviewer shall be final and non reviewable, unless found to be arbitrary and capricious by a court of competent review. Such decision will be binding upon the Company and the Claimant.

If the Second Level Reviewer makes an adverse benefit determination on review, the Second Level Reviewer will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(1) the specific reason or reasons for the denial;

(2) the specific references to pertinent provisions of the Agreement on which the denial is based;

(3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which (i) was relied upon by the Second Level Reviewer in making its decision, (ii) was submitted, considered or generated in the course of the Second Level Reviewer making its decision, without regard to whether such instrument was actually relied upon by the Second Level Reviewer in making its decision or (iii) demonstrates compliance by the Second Level Reviewer with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with this Agreement, and that, where appropriate, the provisions of this Agreement have been applied consistently with respect to similarly situated claimants; and

(4) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following the adverse benefit determination on such review.

14. **Amendment**. This Agreement may not be amended, altered or modified, except by a written instrument signed by the parties hereto, or their respective successors or assigns, and may not be otherwise terminated except as provided herein.

15. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and the Trust, its successors, assigns, administrators and beneficiaries.

16. **Notices**. Any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail, postage prepaid, addressed to such party's last known address as shown on the records of the Company. The date of such mailing shall be deemed the date of notice, consent or demand.

17. **Governing Law**. This Agreement, and the rights of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Florida.

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

OSI RESTAURANT PARTNERS, LLC

By: /s/ Joseph J. Kadow
Name: Joseph J Kadow
Title: Executive Vice President

ATTEST:

/s/ Kelly B. Lefferts
Kelly B. Lefferts,
Assistant Secretary

"COMPANY"

THE CHRIS SULLIVAN 2008 INSURANCE TRUST
DATED JULY 17, 2008

By: SHAMROCK PTC, LLC

/s/ Jill N. Creager
Jill N. Creager Trustee

"TRUST"

CHRIS SULLIVAN NON-EXEMPT IRREVOCABLE TRUST DATED JANUARY 5, 2000

By: /s/ William T. Sullivan
William T. Sullivan, Trustee

CHRIS SULLIVAN EXEMPT IRREVOCABLE TRUST DATED JANUARY 5, 2000

By: /s/ William T. Sullivan
William T. Sullivan, Trustee

"PRIOR TRUSTS"

EXHIBIT A

The following life insurance Policies are subject to the Split Dollar Agreement to which this Exhibit is attached:

Insurer John Hancock Variable Life Insurance Company

Insured Chris T. Sullivan

Policy Number 58051001

Date of Issue November 7, 1999

face Amount $6,219,128 (as of January 31, 2008)

Death Benefit Option Increasing Death Benefit Option

Insurer John Hancock Variable Life Insurance Company

Insured Chris T. Sullivan

Policy Number 58050001

Date of Issue November 7, 1999

face Amount $6,219,128 (as of January 31, 2008)

Death Benefit Option Increasing Death Benefit Option

Exhibit 21.1

SUBSIDIARIES OF BLOOMIN' BRANDS, INC.

A La Carte Event Pavilion, Ltd.	FL
Annapolis Outback, Inc.	MD
Bel Air Outback, Inc.	MD
BFG Alabama Services, Ltd	FL
BFG Arkansas Services, Ltd	FL
BFG Colorado Services, Ltd	FL
BFG Florida Services, Ltd	FL
BFG Georgia Services, Ltd	FL
BFG Illinois Services, Ltd	FL
BFG Indiana Services, Limited Partnership	FL
BFG Iowa Services, Limited Partnership	FL
BFG Kansas Services, Ltd	FL
BFG Kentucky Services, Ltd	FL
BFG Louisiana Services, Ltd	FL
BFG Maryland Services, Ltd	FL
BFG Michigan Services, Ltd	FL
BFG Mississippi Services, Limited Partnership	FL
BFG Missouri Services, Limited Partnership	FL
BFG Nebraska Services, Ltd	FL
BFG NEBRASKA, INC.	FL
BFG New Jersey Services, Limited Partnership	FL
BFG New York Services, Limited Partnership	FL
BFG North Carolina Services, Ltd	FL
BFG Ohio Services, Ltd	FL
BFG Oklahoma Services, Limited Partnership	FL
BFG Oklahoma, Inc.	FL
BFG Pennsylvania Services, Ltd	FL
BFG South Carolina Services, Ltd	FL
BFG Tennessee Services, Ltd	FL
BFG Virginia Services, Limited Partnership	FL
BFG Wisconsin Services, Ltd	FL
BFG/CIP of Iselin Partnership	FL
BFG/FPS of Marlton Partnership	FL
Billings Outback, Inc.	MT
Bloom No.1 Limited	HK
Bloom No.2 Limited	HK
Bloomin Canada Inc.	ON
Bloomin Hong Kong, Ltd.	HK
Bloomin Korea Holding	CI
Bloomin Puerto Rico, L.P.	CI
Bonefish Brandywine, LLC	MD
Bonefish Designated Partner, LLC	DE
Bonefish Grill Gulf Coast of Louisiana, LLC	FL
Bonefish Grill of Florida Designated Partner, LLC	DE
Bonefish Grill of Florida, LLC	DE
Bonefish Grill, LLC	FL
Bonefish Kansas Designated Partner, LLC	DE

Bonefish Kansas LLC	KS
Bonefish of Bel Air, LLC	MD
Bonefish of Gaithersburg, Inc.	MD
Bonefish/Asheville, Limited Partnership	FL
Bonefish/Carolinas, Limited Partnership	FL
Bonefish/Central Florida-I, Limited Partnership	FL
Bonefish/Centreville, Limited Partnership	FL
Bonefish/Colorado, Limited Partnership	FL
Bonefish/Columbus-I, Limited Partnership	FL
Bonefish/Crescent Springs, Limited Partnership	FL
Bonefish/Desert Ridge, Limited Partnership	FL
Bonefish/East Central Florida, Limited Partnership	FL
Bonefish/Fredericksburg, Limited Partnership	FL
Bonefish/Greensboro, Limited Partnership	FL
Bonefish/Gulf Coast, Limited Partnership	FL
Bonefish/Hyde Park, Limited Partnership	FL
Bonefish/Kansas-I, Limited Partnership	KS
Bonefish/Michigan, Limited Partnership	FL
Bonefish/Mid Atlantic, Limited Partnership	FL
Bonefish/Midwest-II, Limited Partnership	FL
Bonefish/Newport News, Limited Partnership	FL
Bonefish/North Florida-I, Limited Partnership	FL
Bonefish/Northeast, Limited Partnership	FL
Bonefish/Plains, Limited Partnership	FL
Bonefish/Richmond, Limited Partnership	FL
Bonefish/South Florida-I, Limited Partnership	FL
Bonefish/Southern Virginia, Limited Partnership	FL
Bonefish/Southern, Limited Partnership	FL
Bonefish/Tallahassee, Limited Partnership	FL
Bonefish/Trio-I, Limited Partnership	FL
Bonefish/Virginia, Limited Partnership	FL
Bonefish/West Florida-I, Limited Partnership	FL
Boomerang Air, Inc.	FL
Carrabba’s Designated Partner, LLC	DE
Carrabba’s Italian Grill of Howard County, Inc.	MD
Carrabba’s Italian Grill of Overlea, Inc.	MD
Carrabba’s Italian Grill, LLC	FL
Carrabba’s Italian Market, LLC	FL
Carrabba’s Kansas Designated Partner, LLC	DE
Carrabba’s Kansas LLC	KS
Carrabba’s Midwest Designated Partner, LLC	DE
Carrabba’s Midwest, Inc.	KS
Carrabba’s of Baton Rouge, LLC	FL
Carrabba’s of Bowie, LLC	MD
Carrabba’s of Germantown, Inc.	MD
Carrabba’s of Ocean City, Inc.	MD
Carrabba’s of Waldorf, Inc.	MD
Carrabba’s Shreveport, LLC	FL

Carrabba's/Arizona-I, Limited Partnership	FL
Carrabba's/Birchwood, Limited Partnership	FL
Carrabba's/Birmingham 280, Limited Partnership	FL
Carrabba's/Bobby Pasta, Limited Partnership	FL
Carrabba's/Broken Arrow, Limited Partnership	FL
Carrabba's/Carolina-I, Limited Partnership	FL
Carrabba's/Central Florida-I, Limited Partnership	FL
Carrabba's/Chicago, Limited Partnership	FL
Carrabba's/Colorado-I, Limited Partnership	FL
Carrabba's/Cool Springs, Limited Partnership	FL
Carrabba's/Crestview Hills, Limited Partnership	FL
Carrabba's/Dallas-I, Limited Partnership	FL
Carrabba's/DC-I, Limited Partnership	FL
Carrabba's/Deerfield Township, Limited Partnership	FL
Carrabba's/First Coast, Limited Partnership	FL
Carrabba's/Georgia-I, Limited Partnership	GA
Carrabba's/Green Hills, Limited Partnership	FL
Carrabba's/Gulf Coast-I, Limited Partnership	FL
Carrabba's/Heartland-I, Limited Partnership	FL
Carrabba's/Kansas-I, Limited Partnership	KS
Carrabba's/Lexington, Limited Partnership	FL
Carrabba's/Louisville, Limited Partnership	FL
Carrabba's/Metro, Limited Partnership	FL
Carrabba's/Miami Beach, Limited Partnership	FL
Carrabba's/Michigan, Limited Partnership	FL
Carrabba's/Mid America, Limited Partnership	FL
Carrabba's/Mid Atlantic-I, Limited Partnership	FL
Carrabba's/Mid East, Limited Partnership	FL
Carrabba's/Midwest-I, Limited Partnership	KS
Carrabba's/Montgomery, Limited Partnership	FL
Carrabba's/New England, Limited Partnership	FL
Carrabba's/Pensacola, Limited Partnership	FL
Carrabba's/Rocky Top, Limited Partnership	FL
Carrabba's/Second Coast, Limited Partnership	FL
Carrabba's/Shelby County, Inc.	AL
Carrabba's/South Florida-I, Limited Partnership	FL
Carrabba's/Sun Coast, Limited Partnership	FL
Carrabba's/Tri State-I, Limited Partnership	FL
Carrabba's/Tropical Coast, Limited Partnership	FL
Carrabba's/West Florida-I, Limited Partnership	FL
Carrabba's/Z Team Two-I, Limited Partnership	FL
Carrabba's/Z Team-I, Limited Partnership	FL
CIGI Alabama Services, Ltd	FL
CIGI Arizona Services, Limited Partnership	FL
CIGI Arkansas Services, Ltd	FL
CIGI Beverages of Texas, Inc.	TX
CIGI Colorado Services, Ltd	FL
CIGI Connecticut Services, Limited Partnership	FL

CIGI Florida Services, Ltd	FL
CIGI Georgia Services, Ltd	FL
CIGI Holdings, Inc.	TX
CIGI Illinois Services, Ltd	FL
CIGI Indiana Services, Limited Partnership	FL
CIGI Kansas Services, Ltd	FL
CIGI Kentucky Services, Ltd	FL
CIGI Louisiana Services, Ltd	FL
CIGI Maryland Services, Ltd	FL
CIGI Massachusetts Services, Ltd	FL
CIGI Michigan Services, Ltd	FL
CIGI Missouri Services, Limited Partnership	FL
CIGI Nebraska Services, Ltd	FL
CIGI NEBRASKA, INC.	FL
CIGI Nevada Services, Limited Partnership	FL
CIGI New Hampshire Services, Limited Partnership	FL
CIGI New Jersey Services, Limited Partnership	FL
CIGI New York Services, Limited Partnership	FL
CIGI North Carolina Services, Ltd	FL
CIGI Ohio Services, Ltd	FL
CIGI Oklahoma Services, Limited Partnership	FL
CIGI Oklahoma, Inc.	FL
CIGI Pennsylvania Services, Ltd	FL
CIGI Rhode Island Services, Limited Partnership	FL
CIGI South Carolina Services, Ltd	FL
CIGI Tennessee Services, Ltd	FL
CIGI Texas Services, Ltd	FL
CIGI Utah Services, Ltd	FL
CIGI Virginia Services, Limited Partnership	FL
CIGI Wisconsin Services, Ltd	FL
CIGI/BFG of East Brunswick Partnership	FL
CLS Restaurantes Brasilia Ltda	BZ
CLS Restaurantes Rio de Janeiro Ltda	BZ
CLS Restaurantes Sul Ltda	BZ
CLS Sao Palo, Ltda.	BZ
Fleming’s Beverages, Inc.	TX
Fleming’s of Baltimore, LLC	MD
Fleming’s of Baton Rouge, LLC	FL
Fleming’s/Boston, Limited Partnership	FL
Fleming’s/Calione, Limited Partnership	FL
Fleming’s/Fresno, Limited Partnership	FL
Fleming’s/Great Lakes-I, Limited Partnership	FL
Fleming’s/Nashville, Limited Partnership	FL
Fleming’s/Northeast-I, Limited Partnership	FL
Fleming’s/Northwest-I, Limited Partnership	FL
Fleming’s/Outback Holdings, Inc.	TX
Fleming’s/Prime Ranch-I, Limited Partnership	FL
Fleming’s/Rancho Cucamonga-I, Limited Partnership	FL

Fleming's/San Diego-I, Limited Partnership	FL
Fleming's/Southeast-I, Limited Partnership	FL
Fleming's/Southmidwest-I, Limited Partnership	FL
Fleming's/Walnut Creek, Limited Partnership	FL
Fleming's/Westcoast-I, Limited Partnership	FL
Fleming's/Woodland Hills-I, Limited Partnership	FL
FPS Alabama Services, Ltd	FL
FPS Arizona Services, Limited Partnership	FL
FPS California Services, Limited Partnership	FL
FPS Colorado Services, Ltd	FL
FPS Connecticut Services, Limited Partnership	FL
FPS Florida Services, Ltd	FL
FPS Georgia Services, Ltd	FL
FPS Illinois Services, Ltd	FL
FPS Indiana Services, Limited Partnership	FL
FPS Iowa Services, Limited Partnership	FL
FPS Louisiana Services, Ltd	FL
FPS Maryland Services, Ltd	FL
FPS Massachusetts Services, Ltd	FL
FPS Michigan Services, Ltd	FL
FPS Missouri Services, Limited Partnership	FL
FPS Nebraska Services, Ltd	FL
FPS NEBRASKA, INC.	FL
FPS Nevada Services, Limited Partnership	FL
FPS New Jersey Services, Limited Partnership	FL
FPS North Carolina Services, Ltd	FL
FPS Ohio Services, Ltd	FL
FPS Oklahoma Services, Limited Partnership	FL
FPS Oklahoma, Inc.	FL
FPS Pennsylvania Services, Ltd	FL
FPS Rhode Island Services, Limited Partnership	FL
FPS Tennessee Services, Ltd	FL
FPS Texas Services, Ltd	FL
FPS Utah Services, Ltd	FL
FPS Virginia Services, Limited Partnership	FL
FPS Wisconsin Services, Ltd	FL
Frederick Outback, Inc.	MD
Hagerstown Outback, Inc.	MD
Heartland Outback-I, Limited Partnership	KS
Heartland Outback-II, Limited Partnership	KS
OBTex Holdings, Inc.	TX
OCC Florida (A La Catering) Services, Ltd	FL
Ocean City Outback, Inc.	MD
OS Asset, Inc.	FL
OS Cathay, Inc.	FL
OS Developers, LLC	FL
OS Investments, Inc.	CA
OS Kanto Limited	JN

OS Management, Inc.	FL
OS Mortgage Holdings, Inc.	DE
OS NIAGARA FALLS, LLC	FL
OS Pacific, LLC	FL
OS Prime, LLC	FL
OS Prime-I, Limited Partnership	FL
OS Realty, LLC	FL
OS Restaurant Services, LLC	FL
OS Southern, LLC	FL
OS Speedway, LLC	FL
OS Tropical, LLC	FL
OS USSF, LLC	FL
OS/PLCK, LLC	DE
OSF Alabama Services, Ltd	FL
OSF Arizona Services, Limited Partnership	FL
OSF Arkansas Services, Ltd	FL
OSF Colorado Services, Ltd	FL
OSF Connecticut Services, Limited Partnership	FL
OSF Delaware Services, Ltd	FL
OSF Florida Services, Ltd	FL
OSF Georgia Services, Ltd	FL
OSF Illinois Services, Ltd	FL
OSF Indiana Services, Limited Partnership	FL
OSF Iowa Services, Limited Partnership	FL
OSF Kansas Services, Ltd	FL
OSF Kentucky Services, Ltd	FL
OSF Louisiana Services, Ltd	FL
OSF Maine Services, Limited Partnership	FL
OSF Maryland Services, Ltd	FL
OSF Massachusetts Services, Ltd	FL
OSF Michigan Services, Ltd	FL
OSF Minnesota Services, Limited Partnership	FL
OSF Missouri Services, Limited Partnership	FL
OSF Montana Services, Limited Partnership	FL
OSF Nebraska Services, Ltd	FL
OSF NEBRASKA, INC.	FL
OSF Nevada Services, Limited Partnership	FL
OSF New Hampshire Services, Limited Partnership	FL
OSF New Jersey Services, Limited Partnership	FL
OSF New Mexico Services, Limited Partnership	FL
OSF New York Services, Limited Partnership	FL
OSF North Carolina Services, Ltd	FL
OSF Ohio Services, Ltd	FL
OSF Oklahoma Services, Limited Partnership	FL
OSF Oklahoma, Inc.	FL
OSF Pennsylvania Services, Ltd	FL
OSF Rhode Island Services, Limited Partnership	FL
OSF South Carolina Services, Ltd	FL

OSF South Dakota Services, Limited Partnership	FL
OSF Tennessee Services, Ltd	FL
OSF Texas Services, Ltd	FL
OSF Utah Services, Ltd	FL
OSF Vermont Services, Limited Partnership	FL
OSF Virginia Services, Limited Partnership	FL
OSF West Virginia Services, Ltd	FL
OSF Wisconsin Services, Ltd	FL
OSF Wyoming Services, Ltd	FL
OSF/BFG of Deptford Partnership	FL
OSF/CIGI of Evesham Partnership	FL
OSI Co-Issuer, Inc.	DE
OSI Gift Card Services, LLC	FL
OSI HoldCo I, Inc.	DE
OSI HoldCo II, Inc.	DE
OSI HoldCo, Inc.	DE
OSI International, LLC	FL
OSI Restaurant Partners, LLC	DE
OSI/Fleming's, LLC	DE
OSIN Hawaii Services, Ltd	FL
OSIN Puerto Rico Services, Ltd	FL
OSSIVT, LLC	VT
Outback & Carrabba's of New Mexico, Inc.	NM
Outback Alabama, Inc.	AL
Outback Beverages of Texas, Inc.	TX
Outback Catering Company, Limited Partnership	FL
Outback Catering Designated Partner, LLC	DE
Outback Catering of Pittsburgh, Ltd.	FL
Outback Catering, Inc.	FL
Outback Designated Partner, LLC	DE
Outback International Designated Partner, LLC	DE
Outback Kansas Designated Partner, LLC	DE
Outback Kansas LLC	KS
Outback of Aspen Hill, Inc.	MD
Outback of Calvert County, Inc.	MD
Outback of Germantown, Inc.	MD
Outback of La Plata, Inc.	MD
Outback of Waldorf, Inc.	MD
Outback Philippines Development Holdings Corporation	PI
Outback Puerto Rico Designated Partner, LLC	DE
Outback Sports, LLC	DE
Outback Steakhouse International Investments, Co.	CI
Outback Steakhouse International, L.P.	GA
Outback Steakhouse International, LLC	FL
Outback Steakhouse Japan Co., Ltd.	JN
Outback Steakhouse Korea, Ltd.	KO
Outback Steakhouse of Bowie, Inc.	MD
Outback Steakhouse of Canton, Inc.	MD

Outback Steakhouse of Central Florida, Ltd.	FL
Outback Steakhouse of Central Florida-II, Ltd.	FL
Outback Steakhouse of Florida, LLC	FL
Outback Steakhouse of Howard County, Inc.	MD
Outback Steakhouse of Indianapolis, Ltd.	FL
Outback Steakhouse of Kentucky, Ltd.	FL
Outback Steakhouse of North Georgia-I, L.P.	GA
Outback Steakhouse of North Georgia-II, L.P.	GA
Outback Steakhouse of South Carolina, Inc.	SC
Outback Steakhouse of South Florida, Ltd.	FL
Outback Steakhouse of South Georgia-I, L.P.	GA
Outback Steakhouse of South Georgia-II, L.P.	GA
Outback Steakhouse of St. Mary's County, Inc.	MD
Outback Steakhouse of Washington D.C., Ltd.	FL
Outback Steakhouse West Virginia, Inc.	WV
Outback Steakhouse-NYC, Ltd.	FL
Outback/Alabama-I, Limited Partnership	FL
Outback/Alabama-II, Limited Partnership	FL
Outback/Bayou-I, Limited Partnership	FL
Outback/Bayou-II, Limited Partnership	FL
Outback/Billings, Limited Partnership	FL
Outback/Bluegrass-I, Limited Partnership	FL
Outback/Bluegrass-II, Limited Partnership	FL
Outback/Buckeye-I, Limited Partnership	FL
Outback/Buckeye-II, Limited Partnership	FL
Outback/Carrabba's Partnership	FL
Outback/Charlotte-I, Limited Partnership	FL
Outback/Chicago-I, Limited Partnership	FL
Outback/Cleveland-II, Limited Partnership	FL
Outback/DC, Limited Partnership	FL
Outback/Denver-I, Limited Partnership	FL
Outback/Detroit-I, Limited Partnership	FL
Outback/Empire-I, Limited Partnership	FL
Outback/Fleming's Designated Partner, LLC	DE
Outback/Hampton, Limited Partnership	FL
Outback/Hawaii-I, Limited Partnership	FL
Outback/Heartland-I, Limited Partnership	FL
Outback/Heartland-II, Limited Partnership	FL
Outback/Indianapolis-II, Limited Partnership	FL
Outback/Maryland-I, Limited Partnership	FL
Outback/Memphis, Limited Partnership	FL
Outback/Metropolis-I, Limited Partnership	FL
Outback/Mid Atlantic-I, Limited Partnership	FL
Outback/Midwest-I, Limited Partnership	FL
Outback/Midwest-II, Limited Partnership	FL
Outback/Missouri-I, Limited Partnership	FL
Outback/Missouri-II, Limited Partnership	FL
Outback/Nevada-I, Limited Partnership	FL

Outback/Nevada-II, Limited Partnership	FL
Outback/New England-I, Limited Partnership	FL
Outback/New England-II, Limited Partnership	FL
Outback/New York, Limited Partnership	FL
Outback/North Florida-I, Limited Partnership	FL
Outback/North Florida-II, Limited Partnership	FL
Outback/Phoenix-I, Limited Partnership	FL
Outback/Phoenix-II, Limited Partnership	FL
Outback/Shenandoah-I, Limited Partnership	FL
Outback/Shenandoah-II, Limited Partnership	FL
Outback/South Florida-II, Limited Partnership	FL
Outback/Southfield, Limited Partnership	FL
Outback/Southwest Georgia, Limited Partnership	FL
Outback/Stone-II, Limited Partnership	FL
Outback/Utah-I, Limited Partnership	FL
Outback/West Florida-I, Limited Partnership	FL
Outback/West Florida-II, Limited Partnership	FL
Outback/West Penn, Limited Partnership	FL
Outback-Carrabba's of Hunt Valley, Inc.	MD
Owings Mills Incorporated	MD
Pacific Designated Partner, LLC	DE
PACIFIC Texas Services, Ltd	FL
Perry Hall Outback, Inc.	MD
PGS Consultario e Servicos, Ltd.	BZ
Prime Designated Partner, LLC	DE
Prince George's County Outback, Inc.	MD
Private Restaurant Master Lessee, LLC	DE
Private Restaurant Properties, LLC	DE
PRP Holdings, LLC	DE
PRP Mezz 1, LLC	DE
PRP Mezz 2, LLC	DE
PRP Mezz 3, LLC	DE
PRP Mezz 4, LLC	DE
ROYS Arizona Services, Limited Partnership	FL
Roy's Beverages, Inc.	TX
ROYS California Services, Limited Partnership	FL
ROYS Florida Services, Ltd	FL
ROYS Illinois Services, Ltd	FL
ROYS Maryland Services, Ltd	FL
ROYS Nevada Services, Limited Partnership	FL
Roy's of Baltimore, LLC	MD
ROYS Pennsylvania Services, Ltd	FL
Roy's/Calione, Limited Partnership	FL
Roy's/Chicago, Limited Partnership	FL
Roy's/Desert Ridge-I, Limited Partnership	FL
Roy's/East Atlantic-I, Limited Partnership	FL
Roy's/Newport Beach, Limited Partnership	FL
Roy's/Outback Designated Partner, LLC	DE

Roy's/Outback Holdings, Inc.	TX
Roy's/Outback Joint Venture	FL
Roy's/Pasadena-I, Limited Partnership	FL
Roy's/Scottsdale, Limited Partnership	FL
Roy's/South Florida-I, Limited Partnership	FL
Roy's/West Florida-I, Limited Partnership	FL
Roy's/Westcoast-I, Limited Partnership	FL
Roy's/Woodland Hills-I, Limited Partnership	FL
Williamsburg Square Joint Venture	PA

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED CERTIFIED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Bloomin' Brands, Inc. of our report dated April 6, 2012 relating to the consolidated financial statements and financial statement schedule of Bloomin' Brands, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP
Tampa, Florida
April 6, 2012

Exhibit 23.2

Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated March 25, 2011, with respect to the consolidated financial statements of PGS Consultoria e Serviços Ltda. included in Bloomin' Brands, Inc.'s Registration Statement on Form S-1 and related Prospectus for the registration of $300,000,000 of its common stock.

/s/ Ernst & Young Terco Auditores Independentes S.S.

Rio de Janeiro, Brazil
April 5, 2012