

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

FORM 10-Q

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

For the Quarterly Period Ended March 27, 2013



Commission File Number 0-18051  
DENNY'S CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

13-3487402

(I.R.S. Employer  
Identification No.)

203 East Main Street  
Spartanburg, South Carolina 29319-0001

(Address of principal executive offices)  
(Zip Code)

(864) 597-8000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

As of April 25, 2013, 91,773,875 shares of the registrant's common stock, par value \$.01 per share, were outstanding.

## TABLE OF CONTENTS

	<u>Page</u>
<b><u>Part I - FINANCIAL INFORMATION</u></b>	
<u>Item 1. Financial Statements</u>	
<u>Condensed Consolidated Balance Sheets (Unaudited)</u>	<u>3</u>
<u>Condensed Consolidated Statements of Comprehensive Income</u>	
<u>Quarter Ended March 27, 2013 and March 28, 2012 (Unaudited)</u>	<u>4</u>
<u>Condensed Consolidated Statement of Shareholders' Equity (Unaudited)</u>	<u>5</u>
<u>Condensed Consolidated Statements of Cash Flows (Unaudited)</u>	<u>6</u>
<u>Notes to Condensed Consolidated Financial Statements (Unaudited)</u>	<u>7</u>
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>15</u>
<u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u>	<u>23</u>
<u>Item 4. Controls and Procedures</u>	<u>24</u>
<b><u>PART II - OTHER INFORMATION</u></b>	
<u>Item 1. Legal Proceedings</u>	<u>25</u>
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>25</u>
<u>Item 6. Exhibits</u>	<u>26</u>
<u>Signatures</u>	<u>27</u>

## PART I - FINANCIAL INFORMATION

### Item 1. Financial Statements

#### Denny's Corporation and Subsidiaries Condensed Consolidated Balance Sheets (Unaudited)

	March 27, 2013	December 26, 2012
	(In thousands)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 10,263	\$ 13,565
Receivables	16,762	19,947
Inventories	2,925	2,890
Current deferred tax asset	20,238	19,807
Prepaid and other current assets	6,184	8,401
Total current assets	56,372	64,610
Property, net of accumulated depreciation of \$252,687 and \$250,173 respectively	105,426	107,004
Goodwill	31,430	31,430
Intangible assets, net	48,369	48,920
Deferred financing costs, net	1,917	2,041
Noncurrent deferred tax asset	42,305	45,776
Other noncurrent assets	25,474	25,104
Total assets	\$ 311,293	\$ 324,885
<b>Liabilities</b>		
Current liabilities:		
Current maturities of long-term debt	\$ 9,250	\$ 8,500
Current maturities of capital lease obligations	4,135	4,181
Accounts payable	19,336	24,461
Other current liabilities	46,529	54,682
Total current liabilities	79,250	91,824
Long-term liabilities:		
Long-term debt, less current maturities	156,750	161,500
Capital lease obligations, less current maturities	16,012	15,953
Liability for insurance claims, less current portion	16,845	18,045
Other noncurrent liabilities and deferred credits	40,617	42,023
Total long-term liabilities	230,224	237,521
Total liabilities	309,474	329,345
Commitments and contingencies		
<b>Shareholders' equity</b>		
Common stock \$0.01 par value; authorized - 135,000; March 27, 2013: 104,341 shares issued and 92,465 shares outstanding; December 26, 2012: 103,764 shares issued and 92,229 shares outstanding	\$ 1,044	\$ 1,038
Paid-in capital	563,483	562,657
Deficit	(488,437)	(495,518)
Accumulated other comprehensive loss, net of tax	(24,745)	(24,999)
Shareholders' equity before treasury stock	51,345	43,178
Treasury stock, at cost, 11,876 and 11,535 shares, respectively	(49,526)	(47,638)
Total shareholders' equity (deficit)	1,819	(4,460)
Total liabilities and shareholders' equity	\$ 311,293	\$ 324,885

See accompanying notes

**Denny's Corporation and Subsidiaries**  
**Condensed Consolidated Statements of Comprehensive Income**  
(Unaudited)

	Quarter Ended	
	March 27, 2013	March 28, 2012
(In thousands, except per share amounts)		
Revenue:		
Company restaurant sales	\$ 81,030	\$ 94,163
Franchise and license revenue	33,460	32,575
Total operating revenue	<u>114,490</u>	<u>126,738</u>
Costs of company restaurant sales:		
Product costs	21,146	23,533
Payroll and benefits	31,546	37,753
Occupancy	5,228	5,774
Other operating expenses	11,200	12,895
Total costs of company restaurant sales	<u>69,120</u>	<u>79,955</u>
Costs of franchise and license revenue	11,402	11,312
General and administrative expenses	15,159	15,663
Depreciation and amortization	5,224	6,060
Operating (gains), losses and other charges, net	134	(165)
Total operating costs and expenses, net	<u>101,039</u>	<u>112,825</u>
Operating income	<u>13,451</u>	<u>13,913</u>
Interest expense, net	2,800	4,456
Other nonoperating expense (income), net	1	(295)
Net income before income taxes	10,650	9,752
Provision for income taxes	3,569	3,887
Net income	<u>\$ 7,081</u>	<u>\$ 5,865</u>
Basic net income per share	<u>\$ 0.08</u>	<u>\$ 0.06</u>
Diluted net income per share	<u>\$ 0.07</u>	<u>\$ 0.06</u>
Basic weighted average shares outstanding	<u>92,350</u>	<u>96,075</u>
Diluted weighted average shares outstanding	<u>94,461</u>	<u>97,878</u>
Comprehensive income	<u>\$ 7,335</u>	<u>\$ 6,133</u>

See accompanying notes

**Denny's Corporation and Subsidiaries**  
**Condensed Consolidated Statement of Shareholders' Equity**  
(Unaudited)

	<u>Common Stock</u>		<u>Treasury Stock</u>		<u>Paid-in</u>	<u>(Deficit)</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>Capital</u>		<u>Other</u>	<u>Shareholders'</u>
							<u>Loss, Net</u>	<u>Equity /</u>
	(In thousands)							
Balance, December 26, 2012	103,764	\$ 1,038	(11,535)	\$(47,638)	\$562,657	\$(495,518)	\$ (24,999)	\$ (4,460)
Net income	—	—	—	—	—	7,081	—	7,081
Minimum pension liability adjustment, net of tax expense of \$165	—	—	—	—	—	—	254	254
Share-based compensation on equity classified awards	—	—	—	—	241	—	—	241
Purchase of treasury stock	—	—	(341)	(1,888)	—	—	—	(1,888)
Issuance of common stock for share-based compensation	300	3	—	—	(3)	—	—	—
Exercise of common stock options	277	3	—	—	685	—	—	688
Tax benefit (expense) from stock options exercised	—	—	—	—	(97)	—	—	(97)
Balance, March 27, 2013	<u>104,341</u>	<u>\$ 1,044</u>	<u>(11,876)</u>	<u>\$(49,526)</u>	<u>\$563,483</u>	<u>\$(488,437)</u>	<u>\$ (24,745)</u>	<u>\$ 1,819</u>

See accompanying notes

**Denny's Corporation and Subsidiaries**  
**Condensed Consolidated Statements of Cash Flows**  
(Unaudited)

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Cash flows from operating activities:		
Net income	\$ 7,081	\$ 5,865
Adjustments to reconcile net income to cash flows provided by operating activities:		
Depreciation and amortization	5,224	6,060
Operating (gains), losses and other charges, net	134	(165)
Amortization of deferred financing costs	133	339
Amortization of debt discount	—	121
Loss on early extinguishment of debt	349	217
Loss on change in the fair value of interest rate cap	2	—
Deferred income tax expense	2,875	3,055
Share-based compensation	1,175	790
Changes in assets and liabilities:		
Decrease (increase) in assets:		
Receivables	2,398	1,998
Inventories	(35)	99
Other current assets	2,218	3,037
Other assets	(1,036)	(1,064)
Increase (decrease) in liabilities:		
Accounts payable	(2,658)	(5,389)
Accrued salaries and vacations	(5,574)	(638)
Accrued taxes	(117)	(55)
Other accrued liabilities	(2,679)	(4,414)
Other noncurrent liabilities and deferred credits	(2,135)	(1,370)
Net cash flows provided by operating activities	<u>7,355</u>	<u>8,486</u>
Cash flows from investing activities:		
Purchase of property	(3,006)	(1,836)
Proceeds from disposition of property	22	3,594
Collections on notes receivable	1,234	1,367
Issuance of notes receivable	(404)	(649)
Net cash flows (used in) provided by investing activities	<u>(2,154)</u>	<u>2,476</u>
Cash flows from financing activities:		
Long-term debt payments	(5,072)	(9,137)
Proceeds from exercise of stock options	688	334
Tax withholding on share-based payments	(464)	(145)
Tax (expense) benefit of stock options exercised	(97)	138
Purchase of treasury stock	(2,272)	—
Net bank overdrafts	(1,286)	(2,352)
Net cash flows used in financing activities	<u>(8,503)</u>	<u>(11,162)</u>
Decrease in cash and cash equivalents	(3,302)	(200)
Cash and cash equivalents at beginning of period	13,565	13,740
Cash and cash equivalents at end of period	<u>\$ 10,263</u>	<u>\$ 13,540</u>

See accompanying notes

**Denny's Corporation and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements**  
(Unaudited)

**Note 1. Introduction and Basis of Presentation**

Denny's Corporation, or Denny's, is one of America's largest full-service restaurant chains based on number of restaurants. The following table shows the unit activity for the quarters ended March 27, 2013 and March 28, 2012, respectively:

	Quarter Ended	
	March 27, 2013	March 28, 2012
Company restaurants, beginning of period	164	206
Units opened	—	—
Units sold to franchisees	—	(6)
Units closed	—	(3)
End of period	164	197
Franchised and licensed restaurants, beginning of period	1,524	1,479
Units opened	7	6
Units purchased from Company	—	6
Units closed	(6)	(8)
End of period	1,525	1,483
Total restaurants, end of period	1,689	1,680

Our unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Therefore, certain information and notes normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles have been condensed or omitted. In our opinion, all adjustments considered necessary for a fair presentation of the interim periods presented have been included. Such adjustments are of a normal and recurring nature. The preparation of these 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. Actual results may differ from these estimates under different assumptions or conditions; however, we believe that our estimates, including those for the above-described items, are reasonable.

These interim condensed consolidated financial statements should be read in conjunction with our consolidated financial statements and notes thereto for the year ended December 26, 2012 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K for the fiscal year ended December 26, 2012. The results of operations for the interim periods presented are not necessarily indicative of the results for the entire fiscal year ending December 25, 2013.

**Note 2. Summary of Significant Accounting Policies**

**Newly Adopted Accounting Standards**

**Intangibles**

ASU No. 2012-02, "Intangibles—Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment"

Effective December 27, 2012, we adopted ASU 2012-02, which modifies the impairment test for indefinite-lived intangible assets. Under the new guidance, an entity is permitted to make a qualitative assessment of whether it is more likely than not that the indefinite-lived intangible asset is impaired. If it is determined through the qualitative assessment that the indefinite-lived intangible asset's fair value is more likely than not greater than its carrying value, the quantitative impairment calculations would not be required. The qualitative assessment is optional, allowing companies to go directly to the quantitative assessment. The adoption did not have any impact on our Condensed Consolidated Financial Statements.



## Comprehensive Income

ASU 2013-02, "Comprehensive Income (Topic 220): Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income"

Effective December 27, 2012, we adopted ASU 2013-02, which requires companies to provide information about the amounts reclassified out of accumulated other comprehensive income by component. In addition, companies are required to present, either on the face of the statement where net income is presented or in the notes, significant amounts reclassified out of accumulated other comprehensive income by the respective line items of net income. ASU 2013-02 is to be applied prospectively. The adoption concerns presentation and disclosure only and did not have an impact on our financial position or results of operations.

### Accounting Standards to be Adopted

We reviewed significant newly issued accounting pronouncements and concluded that they are either not applicable to our business or that no material effect is expected on the financial statements as a result of future adoption.

### **Note 3. Receivables**

Receivables were comprised of the following:

	<u>March 27, 2013</u>	<u>December 26, 2012</u>
	(In thousands)	
Current assets:		
Receivables:		
Trade accounts receivable from franchisees	\$ 10,158	\$ 10,212
Notes receivable from franchisees	3,523	4,310
Vendor receivables	942	2,529
Credit card receivables	989	1,384
Other	1,163	1,524
Allowance for doubtful accounts	(13)	(12)
Total current receivables, net	<u>\$ 16,762</u>	<u>\$ 19,947</u>
Noncurrent assets (included as a component of other noncurrent assets):		
Notes receivable from franchisees	<u>\$ 960</u>	<u>\$ 1,002</u>

For the quarters ended March 27, 2013 and March 28, 2012, we recognized interest income on notes receivable from franchisees of less than \$0.1 million. These amounts are included as a component of interest expense, net on our Condensed Consolidated Statements of Comprehensive Income.

**Note 4. Goodwill and Other Intangible Assets**

Goodwill and intangible assets were comprised of the following:

	March 27, 2013		December 26, 2012	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
	(In thousands)			
Goodwill	\$ 31,430	\$ —	\$ 31,430	\$ —
Intangible assets with indefinite lives:				
Trade names	\$ 44,050	\$ —	\$ 44,050	\$ —
Liquor licenses	126	—	156	—
Intangible assets with definite lives:				
Franchise and license agreements	32,879	28,736	37,524	32,863
Foreign license agreements	241	191	241	188
Intangible assets	\$ 77,296	\$ 28,927	\$ 81,971	\$ 33,051

**Note 5. Operating (Gains), Losses and Other Charges, Net**

Operating (gains), losses and other charges, net are comprised of the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
(Gains) losses on sales of assets and other, net	\$ 18	\$ (1,955)
Restructuring charges and exit costs	116	1,267
Impairment charges	—	523
Operating (gains), losses and other charges, net	\$ 134	\$ (165)

*Restructuring Charges and Exit Costs*

Restructuring charges and exit costs were comprised of the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Exit costs	\$ 56	\$ 579
Severance and other restructuring charges	60	688
Total restructuring and exit costs	\$ 116	\$ 1,267

The components of the change in accrued exit cost liabilities are as follows:

	(In thousands)
Balance, December 26, 2012	\$ 4,061
Exit costs (1)	56
Payments, net of sublease receipts	(447)
Interest accretion	70
Balance, March 27, 2013	3,740
Less current portion included in other current liabilities	1,269
Long-term portion included in other noncurrent liabilities	\$ 2,471

(1) Included as a component of operating (gains), losses and other charges, net.

Estimated net cash payments related to exit cost liabilities are as follows:

	(In thousands)
Remainder of 2013	\$ 1,171
2014	1,077
2015	379
2016	321
2017	323
Thereafter	1,328
Total	4,599
Less imputed interest	859
Present value of exit cost liabilities	\$ 3,740

As of March 27, 2013 and December 26, 2012, we had accrued severance and other restructuring charges of \$0.3 million and \$0.5 million, respectively. The balance as of March 27, 2013 is expected to be paid during the next 12 months.

## Note 6. Fair Value of Financial Instruments

### *Fair Value of Assets and Liabilities Measured on a Recurring and Nonrecurring Basis*

Financial assets and liabilities measured at fair value on a recurring basis are summarized below:

	Fair Value Measurements as of March 27, 2013				Valuation Technique
	Total	Quoted Prices in Active Markets for Identical Assets/Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
	(In thousands)				
Deferred compensation plan investments	\$ 7,331	\$ 7,331	\$ —	\$ —	market approach
Interest rate caps	\$ 6	\$ —	\$ 6	\$ —	income approach
Total	\$ 7,337	\$ 7,331	\$ 6	\$ —	

**Fair Value Measurements as of December 26, 2012**

	<b>Total</b>	<b>Quoted Prices in Active Markets for Identical Assets/Liabilities (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>	<b>Valuation Technique</b>
(In thousands )					
Deferred compensation plan investments	\$ 6,371	\$ 6,371	\$ —	\$ —	market approach
Interest rate caps	\$ 8	\$ —	\$ 8	\$ —	income approach
<b>Total</b>	<b>\$ 6,379</b>	<b>\$ 6,371</b>	<b>\$ 8</b>	<b>\$ —</b>	

In addition to the financial assets and liabilities that are measured at fair value on a recurring basis, we measure certain assets and liabilities at fair value on a nonrecurring basis. As of March 27, 2013, there were no such nonrecurring measurements. As of December 26, 2012, impaired assets related to underperforming units were written down to a fair value of \$0.2 million based on the income approach.

***Disclosures of Fair Value of Other Assets and Liabilities***

The liabilities under our credit facility are carried at historical cost in our Condensed Consolidated Balance Sheets. As of March 27, 2013 and December 26, 2012, the estimated fair value (Level 2) of our senior secured term loan approximated its carrying value. The fair value of our long-term debt is determined based on market prices or, if market prices are not available, the present value of the underlying cash flows discounted at market rates.

**Note 7. Long-Term Debt**

As of March 27, 2013, Denny's Corporation and certain of its subsidiaries had a credit facility comprised of a senior secured term loan in an original principal amount of \$190 million and a senior secured revolver of \$60 million (with a \$30 million letter of credit sublimit). As of March 27, 2013, we had outstanding term loan borrowings under the credit facility of \$166.0 million and outstanding letters of credit under the senior secured revolver of \$25.2 million. There were no revolving loans outstanding at March 27, 2013. These balances resulted in availability of \$34.8 million under the revolving facility. The weighted-average interest rate under the term loan was 2.96% and 2.97% as of March 27, 2013 and December 26, 2012, respectively.

A commitment fee of 0.375% was paid on the unused portion of the revolving credit facility. Interest on the credit facility was payable at per annum rates equal to LIBOR plus 275 basis points. The maturity date for the credit facility was April 12, 2017. The term loan under the credit facility amortized \$19.0 million annually, payable in quarterly installments, with all remaining amounts due on the maturity date. We were required to make certain mandatory prepayments under certain circumstances and had the option to make certain prepayments under the credit facility. The optional prepayments were applied against future amortization. The credit facility included events of default (and related remedies, including acceleration and increased interest rates following an event of default) that were usual for facilities and transactions of this type.

The credit facility was guaranteed by the Company and its material subsidiaries and was secured by substantially all of the assets of the Company and its subsidiaries, including the stock of the Company's subsidiaries. It included negative covenants that are usual for facilities and transactions of this type. The credit facility also included certain financial covenants with respect to a maximum consolidated leverage ratio, a minimum consolidated fixed charged coverage ratio and maximum capital expenditures.

During the quarter ended March 27, 2013, we made \$4.0 million of principal payments on the term loan under the credit facility.

On April 13, 2012, we entered into interest rate hedges that cap the LIBOR rate on borrowings under the credit facility for a two year period. The 200 basis point LIBOR cap applies to \$150 million of borrowings during the first year and \$125 million of borrowings during the second year.

Subsequent to the end of the quarter, we refinanced our credit facility and entered into additional interest rate hedges. See Note 15.

We believe that our estimated cash flows from operations for 2013 , combined with our capacity for additional borrowings under our credit facility, will enable us to meet our anticipated cash requirements and fund capital expenditures over the next twelve months.

#### Note 8. Defined Benefit Plans

The components of net periodic benefit cost were as follows:

	Pension Plan		Other Defined Benefit Plans	
	Quarter Ended		Quarter Ended	
	March 27, 2013	March 28, 2012	March 27, 2013	March 28, 2012
	(In thousands)			
Service cost	\$ 100	\$ 84	\$ —	\$ —
Interest cost	754	789	28	29
Expected return on plan assets	(1,124)	(1,012)	—	—
Amortization of net loss	419	428	18	13
Net periodic benefit cost	<u>\$ 149</u>	<u>\$ 289</u>	<u>\$ 46</u>	<u>\$ 42</u>

We made contributions of \$1.4 million and \$0.3 million to our qualified pension plan during the quarters ended March 27, 2013 and March 28, 2012 , respectively. We made contributions of less than \$0.1 million to our other defined benefit plans during both quarters ended March 27, 2013 and March 28, 2012 . We expect to contribute an additional \$1.4 million to our qualified pension plan and an additional \$0.1 million to our other defined benefit plans over the remainder of fiscal 2013 .

During the quarter ended March 27, 2013 , we amortized \$0.3 million of actuarial losses, net of tax, out of accumulated other comprehensive loss into net periodic benefit cost, which is reported as a component of general and administrative expenses in the Condensed Consolidated Statement of Comprehensive Income. Additional minimum pension liability of \$24.7 million and \$25.0 million is reported as a component of accumulated other comprehensive loss in the Condensed Consolidated Statement of Shareholders' Equity as of March 27, 2013 and December 26, 2012 .

#### Note 9. Share-Based Compensation

Total share-based compensation cost included as a component of net income was as follows:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Stock options	\$ 164	\$ 328
Restricted stock units	831	443
Board deferred stock units	180	19
Total share-based compensation	<u>\$ 1,175</u>	<u>\$ 790</u>

#### Stock Options

We did not grant any stock options during the quarter ended March 27, 2013 . As of March 27, 2013 , we had approximately \$0.4 million of unrecognized compensation cost related to unvested stock option awards outstanding, which is expected to be recognized over a weighted average of 0.8 years .

### *Restricted Stock Units*

In January 2013, we granted approximately 0.3 million performance shares and related performance-based target cash awards of \$2.1 million to certain employees. As these awards contain a market condition, a Monte Carlo valuation was used to determine the performance shares' grant date fair value of \$8.05 per share and the payout probability of the target cash awards. In addition, the awards granted to our named executive officers also contain a performance condition based on certain operating measures for the fiscal year ended December 25, 2013. The performance period is the three year fiscal period beginning December 27, 2012 and ending December 30, 2015. The performance shares and cash awards will vest and be earned (from 0% to 200% of the target award for each such increment) at the end of the performance period based on the Total Shareholder Return of our stock compared to the Total Shareholder Returns of a group of peer companies.

During the quarter ended March 27, 2013, we made payments of \$0.9 million in cash and issued 0.3 million shares of common stock related to restricted stock unit awards.

As of March 27, 2013, we had approximately \$6.6 million of unrecognized compensation cost related to all unvested restricted stock unit awards outstanding, which is expected to be recognized over a weighted average of 1.9 years.

### *Board Deferred Stock Units*

During the quarter ended March 27, 2013, we granted less than 0.1 million deferred stock units (which are equity classified) with a weighted average grant date fair value of \$5.06 per unit to non-employee members of our Board of Directors. A director may elect to convert these awards into shares of common stock either on a specific date in the future (while still serving as a member of the Board of Directors) or upon termination as a member of the Board of Directors. During the quarter ended March 27, 2013, less than 0.1 million deferred stock units were converted into shares of common stock. As of March 27, 2013, we had approximately \$0.1 million of unrecognized compensation cost related to all unvested deferred stock unit awards outstanding, which is expected to be recognized over a weighted average of 0.1 years.

### **Note 10. Income Taxes**

The provision for income taxes was \$3.6 million and \$3.9 million for the quarters ended March 27, 2013 and March 28, 2012, respectively. For the 2013 period, the difference in the overall effective rate from the U.S. Statutory rate was due to a discrete tax item. The passage of the American Tax Payer Relief Act of 2012, enacted in January 2013, resulted in a deferred tax benefit of \$0.5 million related to work opportunity credits generated in 2012, which were allowed retroactively. The provision for income taxes for the first quarter of 2012 was determined using our effective rate estimated for the entire fiscal year.

**Note 11. Net Income Per Share**

	Quarter Ended	
	March 27, 2013	March 28, 2012
(In thousands, except for per share amounts)		
Numerator:		
Net income	\$ 7,081	\$ 5,865
Denominator:		
Weighted average shares - basic	92,350	96,075
Effect of dilutive securities:		
Options	1,023	904
Restricted stock units and awards	1,088	899
Weighted average shares - diluted	94,461	97,878
Basic net income per share	\$ 0.08	\$ 0.06
Diluted net income per share	\$ 0.07	\$ 0.06
Stock options excluded (1)	—	1,730
Restricted stock units and awards excluded (1)	331	715

(1) Excluded from diluted weighted-average shares outstanding as the impact would have been antidilutive.

**Note 12. Supplemental Cash Flow Information**

	Quarter Ended	
	March 27, 2013	March 28, 2012
(In thousands)		
Income taxes paid, net	\$ 343	\$ 213
Interest paid	\$ 2,526	\$ 4,887
Noncash investing and financing activities:		
Issuance of common stock, pursuant to share-based compensation plans	\$ 1,586	\$ 296
Execution of capital leases	\$ 1,313	\$ 1,010
Treasury stock payable	\$ 177	\$ —

**Note 13. Share Repurchase**

Our Old Credit Facility (as defined below in Note 15) permitted and our New Credit Facility (as defined below in Note 15) permits the payment of cash dividends and the purchase of Denny's stock subject to certain limitations. In May 2012, we announced that our Board of Directors approved a share repurchase program authorizing us to repurchase up to an additional 6.0 million shares of our Common Stock. Under this program, we may, from time to time, purchase shares in the open market (including pre-arranged stock trading plans in accordance with the guidelines specified in Rule 10b5-1 under the Securities Exchange Act of 1934) or in privately negotiated transactions, subject to market and business conditions. As of March 27, 2013, we had repurchased 2.9 million shares of Common Stock for approximately \$14.1 million and there were 3.1 million shares remaining to be repurchased under this share repurchase program.

Subsequent to the end of the quarter, we announced that our Board of Directors approved a new share repurchase program. See Note 15.

## **Note 14. Commitments and Contingencies**

There are various claims and pending legal actions against or indirectly involving us, incidental to and arising out of the ordinary course of the business. In the opinion of management, based upon information currently available, the ultimate liability with respect to these proceedings and claims will not materially affect the Company's consolidated results of operations or financial position. We record legal settlement costs as other operating expenses in our Condensed Consolidated Statements of Comprehensive Income as those costs are incurred.

## **Note 15. Subsequent Events**

### *Refinancing of Credit Facility*

On April 24, 2013, Denny's Corporation and certain of its subsidiaries refinanced our credit facility (the "Old Credit Facility") and entered into a new senior secured credit agreement in an aggregate principal amount of \$250 million (the "New Credit Facility"). The New Credit Facility is comprised of a \$60 million senior secured term loan and a \$190 million senior secured revolver (with a \$30 million letter of credit sublimit). As of the closing, there were \$105 million of borrowings outstanding under the new revolver. Borrowings under the New Credit Facility bear a tiered interest rate based on the Company's consolidated leverage ratio and is initially set at LIBOR plus 200 basis points. The New Credit Facility includes an accordion feature that would allow us to increase the size of the facility to \$300 million. The maturity date for the New Credit Facility is April 24, 2018.

The New Credit Facility is being used to refinance the Old Credit Facility (described in Note 7) and will also be available for working capital, capital expenditures and other general corporate purposes. The New Credit Facility is guaranteed by the Company and its material subsidiaries and is secured by substantially all of the assets of the Company and its subsidiaries, including the stock of the Company's subsidiaries. It includes negative covenants that are usual for facilities and transactions of this type. The New Credit Facility also includes certain financial covenants with respect to a maximum consolidated leverage ratio, a minimum consolidated fixed charge coverage ratio and maximum capital expenditures.

The term loan under the New Credit Facility requires amortization of the original term loan balance of 5% per year in the first two years, 7.5% in the subsequent two years and 10% in the fifth year with the balance due at maturity. We will be required to make certain mandatory prepayments under certain circumstances and will have the option to make certain prepayments under the New Credit Facility. The New Credit Facility includes events of default (and related remedies, including acceleration and increased interest rates following an event of default) that are usual for facilities and transactions of this type. We estimate that the refinancing will result in a one-time charge to other nonoperating expense of approximately \$1.2 million in the second quarter of 2013, as a result of charges for the unamortized portion of deferred financing costs related to the Old Credit Facility, and a portion of the fees related to the New Credit Facility.

### *Share Repurchase Authorization*

On April 25, 2013, we announced that our Board of Directors approved a new share repurchase program authorizing us to repurchase up to an additional 10.0 million shares of our Common Stock. Under this program, we may, from time to time, purchase shares in the open market (including pre-arranged stock trading plans in accordance with the guidelines specified in Rule 10b5-1 under the Securities Exchange Act of 1934) or in privately negotiated transactions, subject to market and business conditions. As of April 24, 2013, there were approximately 2.4 million shares remaining available to be repurchased under our previous share repurchase program (as described above in Note 13).

### *Interest Rate Hedges*

Our existing interest rate hedges remain in effect under the New Credit Facility until April 13, 2014 (see Note 7). In addition, on April 30, 2013, we entered into interest rate hedges that cap the LIBOR rate on borrowings under the New Credit Facility. The 200 basis point LIBOR cap applies to \$150 million of borrowings from April 14, 2014 through March 31, 2015.

Also, on April 30, 2013, we entered into interest rate swaps to hedge a portion of the cash flows of our floating rate debt from March 31, 2015 through March 29, 2018. We designated the interest rate swaps as cash flow hedges of our exposure to variability in future cash flows attributable to payments of LIBOR due on a related \$150 million notional debt obligation from March 31, 2015 through March 31, 2017 and a related \$140 million notional debt obligation from April 1, 2017 through March 29, 2018. Under the terms of the swaps, we will pay an average fixed rate of 3.12% on the notional amounts and receive payments from a counterparty based on the 30-day LIBOR rate.



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

### **Forward-Looking Statements**

The following discussion is intended to highlight significant changes in our financial position as of March 27, 2013 and results of operations for the quarter ended March 27, 2013 compared to the quarter ended March 28, 2012 . The forward-looking statements included in Management's Discussion and Analysis of Financial Condition and Results of Operations, which reflect our best judgment based on factors currently known and are intended to speak only as of the date such statements are made, involve risks, uncertainties, and other factors which may cause our actual performance to be materially different from the performance indicated or implied by such statements. Such factors include, among others: competitive pressures from within the restaurant industry; the level of success of our operating initiatives and advertising and promotional efforts; adverse publicity; changes in business strategy or development plans; terms and availability of capital; regional weather conditions; overall changes in the general economy (including with regard to energy costs), particularly at the retail level; political environment (including acts of war and terrorism); and other factors included in the discussion below, or in Part II. Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and Part I. Item 1A. Risk Factors, contained in our Annual Report on Form 10-K for the year ended December 26, 2012 .

## Statements of Income

The following table contains information derived from our Condensed Consolidated Statements of Comprehensive Income expressed as a percentage of total operating revenues, except as noted below. Percentages may not add due to rounding.

	Quarter Ended			
	March 27, 2013		March 28, 2012	
	(Dollars in thousands)			
Revenue:				
Company restaurant sales	\$ 81,030	70.8%	\$ 94,163	74.3 %
Franchise and license revenue	33,460	29.2%	32,575	25.7 %
Total operating revenue	114,490	100.0%	126,738	100.0 %
Costs of company restaurant sales (a):				
Product costs	21,146	26.1%	23,533	25.0 %
Payroll and benefits	31,546	38.9%	37,753	40.1 %
Occupancy	5,228	6.5%	5,774	6.1 %
Other operating expenses	11,200	13.8%	12,895	13.7 %
Total costs of company restaurant sales	69,120	85.3%	79,955	84.9 %
Costs of franchise and license revenue (a)	11,402	34.1%	11,312	34.7 %
General and administrative expenses	15,159	13.2%	15,663	12.4 %
Depreciation and amortization	5,224	4.6%	6,060	4.8 %
Operating (gains), losses and other charges, net	134	0.1%	(165)	(0.1)%
Total operating costs and expenses	101,039	88.3%	112,825	89.0 %
Operating income	13,451	11.7%	13,913	11.0 %
Interest expense, net	2,800	2.4%	4,456	3.5 %
Other nonoperating expense (income), net	1	0.0%	(295)	(0.2)%
Net income before income taxes	10,650	9.3%	9,752	7.7 %
Provision for income taxes	3,569	3.1%	3,887	3.1 %
Net income	\$ 7,081	6.2%	\$ 5,865	4.6 %
Other Data:				
Company average unit sales	\$ 494		\$ 470	
Franchise average unit sales	\$ 349		\$ 349	
Company equivalent units (b)	164		200	
Franchise equivalent units (b)	1,526		1,481	
Company same-store sales increase (decrease) (c)(d)	(1.5) %		0.8 %	
Domestic franchise same-store sales increase (decrease) (c)(e)	(0.5) %		2.8 %	

(a) Costs of company restaurant sales percentages are as a percentage of company restaurant sales. Costs of franchise and license revenue percentages are as a percentage of franchise and license revenue. All other percentages are as a percentage of total operating revenue.

(b) Equivalent units are calculated as the weighted average number of units outstanding during a defined time period.

(c) Same-store sales include sales from restaurants that were open the same period in the prior year.

(d) Prior year amounts have not been restated for 2013 comparable units.

(e) Prior year amounts have been restated to represent domestic franchise units only.

## Quarter Ended March 27, 2013 Compared with Quarter Ended March 28, 2012

### Unit Activity

	Quarter Ended	
	March 27, 2013	March 28, 2012
Company restaurants, beginning of period	164	206
Units opened	—	—
Units sold to franchisees	—	(6)
Units closed	—	(3)
End of period	164	197
Franchised and licensed restaurants, beginning of period	1,524	1,479
Units opened	7	6
Units purchased from Company	—	6
Units closed	(6)	(8)
End of period	1,525	1,483
Total restaurants, end of period	1,689	1,680

### Company Restaurant Operations

During the quarter ended March 27, 2013, we realized a 1.5% decrease in same-store sales. Company restaurant sales decreased \$13.1 million, or 13.9%, primarily resulting from a 36 equivalent-unit decrease in company restaurants. The decrease in equivalent-units resulted primarily from the sale of company restaurants to franchisees during the prior year.

Total costs of company restaurant sales as a percentage of company restaurant sales increased to 85.3% from 84.9%. Product costs increased to 26.1% from 25.0% primarily due to the unfavorable impact of product mix as well as increased commodity costs. Payroll and benefits decreased to 38.9% from 40.1% primarily as a result of a decrease in incentive compensation and lower medical costs. Occupancy costs increased to 6.5% from 6.1% resulting from the positive development of certain general liability claims in the prior year period. Other operating expenses were comprised of the following amounts and percentages of company restaurant sales:

	Quarter Ended			
	March 27, 2013		March 28, 2012	
	(Dollars in thousands)			
Utilities	\$ 3,127	3.9%	\$ 3,714	3.9%
Repairs and maintenance	1,349	1.7%	1,688	1.8%
Marketing	3,016	3.7%	3,535	3.8%
Legal	276	0.3%	98	0.1%
Other direct costs	3,432	4.2%	3,860	4.1%
Other operating expenses	\$ 11,200	13.8%	\$ 12,895	13.7%

## Franchise Operations

Franchise and license revenue and costs of franchise and license revenue were comprised of the following amounts and percentages of franchise and license revenue for the periods indicated:

	Quarter Ended			
	March 27, 2013		March 28, 2012	
	(Dollars in thousands)			
Royalties	\$ 21,027	62.9%	\$ 20,527	63.0%
Initial fees	280	0.8%	436	1.3%
Occupancy revenue	12,153	36.3%	11,612	35.7%
Franchise and license revenue	<u>\$ 33,460</u>	<u>100.0%</u>	<u>\$ 32,575</u>	<u>100.0%</u>
Occupancy costs	8,853	26.5%	8,723	26.8%
Other direct costs	2,549	7.6%	2,589	7.9%
Costs of franchise and license revenue	<u>\$ 11,402</u>	<u>34.1%</u>	<u>\$ 11,312</u>	<u>34.7%</u>

Royalties increased by \$0.5 million, or 2.4%, primarily resulting from a 45 equivalent unit increase in franchised and licensed units, partially offset by a 0.5% decrease in domestic same-store sales, as compared to the prior year. The increase in equivalent units resulted primarily from the sale of company restaurants to franchisees during the prior year. Initial fees decreased by \$0.2 million, or 35.8%, as no restaurants were sold to franchisees during the current year period. The increase in occupancy revenue of \$0.5 million, or 4.7%, is primarily the result of the sale of restaurants to franchisees during 2012.

Costs of franchise and license revenue increased by \$0.1 million, or 0.8%. The increase in occupancy costs of \$0.1 million, or 1.5%, is primarily the result of the sale of restaurants to franchisees during the prior year, partially offset by lease expirations. Other direct costs remained flat. As a result, costs of franchise and license revenue as a percentage of franchise and license revenue decreased to 34.1% for the quarter ended March 27, 2013 from 34.7% for the quarter ended March 28, 2012.

## Other Operating Costs and Expenses

Other operating costs and expenses such as general and administrative expenses and depreciation and amortization expense relate to both company and franchise operations.

General and administrative expenses are comprised of the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Share-based compensation	\$ 1,175	\$ 790
Other general and administrative expenses	13,984	14,873
Total general and administrative expenses	<u>\$ 15,159</u>	<u>\$ 15,663</u>

The \$0.5 million decrease in general and administrative expenses is the result of \$0.9 million in reductions related to payroll and benefits costs, travel and professional fees, partially offset by a \$0.4 million increase in share-based compensation resulting from the increased payout probability of certain awards.

**Depreciation and amortization** is comprised of the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Depreciation of property and equipment	\$ 3,693	\$ 4,437
Amortization of capital lease assets	798	818
Amortization of intangible assets	733	805
Total depreciation and amortization expense	<u>\$ 5,224</u>	<u>\$ 6,060</u>

The overall decrease in depreciation and amortization expense is due primarily to the sale of company restaurants to franchisees during fiscal 2012.

**Operating (gains), losses and other charges, net** are comprised of the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Losses (gains) on sales of assets and other, net	\$ 18	\$ (1,955)
Restructuring charges and exit costs	116	1,267
Impairment charges	—	523
Operating (gains), losses and other charges, net	<u>\$ 134</u>	<u>\$ (165)</u>

During the quarter ended March 28, 2012 , we recognized gains of \$2.0 million , primarily resulting from the sale of restaurant operations to franchisees and the sale of real estate.

Restructuring charges and exit costs were comprised of the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Exit costs	\$ 56	\$ 579
Severance and other restructuring charges	60	688
Total restructuring and exit costs	<u>\$ 116</u>	<u>\$ 1,267</u>

Impairment charges of \$0.5 million for the quarter ended March 28, 2012 resulted primarily from the impairment of an underperforming unit and a unit identified as assets held for sale.

**Operating income** was \$13.5 million for the quarter ended March 27, 2013 and \$13.9 million for the quarter ended March 28, 2012 .

**Interest expense, net** is comprised of the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
(In thousands)		
Interest on credit facilities	\$ 1,269	\$ 2,628
Interest on capital lease liabilities	900	969
Letters of credit and other fees	337	461
Other interest income	(21)	(308)
Total cash interest	2,485	3,750
Amortization of deferred financing costs	133	340
Amortization of debt discount	—	121
Interest accretion on other liabilities	182	245
Total interest expense, net	\$ 2,800	\$ 4,456

The decrease in interest expense resulted from a decrease in interest rates related to the 2012 refinancing of our credit facility, as well as debt reductions during 2012.

The **provision for income taxes** was \$3.6 million for the quarter ended March 27, 2013 compared to \$3.9 million the quarter ended March 28, 2012. For the 2013 period, the difference in the overall effective rate from the U.S. Statutory rate was due to a discrete tax item. The passage of the American Tax Payer Relief Act of 2012, enacted in January 2013, resulted in a deferred tax benefit of \$0.5 million related to work opportunity credits generated in 2012 which were allowed retroactively. The provision for income taxes for the first quarter of 2012 was determined using our effective rate estimated for the entire fiscal year.

**Net income** was \$7.1 million for the quarter ended March 27, 2013 compared with \$5.9 million for the quarter ended March 28, 2012 due to the factors noted above.

### **Liquidity and Capital Resources**

Our primary sources of liquidity and capital resources are cash generated from operations and borrowings under our credit facility (as described below). Principal uses of cash are operating expenses, capital expenditures, debt repayments and the repurchase of shares of our Common Stock.

The following table presents a summary of our sources and uses of cash and cash equivalents for the periods indicated:

	Quarter Ended	
	March 27, 2013	March 28, 2012
(In thousands)		
Net cash provided by operating activities	\$ 7,355	\$ 8,486
Net cash provided by (used in) investing activities	(2,154)	2,476
Net cash used in financing activities	(8,503)	(11,162)
Decrease in cash and cash equivalents	\$ (3,302)	\$ (200)

We believe that our estimated cash flows from operations for 2013, combined with our capacity for additional borrowings under our credit facility, will enable us to meet our anticipated cash requirements and fund capital expenditures over the next twelve months.

Net cash flows used in investing activities were \$2.2 million for the quarter ended March 27, 2013 . These cash flows include capital expenditures of \$3.0 million and issuances of notes receivable of \$0.4 million , partially offset by \$1.2 million in collections of notes receivable. Our principal capital requirements have been largely associated with the following:

	Quarter Ended	
	March 27, 2013	March 28, 2012
	(In thousands)	
Facilities	\$ 1,199	\$ 962
New construction	400	407
Remodeling	1,030	11
Information technology	96	18
Other	281	438
Capital expenditures	<u>\$ 3,006</u>	<u>\$ 1,836</u>

Capital expenditures for fiscal 2013 are expected to be approximately \$19-\$21 million, comprised primarily of costs related to remodels and facilities.

Cash flows used in financing activities were \$8.5 million for the quarter ended March 27, 2013 , which included long-term debt payments of \$5.1 million and stock repurchases of \$2.3 million .

Our working capital deficit was \$22.9 million at March 27, 2013 compared with \$27.2 million at December 26, 2012 . The decrease in working capital deficit is primarily related to the timing of payments impacting prepaid and payable balances. We are able to operate with a substantial working capital deficit because (1) restaurant operations and most food service operations are conducted primarily on a cash (and cash equivalent) basis with a low level of accounts receivable, (2) rapid turnover allows a limited investment in inventories, and (3) accounts payable for food, beverages and supplies usually become due after the receipt of cash from the related sales.

### ***Credit Facility***

As of March 27, 2013 , we had outstanding term loan borrowings under the credit facility of \$166.0 million and outstanding letters of credit under the senior secured revolver of \$25.2 million . There were no revolving loans outstanding at March 27, 2013 . These balances resulted in availability of \$34.8 million under the revolving facility. The weighted-average interest rate under the term loan was 2.96% as of March 27, 2013 .

A commitment fee of 0.375% was paid on the unused portion of the revolving credit facility. Interest on the credit facility was payable at per annum rates equal to LIBOR plus 275 basis points. The maturity date for the credit facility was April 12, 2017. The term loan under the credit facility amortized \$19.0 million annually, payable in quarterly installments, with all remaining amounts due on the maturity date. We were required to make certain mandatory prepayments under certain circumstances and had the option to make certain prepayments under the credit facility. The optional prepayments were applied against future amortization. The credit facility included events of default (and related remedies, including acceleration and increased interest rates following an event of default) that were usual for facilities and transactions of this type.

The credit facility was guaranteed by the Company and its material subsidiaries and was secured by substantially all of the assets of the Company and its subsidiaries, including the stock of the Company's subsidiaries. It included negative covenants that are usual for facilities and transactions of this type. The credit facility also included certain financial covenants with respect to a maximum consolidated leverage ratio, a minimum consolidated fixed charged coverage ratio and maximum capital expenditures.

On April 13, 2012, we entered into interest rate hedges that cap the LIBOR rate on borrowings under the credit facility for a two year period. The 200 basis point LIBOR cap applies to \$150 million of borrowings during the first year and \$125 million of borrowings during the second year.

### ***Refinancing of Credit Facility***

On April 24, 2013, Denny's Corporation and certain of its subsidiaries refinanced our credit facility (the "Old Credit Facility") and entered into a new senior secured credit agreement in an aggregate principal amount of \$250 million (the "New Credit Facility"). The New Credit Facility is comprised of a \$60 million senior secured term loan and a \$190 million senior secured revolver (with a \$30 million letter of credit sublimit). As of the closing, there were \$108 million of borrowings outstanding under the new revolver. Borrowings under the New Credit Facility bear a tiered interest rate based on the Company's consolidated leverage ratio and is initially set at LIBOR plus 200 basis points. The New Credit Facility includes an accordion feature that would allow us to increase the size of the facility to \$300 million. The maturity date for the New Credit Facility is April 24, 2018.

The New Credit Facility is being used to refinance the Old Credit Facility and will also be available for working capital, capital expenditures and other general corporate purposes. The New Credit Facility is guaranteed by the Company and its material subsidiaries and is secured by substantially all of the assets of the Company and its subsidiaries, including the stock of the Company's subsidiaries. It includes negative covenants that are usual for facilities and transactions of this type. The New Credit Facility also includes certain financial covenants with respect to a maximum consolidated leverage ratio, a minimum consolidated fixed charge coverage ratio and maximum capital expenditures.

The term loan under the New Credit Facility requires amortization of 5% per year in the first two years, 7.5% in the subsequent two years and 10% in the fifth year with the balance due at maturity. We will be required to make certain mandatory prepayments under certain circumstances and will have the option to make certain prepayments under the New Credit Facility. The New Credit Facility includes events of default (and related remedies, including acceleration and increased interest rates following an event of default) that are usual for facilities and transactions of this type. We estimate that the refinancing will result in a one-time charge to other nonoperating expense of approximately \$1.2 million in the second quarter of 2013, as a result of charges for the unamortized portion of deferred financing costs related to the Old Credit Facility, and a portion of the fees related to the New Credit Facility.

### ***Interest Rate Hedges***

Our existing interest rate hedges remain in effect under the New Credit Facility until April 13, 2014. In addition, on April 30, 2013, we entered into interest rate hedges that cap the LIBOR rate on borrowings under the New Credit Facility. The 200 basis point LIBOR cap applies to \$150 million of borrowings from April 14, 2014 through March 31, 2015.

Also, on April 30, 2013, we entered into interest rate swaps to hedge a portion of the cash flows of our floating rate debt from March 31, 2015 through March 29, 2018. We designated the interest rate swaps as cash flow hedges of our exposure to variability in future cash flows attributable to payments of LIBOR due on a related \$150 million notional debt obligation from March 31, 2015 through March 31, 2017 and a related \$140 million notional debt obligation from April 1, 2017 through March 29, 2018. Under the terms of the swaps, we will pay an average fixed rate of 3.12% on the notional amounts and receive payments from a counterparty based on the 30-day LIBOR rate.

### **Implementation of New Accounting Standards**

See Note 2 to our Condensed Consolidated Financial Statements.

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

### **Interest Rate Risk**

We have exposure to interest rate risk related to certain instruments entered into for other than trading purposes. Specifically, as of March 27, 2013, borrowings under our term loan and revolver bore interest at variable rates based on LIBOR plus a spread of 275 basis points per annum. Through April 13, 2013, up to \$150 million of the term loan borrowings had a 200 basis point LIBOR point cap. As of April 13, 2013, up to \$125 million of the term loan borrowing has a 200 basis point LIBOR point cap.



Based on the levels of borrowings under the Old Credit Facility at March 27, 2013, if interest rates changed by 100 basis points, our annual cash flow and income before taxes would change by approximately \$1.7 million. This computation is determined by considering the impact of hypothetical interest rates on the Old Credit Facility at March 27, 2013, taking into consideration the interest rate cap. Based on the levels of borrowings under the New Credit Facility at April 24, 2013, if interest rates changed by 100 basis points, our annual cash flow and income before taxes would change by approximately \$1.7 million. This computation is determined by considering the impact of hypothetical interest rates on the New Credit Facility at April 24, 2013, taking into consideration the interest rate cap. However, the nature and amount of our borrowings may vary as a result of future business requirements, market conditions and other factors.

We also have exposure to interest rate risk related to our pension plan, other defined benefit plans and self-insurance liabilities. A 25 basis point increase or decrease in discount rate would increase or decrease our projected benefit obligation related to our pension plan by approximately \$2.6 million and would impact the pension plan's net periodic benefit cost by approximately \$0.3 million. The impact of a 25 basis point increase or decrease in discount rate would decrease or increase our projected benefit obligation related to our other defined benefit plans by less than \$0.1 million while the plans' net periodic benefit cost would remain flat. A 25 basis point increase or decrease in discount rate related to our self-insurance liabilities would result in a decrease or increase of \$0.2 million, respectively.

### **Commodity Price Risk**

We purchase certain food products, such as beef, poultry, pork, eggs and coffee, and utilities such as gas and electricity, which are affected by commodity pricing and are, therefore, subject to price volatility caused by weather, production problems, delivery difficulties and other factors that are outside our control and which are generally unpredictable. Changes in commodity prices affect us and our competitors generally and often simultaneously. In general, we purchase food products and utilities based upon market prices established with vendors. Although many of the items purchased are subject to changes in commodity prices, the majority of our purchasing arrangements are structured to contain features that minimize price volatility by establishing fixed pricing and/or price ceilings and floors. We use these types of purchase arrangements to control costs as an alternative to using financial instruments to hedge commodity prices. In many cases, we believe we will be able to address commodity cost increases which are significant and appear to be long-term in nature by adjusting our menu pricing or changing our product delivery strategy. However, competitive circumstances could limit such actions and, in those circumstances, increases in commodity prices could lower our margins. Because of the often short-term nature of commodity pricing aberrations and our ability to change menu pricing or product delivery strategies in response to commodity price increases, we believe that the impact of commodity price risk is not significant.

We have established a policy to identify, control and manage market risks which may arise from changes in interest rates, commodity prices and other relevant rates and prices. We do not use derivative instruments for trading purposes.

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

As required by Rule 13a-15(b) under the Securities Exchange Act of 1934, as amended, (the "Exchange Act") our management conducted an evaluation (under the supervision and with the participation of our President and Chief Executive Officer, John C. Miller, and our Executive Vice President, Chief Administrative Officer and Chief Financial Officer, F. Mark Wolfinger) as of the end of the period covered by this Quarterly report on Form 10-Q, of the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) under the Exchange Act. Based on that evaluation, Messrs. Miller and Wolfinger each concluded that our disclosure controls and procedures are effective to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) is accumulated and communicated to our management, including Messrs. Miller and Wolfinger, as appropriate to allow timely decisions regarding required disclosure.

There have been no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15 (d) of the Exchange Act that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II - OTHER INFORMATION

### Item 1. Legal Proceedings

There are various claims and pending legal actions against or indirectly involving us, incidental to and arising out of the ordinary course of the business. In the opinion of management, based upon information currently available, the ultimate liability with respect to these proceedings and claims will not materially affect the Company's consolidated results of operations or financial position.

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

#### Purchases of Equity Securities by the Issuer

The table below provides information concerning repurchases of shares of our Common Stock during the quarter ended March 27, 2013 .

Period	Total Number of Shares Purchased	Average Price Paid Per Share (1)	Total Number of Shares Purchased as Part of Publicly Announced Programs (2)	Maximum Number of Shares that May Yet be Purchased Under the Programs (2)
(In thousands, except per share amounts)				
December 27, 2012 - January 23, 2013	75	\$ 4.85	75	3,390
January 24, 2013 - February 20, 2013	—	—	—	3,390
February 21, 2013 - March 27, 2013	266	5.70	266	3,124
Total	341	\$ 5.52	341	

(1) Average price paid per share excludes commissions.

(2) May 18, 2012 we announced that our Board of Directors had approved the repurchase of up to 6 million shares of Common Stock. Such repurchases may take place from time to time on the open market (including in pre-arranged stock trading plans in accordance with the guidelines specified in Rule 10b5-1 under the Securities Exchange Act of 1934) or in privately negotiated transactions, subject to market and business conditions. During the quarter ended March 27, 2013 , we purchased 341,100 shares of Common Stock for an aggregate consideration of approximately \$1.9 million , pursuant to the share repurchase program.

On April 25, 2013, we announced that our Board of Directors approved a new share repurchase program authorizing us to repurchase up to an additional 10.0 million shares of our Common Stock. Under this program, we may, from time to time, purchase shares in the open market (including pre-arranged stock trading plans in accordance with the guidelines specified in Rule 10b5-1 under the Securities Exchange Act of 1934) or in privately negotiated transactions, subject to market and business conditions. As of April 24, 2013, there were approximately 2.4 million shares remaining available to be repurchased under our previous share repurchase program.

## Item 6. Exhibits

The following are included as exhibits to this report:

Exhibit No.	Description
10.1	Form of the 2013 Long-Term Performance Incentive Program Performance Shares and Target Cash Opportunity Award Certificate
10.2	Written Description of the Denny's 2013 Long-Term Performance Incentive Program
10.3	Amended and Restated Credit Agreement dated as of April 24, 2013 among Denny's, Inc., as the Borrower, Denny's Corporation, as Parent, and Certain Subsidiaries of Parent, as Guarantors, Wells Fargo Bank, National Association, as Administrative Agent and L/C Issuer, Regions Bank and General Electric Capital Corporation, as Co-Syndication Agents, Cadence Bank N.A., Fifth Third Bank and RBS Citizens, N.A., as Co-Documentation Agents, and The Other Lenders Party Hereto, Wells Fargo Securities, LLC, Regions Capital Markets and GE Capital Markets, Inc., as Joint Lead Arrangers and Joint Bookrunners.
10.4	Amended and Restated Guarantee and Collateral Agreement dated as of April 24, 2013 among Denny's, Inc., Denny's Realty, LLC, Denny's Corporation, DFO, LLC, the other Subsidiaries of Parent from time to time party hereto, and Wells Fargo Bank, N.A., as Administrative Agent.
31.1	Certification of John C. Miller, President and Chief Executive Officer of Denny's Corporation, pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of F. Mark Wolfinger, Executive Vice President, Chief Administrative Officer and Chief Financial Officer of Denny's Corporation, pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of John C. Miller, President and Chief Executive Officer of Denny's Corporation and F. Mark Wolfinger, Executive Vice President, Chief Administrative Officer and Chief Financial Officer of Denny's Corporation, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document

\* In accordance with Regulation S-T, the XBRL-related information in Exhibit 101 to this Quarterly Report on Form 10-Q shall be deemed "furnished" and not "filed."

## SIGNATURES

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

### DENNY'S CORPORATION

Date: May 1, 2013

By: /s/ F. Mark Wolfinger

F. Mark Wolfinger  
Executive Vice President,  
Chief Administrative Officer and  
Chief Financial Officer

Date: May 1, 2013

By: /s/ Jay C. Gilmore

Jay C. Gilmore  
Vice President,  
Chief Accounting Officer and  
Corporate Controller

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2013 Long-Term Incentive Program	Denny's Corporation
Performance Shares and Target Cash Opportunity	203 East Main Street
Award Certificate	Spartanburg, SC 29319

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(“Grantee”)

Denny's Corporation (the “Company”) has granted to you a performance award (the “Award”), denominated in performance shares (the “Performance Shares”) and in cash (the “Target Cash Opportunity”). The Award is granted under the Denny's Corporation 2012 Omnibus Incentive Plan (the “Plan”) and pursuant to the 2013 Long-Term Incentive Program Description (the “Program Description”). The Performance Shares entitle you to earn shares of the Company's \$0.01 par value common stock (“Shares”), on a one-for-one basis, and the Target Cash Opportunity entitles you to earn a cash payment, as set forth below. By accepting the Award, Grantee shall be deemed to have agreed to the terms and conditions set forth in this Award Certificate, the Program Description and the Plan.

**Grant Date of Award: January 22, 2013**

**Number of Performance Shares:**

**Target Cash Opportunity:**

The Award is granted as a Qualified Performance-Based Award under the Section 14.11 of the Plan. If the Company achieves at least \$55,000,000 in Adjusted EBITDA for the fiscal year ending December 25, 2013 (the “Threshold Performance Goal”), then the Award shall be considered earned in an amount equal to 200% of the Performance Shares and Target Cash Opportunity; *provided, however*, that the number of Performance Shares and the amount of the Target Cash Opportunity actually paid under the Award will be subject to reduction based on the TSR Comparison described below, and is also subject to your continuous employment during the vesting period described below. Prior to any conversion or payout of the Award, the Compensation and Incentives Committee of the Company's Board of Directors shall certify in writing that the Threshold Performance Goal has been satisfied.

If the Threshold Performance Goal is satisfied, then the Award will vest (become non-forfeitable) on December 30, 2015, subject to your continued employment with the Company through such date, unless vesting is accelerated under Section 2 of the Terms and Conditions on the following page.

If the Threshold Performance Goal is satisfied and the vesting condition is satisfied, the actual number of Performance Shares and the amount of the Target Cash Opportunity to be paid to the Grantee will be adjusted to an amount between 0% and 200% of the number and amount originally granted, based on the Company's Total Shareholder Return (“TSR,” as defined below) ranking relative to the Company's Peer Group (as defined in the Program Description) over a three-year fiscal period ending on December 30, 2015 (the “Performance Period”), as further described in the Program Description (the “TSR Comparison”).

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For purposes of this Award Certificate, TSR will be calculated as follows:

$$\text{TSR} = (\text{ending stock price} - \text{beginning stock price} + \text{reinvested dividends}) / \text{beginning stock price}$$

This Award is governed by the terms of the Plan and the Program Description, and subject to the Terms and Conditions on the following page. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Plan.

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February 4, 2013

Date

Jill Van Pelt - Vice President, Human Resources  
For Denny's Corporation

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## TERMS AND CONDITIONS

**1. Vesting and Forfeiture of Award .** If the Threshold Performance Goal is satisfied, the Award will vest and become non-forfeitable on December 30, 2015, subject to accelerated vesting under certain circumstances as provided in Section 2 below (the "Vesting Date"). Notwithstanding anything contained in the Plan to the contrary, if Grantee's employment with the Company terminates for any reason other than as set forth in paragraph (a) of Section 2 below, Grantee shall forfeit all of Grantee's right, title and interest in and to any unvested Performance Shares and unvested Target Cash Opportunity under the Award as of the date of termination of employment. In addition, if Grantee's employment is terminated by the Company for Cause, Grantee shall also forfeit any vested Performance Shares and Target Cash Opportunity that has not yet been paid.

**2. Acceleration of Vesting and Payout .** The Award shall be subject to accelerated vesting as set forth below, in each case subject to the TSR Comparison adjustment as described.

(a) Upon Grantee's termination of employment with the Company due to death or Disability, a pro rata portion of the Performance Shares and the Target Cash Opportunity will vest and become non-forfeitable (the pro rata portion shall be determined by multiplying each of the number of Performance Shares and the amount of the Target Cash Opportunity by a fraction, the numerator of which is the number of days elapsed from December 27, 2012 to the termination date, and the denominator of which is 1,099). The TSR Comparison shall then be applied, and the pro rata number of Performance Shares and the pro rata amount of Target Cash Opportunity shall be adjusted, based on the Company's TSR ranking relative to the Peer Group as of the end of the Company's fiscal quarter in which the termination of employment due to death or Disability occurs (as if the Performance Period had ended on such fiscal quarter ending date), and such Performance Shares and the Target Cash Opportunity, as adjusted, shall be paid out within 30 days following the termination of employment .

(b) Upon a Change in Control of the Company, the Performance Shares and the Target Cash Opportunity will vest and become non-forfeitable. The TSR Comparison shall then be applied, and the number of Performance Shares and the Target Cash Opportunity amount shall be adjusted, based on the Company's TSR ranking relative to the Peer Group as of the date of the Change in Control (as if the Performance Period had ended on the date of the Change in Control), and the Performance Shares and the Target Cash Opportunity, as adjusted, shall be paid out within 30 days following the Change in Control.

**3. TSR Comparison and Award Adjustment .** The number of Performance Shares and the amount of the Target Cash Opportunity shall be adjusted following the end of the Performance Period or upon a Change in Control (or the pro rata portion shall be adjusted following the end of the Company's fiscal quarter following a termination of employment due to death or Disability) based on the TSR Comparison, as follows:

	<b>Company's TSR Percentile Ranking Relative to Peer Group</b>	<b>Adjustment Factor *</b>
Below Threshold	Less than 25%	—%
Threshold	25%	50%
Target	50%	100%
Maximum	90%	200%

\* TSR Comparison is interpolated on a straight-line basis for performance between points.

Notwithstanding anything contained herein to the contrary, the Committee retains the discretion to increase (but not above 200% of the original award amounts) or decrease the number of Performance Shares and the amount of the Target Cash Opportunity to be paid in extraordinary circumstances to account for unusual or non-recurring events not anticipated at the time of grant.

**4. Conversion to Shares and Cash Payment .** The Performance Shares (as adjusted based on the TSR Comparison) will be converted to actual Shares, and the Target Cash Opportunity (as adjusted based on the TSR Comparison) will be paid in cash, as soon as practicable following the end of the Performance Period, and no later than January 31, 2016. Stock certificates evidencing Shares paid upon conversion of the Performance Shares will be registered on the books of the Company in Grantee's name as of the date of payment and delivered to Grantee as soon as practical thereafter.

**5. Limitation of Rights .** The Award does not confer to Grantee or Grantee's beneficiary any rights of a stockholder of the Company unless and until Shares are in fact issued to such person in connection with the Award. Nothing in this Award Certificate shall interfere with or limit in any way the right of the Company or any Affiliate to terminate Grantee's employment at any time, nor confer upon Grantee any right to continue in employment of the Company or any Affiliate.

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**6. Payment of Taxes** . The Company or any Affiliate employing Grantee has the authority and the right to deduct or withhold, or require Grantee to remit to the employer, an amount sufficient to satisfy federal, state, and local taxes (including Grantee's FICA obligation) required by law to be withheld with respect to any taxable event arising as a result of the vesting or settlement of the Award. The withholding requirement with respect to the Performance Shares only may be satisfied, in whole or in part, by withholding from the settlement of the Performance Shares a number of Shares having a fair market value equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Company establishes. The obligations of the Company under this Award Certificate will be conditional on such payment or arrangements, and the Company, and, where applicable, its Affiliates will, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise.

**7. Restrictions on Issuance of Shares** . If at any time the Committee shall determine in its discretion, that registration, listing or qualification of the Shares underlying the Performance Shares upon any securities exchange or similar self-regulatory organization or under any foreign, federal, or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition to the settlement of the Performance Shares, the Shares will not be paid unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Committee.

**8. Plan Controls** . The terms contained in the Plan are incorporated into and made a part of this Award Certificate and this Award Certificate shall be governed by and construed in accordance with the Plan. In the event of any actual or alleged conflict between the provisions of the Plan and the provisions of this Award Certificate, the provisions of the Plan shall be controlling and determinative.

**9. Successors** . This Award Certificate shall be binding upon any successor of the Company, in accordance with the terms of this Award Certificate and the Plan.

**10. Severability** . If any one or more of the provisions contained in this Award Certificate is deemed to be invalid, illegal or unenforceable, the other provisions of this Award Certificate will be construed and enforced as if the invalid, illegal or unenforceable provision had never been included.

**11. Notice** . Notices and communications under this Award Certificate must be in writing and either personally delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid. Notices to the Company must be addressed to Denny's Corporation, 203 East Main Street, Spartanburg, SC 29319-0001, Attn: Secretary, or any other address designated by the Company in a written notice to Grantee. Notices to Grantee will be directed to the address of Grantee then currently on file with the Company, or at any other address given by Grantee in a written notice to the Company.





## **Denny's 2013 Long-Term Incentive Program Description**

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### **Program Concept**

The Compensation and Incentives Committee of the Board of Directors (the "Compensation Committee") has approved the 2013 Long-Term Incentive (LTI) Program, an incentive compensation program pursuant to and subject to the Denny's Corporation 2012 Omnibus Incentive Plan.

Under the program, participants are granted a target number of performance shares and a target cash award. From 0% to 200% of the target number of performance shares and the target amount of cash may be earned based on the results of Denny's Total Shareholder Return (TSR), discussed further below. Once earned, the performance shares convert to and are settled in shares of Denny's stock on a one-for-one basis.

The number of shares and the percentage of the cash target earned will be contingent upon Denny's TSR results as compared to its peers (refer to Peer Group listed below).

Please refer to your individual award agreement for your target number of performance shares and target cash award.

Your award agreement and the 2012 Omnibus Incentive Plan govern the terms of this award. Please read these documents carefully. If any term in this document conflicts with the award agreement, the terms of the award agreement will control the award.

### **Eligibility**

Vice Presidents and above are eligible for the 2013 long-term incentive awards. At the discretion of the Executive Committee, and with approval by the Compensation Committee, certain director-level and senior director-level employees also may be eligible for these awards.

### **Performance Period & Vesting Schedule**

The performance period will be the three-year fiscal period beginning December 27, 2012 and ending December 30, 2015. Performance shares will vest and be earned at the end of the performance period. Participants will have no voting or dividend rights until the shares are distributed. The cash award will also vest and be earned at the end of the performance period.

Participants must be employed on the vesting date in order to vest in the award (except in cases of death or disability, or otherwise as noted below). Termination for cause results in forfeiture of all unpaid awards, including otherwise vested awards.

## How Performance Is Measured

Performance will be measured based on the Total Shareholder Return (TSR) of Denny's stock compared to the Total Shareholder Returns of the stocks of Denny's Peer Group over the three-year performance period. TSR combines share price appreciation and dividends paid to show the total return to the shareholder. TSR will be calculated as follows:

$$\text{TSR} = (\text{ending stock price} - \text{beginning stock price} + \text{reinvested dividends}) / \text{beginning stock price}$$

A 20-trading day average will be used to determine the beginning and ending stock prices for Denny's and its Peer Group. Based on this definition, Denny's beginning stock price as of December 27, 2012 is \$4.76.

Denny's TSR performance ranking compared to its Peer Group determines the payout level as shown below.

	<b>Denny's TSR Performance Ranking vs. Peers</b>	<b>Payout as a % of Target</b>
Below Threshold	<25th %ile	—%
Threshold	25th %ile	50%
Target	50th %ile	100%
Maximum	90th %ile	200%

*Note: Linear interpolation will be used to determine payouts which fall between given points on this scale.*

## Peer Group

Denny's TSR will be measured against the TSR of the following twenty-one peer companies:

BJ's Restaurants, Inc. Einstein Noah Restaurant Group, Inc.  
Bob Evans Farms, Inc. Jack in the Box, Inc.  
Brinker International, Inc. Krispy Kreme Doughnuts, Inc.  
Buffalo Wild Wings, Inc. Panera Bread Company  
The Cheesecake Factory Incorporated Papa John's International, Inc.  
Chipotle Mexican Grill, Inc. Red Robin Gourmet Burgers, Inc.  
Cracker Barrel Old Country Store, Inc. Ruby Tuesday, Inc.  
DineEquity, Inc. Sonic Corporation  
Domino's Pizza, Inc. Texas Roadhouse, Inc.  
Dunkin Brands Group, Inc. The Wendy's Company

## Form and Timing of Payout, and Taxation

Participants will receive their earned shares and cash as soon as practicable following the end of the performance period, but no later than January 31, 2016. Participants will be taxed on the value of the vested shares and the vested cash on the date of payout. All applicable federal, state, and local taxes will be withheld from the payment due to the participant. The closing stock price of Denny's stock on the last trading day preceding the date of payout will be used to determine the taxable value of the shares.

It is intended that the payments under the LTI Program shall either be exempt from the application of, or comply with, the requirements of Section 409A of the Internal Revenue Code. The Program shall be construed in a manner that affects such intent. Nevertheless, the tax treatment of the Program is not warranted or guaranteed. Neither the Company, its affiliates nor their respective directors, officers, employees or advisors (other than in his or her capacity as a participant in the Program) shall be held liable for any taxes, interest, penalties or other monetary amounts owed by any participant or other taxpayer as a result of the LTI Program.

**Impact of Termination Events**

Participation in the Plan does not constitute an offer or guarantee of employment. The table below shows the impact of various termination events and a change in control:

<b>Termination Event</b>	<b>Payout</b>
Death or disability	<ul style="list-style-type: none"> <li>• Termination due to death or disability prior to vesting will result in pro rata vesting of the amount earned, calculated at the end of the quarter in which the termination due to death or disability occurs, and paid out within 30 days following the termination.</li> <li>• Termination due to death or disability occurring between the vesting and payout dates will result in no change to the amount that would have been paid had the termination event not occurred.</li> </ul>
Termination for Cause	<ul style="list-style-type: none"> <li>• Vested but unpaid and unvested awards will be forfeited. No payout will occur even if awards had vested.</li> </ul>
Voluntary Termination (Resignation, Retirement)	<ul style="list-style-type: none"> <li>• Vested but unpaid awards will be paid out in accordance with the regular payout schedule. Unvested awards will be forfeited.</li> </ul>
Involuntary Termination Not for Cause	<ul style="list-style-type: none"> <li>• Vested but unpaid awards will be paid out in accordance with the regular payout schedule. Unvested awards will be forfeited.</li> </ul>
Change in Control	<ul style="list-style-type: none"> <li>• Vested but unpaid awards will be paid out in accordance with the regular payout schedule, but no later than the date of the Change in Control. Unvested awards will be deemed to be fully earned based on actual performance up to the date of the Change in Control, and will be paid out as soon as practicable within 30 days following the Change in Control.</li> </ul>

**Impact on Other Plans**

Awards are not considered pay for purposes of Denny's retirement or welfare plans. There will be no specific deferral opportunities under this plan.

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of April 24, 2013

among

DENNY'S, INC.,  
as the Borrower,

DENNY'S CORPORATION,  
as Parent,

and

Certain Subsidiaries of Parent,  
as Guarantors,

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent and  
L/C Issuer

REGIONS BANK

and

GENERAL ELECTRIC CAPITAL CORPORATION,  
as Co-Syndication Agents,

CADENCE BANK, N.A.,  
FIFTH THIRD BANK

and

RBS CITIZENS, N.A.,  
as Co-Documentation Agents

and

The Other Lenders Party Hereto

WELLS FARGO SECURITIES, LLC,  
REGIONS CAPITAL MARKETS,  
A DIVISION OF REGIONS BANK

and

GE CAPITAL MARKETS, INC.  
as Joint Lead Arrangers and Joint Bookrunners

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TABLE OF CONTENTS

Page

<b><u>Article I DEFINITIONS AND ACCOUNTING TERMS</u></b>	<b>1</b>
<b><u>1.01 Defined Terms .</u></b>	<b>1</b>
<b><u>1.02 Other Interpretive Provisions .</u></b>	<b>36</b>
<b><u>1.03 Accounting Terms .</u></b>	<b>37</b>
<b><u>1.04 Rounding .</u></b>	<b>38</b>
<b><u>1.05 Times of Day .</u></b>	<b>38</b>
<b><u>1.06 Letter of Credit Amounts .</u></b>	<b>38</b>
<b><u>1.07 Currency Equivalents Generally .</u></b>	<b>39</b>
<b><u>Article II THE COMMITMENTS AND CREDIT EXTENSIONS</u></b>	<b>39</b>
<b><u>2.01 The Loans .</u></b>	<b>39</b>
<b><u>2.02 Borrowings, Conversions and Continuations of Loans .</u></b>	<b>40</b>
<b><u>2.03 Letters of Credit .</u></b>	<b>41</b>
<b><u>2.04 Prepayments .</u></b>	<b>51</b>
<b><u>2.05 Termination or Reduction of Commitments .</u></b>	<b>55</b>
<b><u>2.06 Repayment of Loans .</u></b>	<b>56</b>
<b><u>2.07 Interest .</u></b>	<b>56</b>
<b><u>2.08 Fees .</u></b>	<b>57</b>
<b><u>2.09 Computation of Interest and Fees .</u></b>	<b>57</b>
<b><u>2.10 Evidence of Debt .</u></b>	<b>58</b>
<b><u>2.11 Payments Generally; Administrative Agent's Clawback .</u></b>	<b>59</b>
<b><u>2.12 Sharing of Payments by Lenders .</u></b>	<b>61</b>
<b><u>2.13 Increase in Revolving Credit Facility .</u></b>	<b>62</b>
<b><u>2.14 Increase in Term Facility .</u></b>	<b>64</b>
<b><u>2.15 Cash Collateral .</u></b>	<b>66</b>
<b><u>2.16 Defaulting Lenders .</u></b>	<b>67</b>
<b><u>Article III TAXES, YIELD PROTECTION AND ILLEGALITY</u></b>	<b>70</b>
<b><u>3.01 Taxes .</u></b>	<b>70</b>
<b><u>3.02 Illegality .</u></b>	<b>75</b>
<b><u>3.03 Inability to Determine Rates .</u></b>	<b>76</b>
<b><u>3.04 Increased Costs; Reserves on Eurodollar Rate Loans .</u></b>	<b>76</b>
<b><u>3.05 Compensation for Losses .</u></b>	<b>78</b>
<b><u>3.06 Mitigation Obligations; Replacement of Lenders .</u></b>	<b>79</b>
<b><u>3.07 Survival .</u></b>	<b>79</b>
<b><u>Article IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS</u></b>	<b>79</b>
<b><u>4.01 Conditions of Initial Credit Extension .</u></b>	<b>79</b>
<b><u>4.02 Conditions to all Credit Extensions .</u></b>	<b>83</b>
<b><u>Article V REPRESENTATIONS AND WARRANTIES</u></b>	<b>84</b>
<b><u>5.01 Existence, Qualification and Power .</u></b>	<b>84</b>

<a href="#"><u>5.02</u></a>	<a href="#"><u>Authorization; No Contravention .</u></a>	84
<a href="#"><u>5.03</u></a>	<a href="#"><u>Governmental Authorization; Other Consents .</u></a>	84
<a href="#"><u>5.04</u></a>	<a href="#"><u>Binding Effect .</u></a>	85
<a href="#"><u>5.05</u></a>	<a href="#"><u>Financial Statements; No Material Adverse Effect .</u></a>	85
<a href="#"><u>5.06</u></a>	<a href="#"><u>Litigation .</u></a>	86
<a href="#"><u>5.07</u></a>	<a href="#"><u>No Default .</u></a>	86
<a href="#"><u>5.08</u></a>	<a href="#"><u>Ownership of Property; Liens; Investments .</u></a>	86
<a href="#"><u>5.09</u></a>	<a href="#"><u>Environmental Compliance .</u></a>	87
<a href="#"><u>5.10</u></a>	<a href="#"><u>Insurance .</u></a>	88
<a href="#"><u>5.11</u></a>	<a href="#"><u>Taxes .</u></a>	88
<a href="#"><u>5.12</u></a>	<a href="#"><u>ERISA Compliance .</u></a>	89
<a href="#"><u>5.13</u></a>	<a href="#"><u>Subsidiaries; Equity Interests; Loan Parties .</u></a>	90
<a href="#"><u>5.14</u></a>	<a href="#"><u>Margin Regulations; Investment Company Act .</u></a>	90
<a href="#"><u>5.15</u></a>	<a href="#"><u>Disclosure .</u></a>	90
<a href="#"><u>5.16</u></a>	<a href="#"><u>Compliance with Laws .</u></a>	91
<a href="#"><u>5.17</u></a>	<a href="#"><u>Intellectual Property; Licenses, Etc .</u></a>	91
<a href="#"><u>5.18</u></a>	<a href="#"><u>Solvency .</u></a>	91
<a href="#"><u>5.19</u></a>	<a href="#"><u>Casualty, Etc .</u></a>	91
<a href="#"><u>5.20</u></a>	<a href="#"><u>Labor Matters .</u></a>	91
<a href="#"><u>5.21</u></a>	<a href="#"><u>Collateral Documents .</u></a>	92
<a href="#"><u>5.22</u></a>	<a href="#"><u>Foreign Assets Control Regulations, Etc .</u></a>	92

## [Article VI AFFIRMATIVE COVENANTS](#) 93

<a href="#"><u>6.01</u></a>	<a href="#"><u>Financial Statements .</u></a>	93
<a href="#"><u>6.02</u></a>	<a href="#"><u>Certificates; Other Information .</u></a>	94
<a href="#"><u>6.03</u></a>	<a href="#"><u>Notices .</u></a>	96
<a href="#"><u>6.04</u></a>	<a href="#"><u>Payment of Obligations .</u></a>	97
<a href="#"><u>6.05</u></a>	<a href="#"><u>Preservation of Existence, Etc .</u></a>	97
<a href="#"><u>6.06</u></a>	<a href="#"><u>Maintenance of Properties .</u></a>	97
<a href="#"><u>6.07</u></a>	<a href="#"><u>Maintenance of Insurance .</u></a>	97
<a href="#"><u>6.08</u></a>	<a href="#"><u>Compliance with Laws .</u></a>	98
<a href="#"><u>6.09</u></a>	<a href="#"><u>Books and Records .</u></a>	98
<a href="#"><u>6.10</u></a>	<a href="#"><u>Inspection Rights .</u></a>	98
<a href="#"><u>6.11</u></a>	<a href="#"><u>Use of Proceeds .</u></a>	98
<a href="#"><u>6.12</u></a>	<a href="#"><u>Covenant to Guarantee Obligations and Give Security .</u></a>	98
<a href="#"><u>6.13</u></a>	<a href="#"><u>Compliance with Environmental Laws .</u></a>	103
<a href="#"><u>6.14</u></a>	<a href="#"><u>Preparation of Environmental Reports .</u></a>	103
<a href="#"><u>6.15</u></a>	<a href="#"><u>Further Assurances .</u></a>	103
<a href="#"><u>6.16</u></a>	<a href="#"><u>Material Contracts .</u></a>	104
<a href="#"><u>6.17</u></a>	<a href="#"><u>Cash Management Arrangements .</u></a>	104

## [Article VII NEGATIVE COVENANTS](#) 104

<a href="#"><u>7.01</u></a>	<a href="#"><u>Liens .</u></a>	104
<a href="#"><u>7.02</u></a>	<a href="#"><u>Indebtedness .</u></a>	105
<a href="#"><u>7.03</u></a>	<a href="#"><u>Investments .</u></a>	106
<a href="#"><u>7.04</u></a>	<a href="#"><u>Mergers, Consolidations and Sales of Assets .</u></a>	109

<a href="#"><u>7.05</u></a>	<a href="#"><u>Dividends and Distributions, Restrictions on Ability of Subsidiaries to Pay Dividends .</u></a>	110
<a href="#"><u>7.06</u></a>	<a href="#"><u>Nature of Business .</u></a>	111
<a href="#"><u>7.07</u></a>	<a href="#"><u>Transactions with Affiliates .</u></a>	111
<a href="#"><u>7.08</u></a>	<a href="#"><u>OFAC, Etc .</u></a>	112
<a href="#"><u>7.09</u></a>	<a href="#"><u>Use of Proceeds .</u></a>	112
<a href="#"><u>7.10</u></a>	<a href="#"><u>Financial Covenants .</u></a>	112
<a href="#"><u>7.11</u></a>	<a href="#"><u>Capital Expenditures .</u></a>	112
<a href="#"><u>7.12</u></a>	<a href="#"><u>Amendments of Organization Documents .</u></a>	113
<a href="#"><u>7.13</u></a>	<a href="#"><u>Accounting Changes .</u></a>	113
<a href="#"><u>7.14</u></a>	<a href="#"><u>Other Indebtedness and Agreements .</u></a>	113
<a href="#"><u>7.15</u></a>	<a href="#"><u>Sale and Lease-Back Transactions .</u></a>	114
<a href="#"><u>7.16</u></a>	<a href="#"><u>Operating Leases .</u></a>	114
<a href="#"><u>7.17</u></a>	<a href="#"><u>Swap Contracts .</u></a>	114
<a href="#"><u>7.18</u></a>	<a href="#"><u>Designated Subsidiary .</u></a>	114
<a href="#"><u>Article VIII</u></a>	<a href="#"><u>EVENTS OF DEFAULT AND REMEDIES</u></a>	114
<a href="#"><u>8.01</u></a>	<a href="#"><u>Events of Default .</u></a>	114
<a href="#"><u>8.02</u></a>	<a href="#"><u>Remedies upon Event of Default .</u></a>	117
<a href="#"><u>8.03</u></a>	<a href="#"><u>Application of Funds .</u></a>	118
<a href="#"><u>Article IX</u></a>	<a href="#"><u>ADMINISTRATIVE AGENT</u></a>	119
<a href="#"><u>9.01</u></a>	<a href="#"><u>Appointment and Authority .</u></a>	119
<a href="#"><u>9.02</u></a>	<a href="#"><u>Rights as a Lender .</u></a>	120
<a href="#"><u>9.03</u></a>	<a href="#"><u>Exculpatory Provisions .</u></a>	120
<a href="#"><u>9.04</u></a>	<a href="#"><u>Reliance by Administrative Agent .</u></a>	121
<a href="#"><u>9.05</u></a>	<a href="#"><u>Delegation of Duties .</u></a>	121
<a href="#"><u>9.06</u></a>	<a href="#"><u>Resignation of Administrative Agent .</u></a>	122
<a href="#"><u>9.07</u></a>	<a href="#"><u>Non-Reliance on Administrative Agent and Other Lenders .</u></a>	123
<a href="#"><u>9.08</u></a>	<a href="#"><u>No Other Duties, Etc .</u></a>	123
<a href="#"><u>9.09</u></a>	<a href="#"><u>Administrative Agent May File Proofs of Claim .</u></a>	123
<a href="#"><u>9.10</u></a>	<a href="#"><u>Collateral and Guaranty Matters .</u></a>	124
<a href="#"><u>9.11</u></a>	<a href="#"><u>Secured Cash Management Agreements and Secured Hedge Agreements .</u></a>	125
<a href="#"><u>Article X</u></a>	<a href="#"><u>MISCELLANEOUS</u></a>	125
<a href="#"><u>10.01</u></a>	<a href="#"><u>Amendments, Etc .</u></a>	125
<a href="#"><u>10.02</u></a>	<a href="#"><u>Notices; Effectiveness; Electronic Communications .</u></a>	128
<a href="#"><u>10.03</u></a>	<a href="#"><u>No Waiver; Cumulative Remedies; Enforcement .</u></a>	130
<a href="#"><u>10.04</u></a>	<a href="#"><u>Expenses; Indemnity; Damage Waiver .</u></a>	131
<a href="#"><u>10.05</u></a>	<a href="#"><u>Payments Set Aside .</u></a>	133
<a href="#"><u>10.06</u></a>	<a href="#"><u>Successors and Assigns .</u></a>	133
<a href="#"><u>10.07</u></a>	<a href="#"><u>Treatment of Certain Information; Confidentiality .</u></a>	138
<a href="#"><u>10.08</u></a>	<a href="#"><u>Right of Setoff .</u></a>	139
<a href="#"><u>10.09</u></a>	<a href="#"><u>Interest Rate Limitation .</u></a>	140
<a href="#"><u>10.10</u></a>	<a href="#"><u>Counterparts; Integration; Effectiveness .</u></a>	140

<a href="#"><u>10.11 Survival of Representations and Warranties .</u></a>	140
<a href="#"><u>10.12 Severability .</u></a>	141
<a href="#"><u>10.13 Replacement of Lenders .</u></a>	141
<a href="#"><u>10.14 Governing Law; Jurisdiction; Etc .</u></a>	142
<a href="#"><u>10.15 Waiver of Jury Trial .</u></a>	143
<a href="#"><u>10.16 No Advisory or Fiduciary Responsibility .</u></a>	143
<a href="#"><u>10.17 Electronic Execution of Assignments and Certain Other Documents .</u></a>	144
<a href="#"><u>10.18 USA PATRIOT Act .</u></a>	144
<a href="#"><u>10.19 Release of Collateral .</u></a>	145
<a href="#"><u>10.20 Amendment and Restatement .</u></a>	145

## **EXHIBITS**

### *Form of*

- A Committed Loan Notice
- B Term Note
- C Revolving Credit Note
- D Compliance Certificate
- E Assignment and Assumption



## **AMENDED AND RESTATED CREDIT AGREEMENT**

This AMENDED AND RESTATED CREDIT AGREEMENT (“Agreement”) is entered into as of April 24, 2013, among DENNY'S, INC., a Florida corporation (“Denny's” or the “Borrower”), DENNY'S CORPORATION, a Delaware corporation (“Parent”), each of those Subsidiaries of Parent identified as a “Guarantor” on the signature pages hereto and such other Subsidiaries of Parent as may from time to time become a party hereto (Parent and such Subsidiaries, each a “Guarantor” and collectively, the “Guarantors”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent and L/C Issuer.

### **PRELIMINARY STATEMENTS :**

**WHEREAS** , the Borrower, is party to that certain Credit Agreement, dated as of April 12, 2012, among the Borrower, the Parent, the Guarantors parties thereto, the several banks and other financial institutions parties thereto (the “Existing Lenders”) and the Administrative Agent (as amended, modified or supplemented prior to the date hereof, the “Existing Credit Agreement”), pursuant to which the Existing Lenders have agreed to make loans and other financial accommodations to the Borrower; and

**WHEREAS** , the Borrower has requested, and, subject to the terms and conditions hereof, the Administrative Agent and the Lenders have agreed to amend and restate the Existing Credit Agreement and provide certain credit facilities to the Borrower on the terms and conditions of this Agreement.

**NOW THEREFORE** , in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND ACCOUNTING TERMS**

**1.01 Defined Terms** . As used in this Agreement, the following terms shall have the meanings set forth below:  
“Administrative Agent” means Wells Fargo in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent's Office” means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02 of the Disclosure Schedules, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form approved by the Administrative Agent.

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“ 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.

“ Aggregate Commitments ” means the Commitments of all the Lenders.

“ Agreement ” has the meaning specified in the introductory paragraph hereto.

“ Applicable Percentage ” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) on or prior to the Closing Date, such Term Lender's Closing Date Term Commitment at such time and (ii) thereafter, the principal amount of such Term Lender's Term Loans at such time, and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender's Revolving Credit Commitment at such time, subject to adjustment as provided in Section 2.16 . If the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 , or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 of the Disclosure Schedules or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“ Applicable Rate ” with respect to Revolving Credit Loans, the Term Loan, Letters of Credit and the Commitment Fee, the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a) :

Pricing Tier	Consolidated Leverage Ratio	Commitment Fee	Eurodollar Rate +	Standby Letter of Credit Fees	Commercial Letter of Credit Fees	Base Rate +
I	Greater than or equal to 2.50 to 1.00	0.4%	2.5%	2.5%	2.5%	1.5%
II	Greater than or equal to 2.00 to 1.00, but less than 2.50 to 1.00	0.35%	2%	2%	2%	1%
III	Less than 2.00 to 1.00	0.3%	1.75%	1.75%	1.75%	0.75%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated 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(a) reporting such change; provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Tier I shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall continue to apply until the first Business Day immediately following the date a Compliance Certificate is delivered in accordance with Section 6.02(a), whereupon the Applicable Rate shall be adjusted based upon the calculation of the Consolidated Leverage Ratio contained in such Compliance Certificate. The Applicable Rate in effect from the Closing Date to the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a) for the fiscal quarter ending June 26, 2013 shall be determined based upon Pricing Tier II. Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.09(b).

“ Applicable Revolving Credit Percentage ” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender's Applicable Percentage in respect of the Revolving Credit Facility at such time.

“ Appropriate Lender ” means, at any time, (a) with respect to any of the Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term Loan or a Revolving Credit Loan, respectively, at such time, and (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders.

“ Approved Fund ” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“ Arrangers ” means, collectively, Wells Fargo Securities, Regions Capital Markets, a division of Regions Bank and GE Capital Markets, Inc., in their capacities as joint lead arrangers and joint bookrunners.

“ Asset Sale ” means any sale, lease, transfer, license, assignment or other disposition (by merger or otherwise) of any assets (including trademarks and other intangibles), business units, individual business assets or other property of any Loan Party or any Subsidiary of any Loan Party (or the granting of any option or other right with respect to any of the foregoing), including the sale, transfer or disposition of any real property, to any person other than a Loan Party; provided, however, that none of the following shall be deemed to be an Asset Sale: (a) the sale of inventory in the ordinary course of business, (b) leases or subleases of real property in the ordinary course of business not interfering in any material respect with the business of the Loan Parties taken as a whole or (c) the sale of damaged, worn-out or obsolete assets made pursuant to Section 7.04(b). The term Asset Sale shall include any Refranchising Asset Sale.

“ Assignee Group ” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“ Assignment and Assumption ” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.06(b) ), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“ Attributable Indebtedness ” means, on any date, (a) 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, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

“ Audited Financial Statements ” means the audited consolidated balance sheet of Parent and its Subsidiaries for the fiscal year ended December 26, 2012, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of Parent and its Subsidiaries, including the notes thereto.

“ Auto-Extension Letter of Credit ” has the meaning specified in Section 2.03(b)(ii) .

“ Availability Period ” means in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Credit Facility, (ii) the date of termination of the Revolving Credit Commitments pursuant to Section 2.05 , and (iii) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02 .

“ Base Rate ” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Wells Fargo as its “Prime Rate,” and (c) the Eurodollar Rate plus 1.00%. The “Prime Rate” is a rate set by Wells Fargo based upon various factors including Wells Fargo'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 Prime Rate announced by Wells Fargo shall take effect at the opening of business on the day specified in the public announcement of such change.

“ Base Rate Loan ” means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

“ Borrower ” has the meaning specified in the introductory paragraph hereto.

“ Borrower Materials ” has the meaning specified in Section 6.02.

“ Borrowing ” means a Revolving Credit Borrowing or a Term 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 Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“ Capex Carryover Amount ” means, for any fiscal year of Parent, an amount up to 50% of the excess of (a) the amount of Consolidated Capital Expenditures permitted to be made in such fiscal year pursuant to Section 7.11 over (b) the Consolidated Capital Expenditures made by Parent and its Subsidiaries pursuant to Section 7.11 during such fiscal year.

“ Capitalized Leases ” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“ Capital Lease Obligations ” of any person shall mean the obligations of such person to pay rent or other amounts under any Capitalized Lease. For the avoidance of doubt, a Capital Lease Obligation will be deemed to be secured by the real and/or personal property that is the subject of such lease.

“ Cash Collateralize ” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent or the L/C Issuer (as applicable) and the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“ Cash Management Agreement ” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer, purchasing card programs and other cash management arrangements.

“ Cash Management Bank ” means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

“ CFC ” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“ Change in Law ” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, implemented or issued.

“ Change of Control ” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “ option right ”)), directly or indirectly, of 35% or more of the equity securities of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors (including nominations made pursuant to Rule 14(a)-8 of the Securities Exchange Act of 1934) by or on behalf of the board of directors); or

(c) Parent shall cease, directly or indirectly, to own and control legally and beneficially all of the Equity Interests in the Borrower.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Closing Date Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender's name on Schedule 2.01 of the Disclosure Schedules under the caption “Closing Date Term Commitment”.

“Code” means the Internal Revenue Code of 1986.

“Co-Documentation Agents” means Cadence Bank, Fifth Third Bank and RBS Citizens, N.A., each in its capacity as co-documentation agent.

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and shall also include the Mortgaged Properties and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Guarantee and Collateral Agreement, the IP Security Agreement, the Mortgages, collateral assignments, Guarantee and Collateral Agreement Supplements, IP Security Agreement supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means a Term Commitment or a Revolving Credit Commitment, as the context may require.

“Commitment Fee” has the meaning specified in Section 2.08(a).

“Committed Loan Notice” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to the other, or (d) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02 (a), which, if in writing, shall be substantially in the form of Exhibit A.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Consolidated Capital Expenditures” means, with respect to any period, without duplication, the sum of the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability) by Parent and its Subsidiaries during such period that, in conformity with GAAP, would be included in “additions to property, plant or equipment” or

comparable items reflected in the consolidated statement of cash flows of Parent and its Subsidiaries for such period, including (a) Capital Lease Obligations and (b) expenditures for equipment that is purchased simultaneously with the trade-in of existing equipment owned by Parent or any Subsidiary of Parent to the extent of the gross amount of the purchase price less the book value of the equipment being traded in at such time, but excluding (i) interest capitalized during construction and (ii) expenditures made in connection with the replacement or restoration of assets, to the extent reimbursed or financed from insurance proceeds paid on account of the loss of or the damage to the assets being replaced or restored, or from awards of compensation arising from the taking by condemnation or eminent domain of such assets being replaced, and net of cash amounts received by Parent and its Subsidiaries from other Persons during that period in reimbursement of Consolidated Capital Expenditures made by Parent and its Subsidiaries.

“ Consolidated Cash Interest Expense ” means, for any Measurement Period, Consolidated Interest Expense minus the sum, without duplication, of (a) interest not paid in cash (including amortization of (x) discount and deferred debt expenses and (y) fees with respect to interest rate Swap Contracts) in connection with the incurrence of Indebtedness to the extent included in interest expense in accordance with GAAP (including such fees and expenses in connection with the Transactions) and (b) interest expense related to discounted liabilities that is treated as interest in accordance with GAAP.

“ Consolidated Cash Taxes ” means, for any Measurement Period, for Parent and its Subsidiaries on a consolidated basis, the aggregate of all Federal, state, local and foreign income taxes, as determined in accordance with GAAP, to the extent the same are paid in cash during such Measurement Period.

“ Consolidated EBITDA ” means, at any date of determination, an amount equal to Consolidated Net Income of Parent and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Expense, (ii) the provision for Federal, state, local and foreign income taxes payable, (iii) depreciation and amortization expense, (iv) other non-cash charges (including, without limitation, stock compensation expenses, deferred compensation adjustments, impairment charges, restructuring and exit costs and other non-operating expenses (income)), (v) the cumulative effect of any change in accounting principles, (vi) any net loss attributable to an Asset Sale, (vii) any non-recurring expenses related to, arising out of or incurred in connection with the Transactions (in each case of or by Parent and its Subsidiaries for such Measurement Period) and (viii) lease buy-out payments in an amount not to exceed \$1,000,000 in any Measurement Period and minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) the amount of cash expended in such Measurement Period in respect of any amount that, under clause (a)(iv) above, was taken into account in determining Consolidated EBITDA for such or any prior Measurement Period, (ii) any net gain attributable to an Asset Sale, (iii) Federal, state, local and foreign income tax credits and (iv) other non-cash items (including, without limitation, stock compensation benefits, deferred compensation adjustments, restructuring and exit cost reversals and other non-operating income) increasing Consolidated Net Income (in each case of or by



Parent and its Subsidiaries for such Measurement Period); provided, however, that after the occurrence of any acquisition of any Person by Parent or any Subsidiary of Parent, Consolidated EBITDA for each Measurement Period that includes the date of occurrence of such acquisition will, solely for purposes of determining compliance with Section 7.10(a), be determined on a *pro forma* basis, based on the actual historical results of operations of such Person, as if such acquisition had occurred on the first day of such Measurement Period.

“ Consolidated EBITDAR ” means, at any date of determination, the sum of (a) Consolidated EBITDA plus (b) Consolidated Lease Expense to the extent deducted in determining Consolidated Net Income for the Measurement Period most recently ended.

“ Consolidated Fixed Charge Coverage Ratio ” means, at any date of determination, the ratio of (a) the sum of (i) Consolidated EBITDAR, less (ii) Consolidated Maintenance Capital Expenditures less (iii) Consolidated Cash Taxes to (b) the sum of (i) Consolidated Cash Interest Expense, plus (ii) Consolidated Scheduled Funded Debt Payments plus (iii) Consolidated Lease Expense, in each case, of or by Parent and its Subsidiaries for the most recently completed Measurement Period.

“ Consolidated Funded Indebtedness ” means, as of any date of determination, for Parent and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) all Attributable Indebtedness, (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in such Person or any other Person prior to the Maturity Date, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than Parent or any Subsidiary of Parent, and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Parent or a Subsidiary of a Parent is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to Parent or such Subsidiary; provided, however, that (i) obligations of Parent and its Subsidiaries in respect of (A) Swap Contracts entered into for purposes of hedging against fluctuations in foreign currency and (B) Swap Contracts entered into for purposes of hedging against fluctuations in interest rates and (ii) contingent reimbursement obligations in respect of Letters of Credit shall be excluded for purposes of determining Consolidated Funded Indebtedness

“ Consolidated Growth Capital Expenditures ” means, for any Measurement Period, (a) any Consolidated Capital Expenditures relating to the construction or opening after the

Closing Date of new restaurants owned or operated by Parent or any of its Subsidiaries less (b) any capitalized interest expense with respect to expenditures described in the foregoing clause (a).

“ Consolidated Interest Expense ” means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, net of cash interest income, in each case to the extent treated as interest in accordance with GAAP, (b) the portion of rent expense under Capital Lease Obligations that is treated as interest in accordance with GAAP and (c) interest expense related to discounted liabilities that is treated as interest in accordance with GAAP, in each case, of or by Parent and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“ Consolidated Lease Expense ” shall mean, for any Measurement Period, an amount equal to (a) all payment obligations during such Measurement Period under any Operating Lease minus (b) net rental income in respect of subleases of real property to franchisees, determined in accordance with GAAP, in each case, of or by Parent and its Subsidiaries on a consolidated basis for such Measurement Period.

“ Consolidated Leverage Ratio ” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA.

“ Consolidated Maintenance Capital Expenditures ” means, for any Measurement Period, any Consolidated Capital Expenditures that are not Consolidated Growth Capital Expenditures.

“ Consolidated Net Income ” means, at any date of determination, the net income (or loss) of Parent and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Subsidiary (other than a Loan Party) during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income to a Loan Party is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that Parent's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that Parent's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to Parent or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to a Loan Party as described in clause (b) of this proviso).

“ Consolidated Scheduled Funded Debt Payments ” means for any Measurement Period for Parent and its Subsidiaries on a consolidated basis, the sum of all scheduled payments of

principal on Consolidated Funded Indebtedness, as determined in accordance with GAAP. For purposes of this definition, “scheduled payments of principal” (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during such Measurement Period, (b) shall be deemed to include the Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations and (c) shall not include any voluntary prepayments or mandatory prepayments during such Measurement Period required pursuant to Section 2.04.

“Consolidated Total Assets” means, as of any date of determination, the total amount of all assets of Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP

“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” 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.

“Co-Syndication Agents” means Regions Bank and General Electric Capital Corporation in their capacity as co-syndication agents.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“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 (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar 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% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“ Defaulting Lender ” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding set forth herein (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, unless such payment is subject to a good faith dispute, (b) has notified the Borrower, the Administrative Agent or the L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding set forth herein (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder ( provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interests in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer, such Defaulting Lender and each other Lender promptly following such determination.

“ Denny's ” has the meaning specified in the introductory paragraph hereto.

“ Denny's Realty ” means Denny's Realty, LLC, a Delaware limited liability company.

“ Designated Subsidiary ” means La Mirada Enterprises No. 1, LLC; provided, however, that such Person shall, automatically and without any further action or consent of the Administrative Agent or any Lender, cease to be the “Designated Subsidiary” upon becoming a Guarantor hereunder.

“ DFO ” means DFO, LLC, a Delaware limited liability company.

“ Disclosure Schedules ” means a document in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, setting forth disclosure schedules of the Loan Parties and their Subsidiaries in respect of matters referenced in this Agreement.

“ Dollar ” and “ \$ ” mean lawful money of the United States.

“ Eligible Assignee ” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.06(b)(iii) ).

“ Employee Deferred Compensation Account ” means the account or accounts established by Denny's for the Rabbi Trust in Support of Denny's Inc. Deferred Compensation Plan by agreement dated June 21, 2002 between Denny's and Reliance Trust Company as trustee, as the same may be amended from time to time.

“ 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 and the protection of the environment or 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 Interests ” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares

of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ ERISA ” means the Employee Retirement Income Security Act of 1974.

“ ERISA Affiliate ” means any trade or business (whether or not incorporated) under common control with Parent or the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ ERISA Event ” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of Parent or the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity 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 Parent or the Borrower 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 Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any 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; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) 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 Parent or the Borrower or any ERISA Affiliate.

“ Eurodollar Rate ” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page), then “LIBOR” shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars in minimum amounts of at least \$5,000,000 would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period; and

(b) for any interest rate calculation with respect to a Base Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars in minimum amounts of at least \$5,000,000 for a period equal to one month (commencing on the date of determination of such interest rate) which appears on the Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page) then “LIBOR” for such Base Rate Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars in minimum amounts of at least \$5,000,000 would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination.

Each calculation by the Administrative Agent of the Eurodollar Rate shall be conclusive and binding for all purposes, absent manifest error.

“Eurodollar Rate Loan” means a Revolving Credit Loan, or a Term Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Franchisee Operated Properties” means the parcels of real property located at (i) 20565 Eureka Road, Taylor, MI, (ii) 612 Contra Costa Boulevard, Pleasant Hill, CA and (iii) 3310 Washtenaw Road, Ann Arbor, MI.

“Excluded Issuance” by any Person means an issuance of shares of capital stock of (or other ownership or profit interests in) such Person upon the exercise of warrants, options or other rights for the purchase of such capital stock (or other ownership or profit interest).

“Excluded Swap Obligation” shall have the meaning assigned to such term in the Guarantee and Collateral Agreement.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Foreign Lender (other than

an assignee pursuant to a request by the Borrower under Section 10.13), any United States withholding tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01(a)(ii) and (e) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning specified in the introductory paragraph hereto.

“Existing Letters of Credit” means each letter of credit identified on Schedule 1.01 of the Disclosure Schedules.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including, without limitation, tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of insurance included in clause (b) of the definition of the term “Reduction Event” and proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), indemnity payments and any purchase price adjustments; provided, however, that an Extraordinary Receipt shall not include cash receipts received from proceeds of insurance, indemnity payments or purchase price adjustments to the extent that such proceeds, payments or adjustments are received by any Person in respect of any third party claim against such Person and applied to pay (or to reimburse such Person for its prior payment of) such claim and the costs and expenses of such Person with respect thereto.

“Facility” means the Term Facility or the Revolving Credit Facility, as the context may require.

“Fair Market Value” means, with respect to any asset, the value of the consideration obtainable in a sale of such asset in the open market at a specific date assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, which value shall, for any asset with a Fair Market Value in excess of \$5,000,000, be either (a) the value of such asset as determined in good faith by the Board of Directors of Parent or (b) if such asset shall have been the subject of an appraisal done reasonably contemporaneously by any independent third-party appraiser engaged by Administrative Agent, any Lender or Loan Party and the basic assumptions underlying such appraisal are reasonable, the value of such asset as stated in such appraisal.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.



“ FATCA ” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“ Federal Funds Rate ” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Wells Fargo on such day on such transactions as determined by the Administrative Agent.

“ Fee Letter ” means the letter agreement, dated March 5, 2013, among the Borrower, the Administrative Agent and Wells Fargo Securities.

“ Flying J Franchisee Loans ” means loans and other extensions of credit to franchisees of the Loan Parties in connection with such franchisees' ownership and operation of “Denny's” branded restaurants at “Flying J” locations.

“ Flying J Guaranties ” means, with respect to any Loan Party, each Guarantee of Flying J Franchisee Loans made by such Loan Party in connection with a franchisee's ownership and operation of “Denny's” branded restaurants at “Flying J” locations and, in each case, consistent with guaranty programs of the Loan Parties existing as of the Closing Date.

“ Foreign Lender ” means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“ FRB ” means the Board of Governors of the Federal Reserve System of the United States.

“ Fronting Exposure ” means, at any time there is a Revolving Credit Lender that is a Defaulting Lender, with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit Lenders or Cash Collateralized in accordance with the terms hereof.

“ Fund ” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“ GAAP ” means generally accepted accounting principles in the United States 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“ Governmental Authority ” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“ Guarantee ” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other 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 obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other 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 obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other 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 obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). 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. Anything herein to the contrary notwithstanding, the term “Guarantee” shall not include contingent obligations of a Loan Party under Flying J Guaranties in an amount at any time not to exceed the lesser of (x) \$3,000,000 and (y) 10% of the aggregate amount of Flying J Franchisee Loans then outstanding (it being understood that upon the occurrence of any event, the effect of which event is to cause, or to permit the beneficiary or beneficiaries of any Flying J Guaranty (or a trustee or agent on behalf of such beneficiary or beneficiaries) to cause, with the giving of notice if required, such guarantee or other credit support under any Flying J

Guaranty to become payable, then such Flying J Guaranty shall be included in the term “Guarantee” hereunder).

“ Guarantors ” means, collectively, Parent, Denny's Realty, DFO and each Subsidiary of Parent that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12.

“ Guarantee and Collateral Agreement ” means, collectively, (a) that certain Amended and Restated Guarantee and Collateral Agreement, executed and delivered on the Closing Date, between the Loan Parties and the Administrative Agent, and (b) any other guarantee and collateral agreement that may be entered into after the Closing Date with respect to a Subsidiary of a Loan Party formed or acquired after the Closing Date, in each case, in form and substance reasonably satisfactory to the Administrative Agent and as amended and in effect from time to time.

“ Guarantee and Collateral Agreement Supplement ” means each supplement to the Guarantee and Collateral Agreement executed and delivered to the Administrative Agent by any Loan Party or any other Subsidiary of a Loan Party pursuant to Section 6.12, in form and substance reasonably satisfactory to the Administrative Agent.

“ Hazardous Materials ” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other 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, at the time it enters into a Swap Contract permitted under Article VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“ Increasing Revolving Credit Lender ” has the meaning specified in Section 2.13(c).

“ Increasing Term Lender ” has the meaning specified in Section 2.14(c).

“ Incremental Term Commitment ” shall mean any Increasing Term Lender's commitment to make any Incremental Term Loans pursuant to Section 2.14.

“ Incremental Term Loan ” shall mean, with respect to each Increasing Term Lender, any incremental term loan made by such Increasing Term Lender pursuant to Section 2.14 in accordance with its Incremental Term Commitment.

“ Incurrence Ratio ” means, as of any date of determination, the maximum Consolidated Leverage Ratio permitted under Section 7.10(a) for such date, less 0.25.

“ 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 (other than performance, surety and appeal bonds arising in the ordinary course of business);

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(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 property, including inventory, and services purchased, and expense accruals and deferred compensation items arising, in the ordinary course of business);

(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), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases (including Capital Lease Obligations) and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, provided, however, that the term “Indebtedness” shall not include any declared and unpaid dividend permitted pursuant to Section 7.05; 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, unless such Indebtedness is expressly made non-recourse to such Person. 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.

“ Indemnified Taxes ” means Taxes other than Excluded Taxes.

“ Indemnitees ” has the meaning specified in Section 10.04(b).

“ Information ” has the meaning specified in Section 10.07.

“ Interest Payment Date ” means, (a) as to any Eurodollar 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, however, that if any Interest Period for a Eurodollar 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, 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, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice (other than any initial Interest Period commencing on the Closing Date which the Borrower may select to be an Interest Period of two weeks); provided that:

(i) 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;

(j) 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

(k) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“ Internal Control Event ” means a material weakness in, or fraud that involves management or other employees who have a significant role in, Parent's or any of its Subsidiaries' internal controls over financial reporting, in each case as described in the Securities Laws.

“ 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 of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business or assets of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount

actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“ IP Rights ” has the meaning specified in Section 5.17.

“ IP Security Agreement ” means each intellectual property security agreement pursuant to which any Loan Party grants to the Administrative Agent, for the benefit of the Secured Parties, a Lien on such Loan Party's IP Rights in any trademarks, service marks, trade names, copyrights, patents and patent rights as security for the Obligations, in each case, in form an substance reasonably satisfactory to the Administrative Agent.

“ ISP ” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“ Issuer Documents ” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“ 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 Revolving Credit Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage.

“ 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 Revolving Credit 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 increase of the amount thereof.

“ L/C Issuer ” means Wells Fargo in its capacity as 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 amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be

drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto.

“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 letter of credit issued hereunder and shall include the Existing Letters of Credit. 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 L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to \$30,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“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 in the nature of a security interest 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 financing 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 II in the form of a Term Loan or a Revolving Credit Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Disclosure Schedules, (c) the Notes, (d) the Collateral Documents, (e) the Perfection Certificate, (f) the Fee Letter, (g) each Issuer Document, and (h) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 of this Agreement.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“ Long-Term Indebtedness ” shall mean any Indebtedness of Parent and its Subsidiaries that, in accordance with GAAP, constitutes (or, when incurred, constituted) a long-term liability.

“ London Banking Day ” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“ Material Adverse Effect ” shall mean (a) a materially adverse effect on or change in the business, assets, operations, properties, condition (financial or otherwise), liabilities (including potential environmental and employee health and safety liabilities and other contingent liabilities), prospects or material agreements of Parent and its Subsidiaries, taken as a whole, (b) material impairment of the ability of the Borrower or any other Loan Party to perform any of its obligations under any Loan Document to which it is or will be a party, (c) material impairment of the rights of or benefits available to the Lenders or the Administrative Agent under any Loan Document, or (d) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“ Material Contract ” means, with respect to any Loan Party or any Subsidiary of a Loan Party, each contract to which such Person is a party involving aggregate consideration payable to or by such Person of \$4,000,000 or more in any year or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

“ Maturity Date ” means April 24, 2018; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“ Measurement Period ” means, at any date of determination, the most recently completed four fiscal quarters of Parent.

“ Minimum Collateral Amount ” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 102% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.15(a)(i), (a)(ii) or (a)(iii), an amount equal to 102% of the Outstanding Amount of all L/C Obligations, and (iii) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“ Moody's ” means Moody's Investors Service, Inc. and any successor thereto.

“ Mortgage ” means deeds of trust, trust deeds, deeds to secure debt and mortgages, in each case with respect to each Mortgaged Property (and each other mortgage delivered pursuant to Section 6.12 and Section 6.15), as amended and in form and substance reasonably satisfactory to the Administrative Agent.



“ Mortgaged Property ” means, initially, each parcel of real property (other than (i) any parcel of real property located in the State of Florida, Maryland or New York, (ii) the Excluded Franchisee Operated Properties, (iii) the real property located at 2943 South Arlington Road, Akron, OH 44312, subject to Section 6.12(e), (iv) the real property located at 110 Bonita Rd., Chula Vista, CA 91910, (v) the real property located at 11901 E. Freeway, Houston, TX 77029, (vi) the real property located at 2200 Beach Boulevard, Biloxi, MS 39531 and (vii) the real property located at 205 Lewers Street, Unit C-4, Honolulu, HI 96815) and the improvements thereto owned by a Loan Party, which properties are set forth on Schedule 5.08(c) of the Disclosure Schedules, and includes each other parcel of real property and improvements thereto with respect to which a Mortgage is granted pursuant to Section 6.12 and Section 6.15.

“ Multiemployer Plan ” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which Parent, the Borrower 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.

“ Multiple Employer Plan ” means a Plan which has two or more contributing sponsors (including Parent, the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“ Net Cash Proceeds ” means, with respect to any event, the aggregate amount of cash received from time to time by or on behalf of any Loan Party or any Subsidiary of any Loan Party in connection with such transaction after deducting therefrom only (a) reasonable and customary brokerage commissions, underwriting fees and discounts, legal fees, finder's fees and other similar fees and commissions paid by such Loan Party or such Subsidiary to third parties (other than Affiliates of such Loan Party or such Subsidiary) in connection therewith, (b) the amount of taxes and other governmental fees and charges, if any, payable by such Loan Party or such Subsidiary in connection with or as a result of such transaction, (c) the amount of any Indebtedness secured by a Lien on the asset that is the subject of an Asset Sale or other disposition (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding) that, by the terms of such transaction, is required to be repaid by such Loan Party or such Subsidiary upon such disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, properly attributable to such transaction or to the asset that is the subject of such Asset Sale or other disposition and are actually paid by such Loan Party or such Subsidiary to a Person that is not an Affiliate of such Loan Party or such Subsidiary and (d) in the case of Asset Sales only, an amount of such proceeds equal to the amount of liabilities associated with such asset (including accrued tax liabilities) incurred or retained by such Loan Party or such Subsidiary as part of such transaction to the extent, and for the period, such liabilities are reserved against in accordance with GAAP or actually paid by such Loan Party or such Subsidiary to a Person that is not an Affiliate of such Loan Party or such Subsidiary, provided that such proceeds shall be deemed received by such Loan Party or such Subsidiary as and when such reserves are no longer maintained and such liabilities are not actually so paid by such Loan Party or such Subsidiary.

“ Net Working Capital ” shall mean at any date, (a) the consolidated current assets of Parent and its Subsidiaries as of such date (excluding cash and Permitted Investments) minus (b) the consolidated current liabilities of Parent and its Subsidiaries as of such date (excluding current liabilities in respect of Indebtedness). Net Working Capital at any date may be a positive or negative number. Net Working Capital increases when it becomes more positive or less negative and decreases when it becomes less positive or more negative.

“ Non-Consenting Lender ” means any Lender that does not approve any consent, change, waiver, discharge, termination or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

“ Non-Defaulting Lender ” means, at any time, each Lender that is not a Defaulting Lender at such time.

“ Note ” means a Term Note or a Revolving Credit Note, as the context may require.

“ Obligations ” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof 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; provided, that with respect to a Subsidiary Loan Party, “Obligations” shall exclude any Excluded Swap Obligation with respect to such Subsidiary Loan Party.

“ Operating Leases ” means, as applied to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) that is not a Capitalized Lease, other than any such lease under which such person is the lessor.

“ 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 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.

“ Other Taxes ” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or

under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“ Outstanding Amount ” means (a) with respect to Term Loans and Revolving Credit Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans and Revolving Credit Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“ Parent ” has the meaning specified in the introductory paragraph hereto.

“ Participant ” has the meaning specified in Section 10.06(d).

“ Participant Register ” has the meaning specified in Section 10.06(d).

“ PBGC ” means the Pension Benefit Guaranty Corporation.

“ PCAOB ” means the Public Company Accounting Oversight Board.

“ Pension Act ” means the Pension Protection Act of 2006.

“ Pension Funding Rules ” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“ Pension Plan ” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by Parent, the Borrower or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“ Perfection Certificate ” shall have the meaning assigned to such term in the Guarantee and Collateral Agreement.

“ Permitted Investments ” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof), in each case maturing within one year from the date of acquisition thereof;

(b) without limiting the provisions of clause (d) below, Investments in commercial paper maturing within 180 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least "A-1" or the equivalent thereof from S&P or of at least "P-1" or the equivalent thereof from Moody's or Investments in other corporate debt securities maturing within one year from the date of the acquisition thereof and having, at such date of acquisition, a rating of at least "A" or the equivalent thereof from S&P or of at least "A2" or the equivalent thereof from Moody's;

(c) Investments in certificates of deposit, bankers' acceptances and time deposits (including Eurodollar time deposits) maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with (i) any domestic office of the Administrative Agent or the bank with whom the Loan Parties and their Subsidiaries maintain their cash management system, provided, that if such bank is not a Lender hereunder, such bank shall have entered into an agreement with the Administrative Agent pursuant to which such bank shall have waived all rights of setoff and confirmed that such bank does not have, nor shall it claim, a security interest therein or (ii) any domestic office of any other commercial bank of recognized standing organized under the Laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$250,000,000 and is the principal banking subsidiary of a bank holding company having a long-term unsecured debt rating of at least "A" or the equivalent thereof from S&P or at least "A2" or the equivalent thereof from Moody's;

(d) Investments in commercial paper maturing within 180 days from the date of acquisition thereof and issued by (i) the holding company of the Administrative Agent or (ii) the holding company of any other commercial bank of recognized standing organized under the laws of the United States of America or any State thereof that has (A) a combined capital and surplus in excess of \$250,000,000 and (B) commercial paper rated at least "A-1" or the equivalent thereof from S&P or of at least "P-1" or the equivalent thereof from Moody's ;

(e) Investments in repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any office of a bank or trust company meeting the qualifications specified in clause (c) above;

(f) taxable or tax-exempt securities which at the time of purchase have been rated and the ratings for which are not less than Aa2 if rated by Moody's, and not less than AA if rated by S&P;

(g) Investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (a) through (e) above; and

(h) solely with respect to accruals to, and proceeds of, the Employee Deferred Compensation Account, (i) Investments set forth in clauses (a) through (g) above and

(ii) Investments in any mutual fund, combination of mutual funds, or other investment options allowed under the Company's Non-Qualified Deferred Compensation Plan as allocated by the contributing employee.

“ Permitted Liens ” means (a) Liens imposed by law (other than any Lien imposed under ERISA) for taxes, assessments or charges of any Governmental Authority for claims not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP; (b) statutory and other Liens of landlords, Liens of tenants arising from occupancy rights and statutory Liens of carriers, warehousemen, mechanics, materialmen and other Liens (other than any Lien imposed under ERISA) imposed by law created in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP; (c) Liens (other than any Lien imposed under ERISA) incurred or deposits made in the ordinary course of business (including surety bonds and appeal bonds) in connection with workers' compensation, unemployment insurance and other types of social security benefits or to secure the performance of tenders, bids, leases, contracts (other than for the repayment of Indebtedness), statutory obligations and other similar obligations or arising as a result of progress payments under government contracts; (d) easements (including reciprocal easement agreements and utility agreements), rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other restrictions, charges or encumbrances (whether or not recorded), which do not interfere materially with the ordinary conduct of the business of any Loan Party, as the case may be, and which do not materially detract from the value of the property to which they attach or materially impair the use thereof by any Loan Party, as the case may be (any such items described in this clause (d), “ Permitted Real Estate Liens ”); (e) Liens in connection with attachments or judgments (including judgment or appeal bonds) that do not constitute an Event of Default under Section 8.01(h), provided that the judgments secured shall, within 30 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall have been discharged within 30 days after the expiration of such stay; (f) leases or subleases granted to others in the ordinary course of business not interfering in any material respect with the business of any Loan Party; (g) any interest or title of a lessor under, and Liens arising from UCC financing statements relating to, leases permitted by this Agreement; (h) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions; and (i) extensions, renewals or replacements of any Lien referred to in paragraphs (a) through (h) above in connection with an extension, renewal, refinancing or replacement of the obligations which they secure or otherwise, provided that the principal amount of the obligation secured thereby is not increased and that any such extension, renewal or replacement is limited to the property originally encumbered thereby.

“ Permitted Real Estate Liens ” shall have the meaning assigned to such term in clause (d) of the definition of “Permitted Liens”.

“ 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 within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“ Platform ” has the meaning specified in Section 6.02 .

“ Pledged Debt Securities ” has the meaning specified in Section 3.01 of the Guarantee and Collateral Agreement.

“ Pledged Stock ” has the meaning specified in Section 3.01 of the Guarantee and Collateral Agreement.

“ Public Lender ” has the meaning specified in Section 6.02 .

“ Prime Rate ” has the meaning specified in the definition of “Base Rate”.

“ Reduction Event ” means:

- (i) any Asset Sale;
- (j) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party or any Subsidiary of a Loan Party, in each case under this clause (b) the Net Cash Proceeds of which exceed \$3,000,000;
- (k) receipt by any Loan Party or any Subsidiary of a Loan Party of any Extraordinary Receipts, in each case under this clause (c) the Net Cash Proceeds of which exceed \$5,000,000;
- (l) the issuance by any Loan Party or any Subsidiary of a Loan Party of any Equity Interests, or the receipt by any Loan Party or any Subsidiary of a Loan Party of any capital contribution, other than (i) any such issuance of Equity Interests to, or receipt of any such capital contribution from, any Loan Party or any Subsidiary of a Loan Party and (ii) any Excluded Issuance by Parent; or
- (m) the incurrence by any Loan Party or any Subsidiary of any Loan Party of any Indebtedness, other than Indebtedness permitted pursuant to Section 7.02 .

“ Refranchising Asset Sale ” means the sale, pursuant to an arm's length transaction for Fair Market Value, of a Restaurant Business and related assets by any Loan Party where, contemporaneously with such sale, DFO enters into a franchise agreement with the transferee of such Restaurant Business.

“ Register ” has the meaning specified in Section 10.06(c) .

“ Reinvestment Assets ” means any assets to be employed in the business of any Loan Party as conducted on the Closing Date.

“ Reinvestment Period ” means, with respect to the receipt of any Net Cash Proceeds in connection with a Reduction Event, the period commencing on the date such Net Cash Proceeds are received by Parent or any Subsidiary of Parent and ending on the date that is 360 days thereafter, provided, however, that in the event that Parent or the applicable Subsidiary of Parent shall have entered into a binding commitment to acquire Reinvestment Assets within such initial 360-day period (as certified by the Borrower in writing to the Administrative Agent), the Reinvestment Period shall be extended by an additional 180 days.

“ Related Parties ” means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

“ Reportable Event ” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“ Request for Credit Extension ” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Committed Loan Notice, and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“ Required Lenders ” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations being deemed “held” by such Revolving Credit Lender for purposes of this definition), (b) aggregate unused Revolving Credit Commitments and (c) the Term Facility; provided that the unused Revolving Credit Commitment of, the portion of the Total Revolving Credit Outstandings held or deemed held by, and that the portion of the Term Facility 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, senior vice president, vice president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent. 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 Businesses ” shall have the meaning assigned to such term in Section 7.04(e).

“ Restricted Payment ” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, 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 capital stock or other Equity Interest of such Person or any of its Subsidiaries or of any other Person of which such Person is a Subsidiary, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“ Revolving Credit Borrowing ” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

“ Revolving Credit Commitment ” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(b), and (b) purchase participations in L/C Obligations, 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 of the Disclosure Schedules under the caption “Revolving Credit Commitment” or opposite such caption 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.

“ Revolving Credit Facility ” means, at any time, the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time. As of the Closing Date, the Revolving Credit Facility is \$190,000,000.

“ Revolving Credit Increase Effective Date ” has the meaning specified in Section 2.13(d).

“ Revolving Credit Lender ” means, at any time, any Lender that has a Revolving Credit Commitment at such time.

“ Revolving Credit Loan ” has the meaning specified in Section 2.01(b).

“ Revolving Credit Note ” means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form of Exhibit C.

“ S&P ” means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“ SEC ” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.



“ Secured Cash Management Agreement ” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“ Secured Hedge Agreement ” means any Swap Contract permitted under Article VII that is entered into by and between any Loan Party and any Hedge Bank.

“ Secured Parties ” means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“ Securities Laws ” means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

“ 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, (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, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. 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. The determination of Solvency with respect to the Loan Parties shall take into account all rights and obligations of indemnity, contribution and reimbursement of the Loan Parties and limitations, if any, on the obligations under the Guarantee and Collateral Agreement.

“ Stockholder Dividend Amount ” means an amount equal to \$0.05 times the sum of (a) the aggregate issued and outstanding shares of common stock of Parent on March 27, 2013 (92,464,275), plus (b) each additional share of common stock of Parent that is issued after such date, solely to the extent such common stock of Parent is issued in a transaction that directly benefits the Borrower and the other Loan Parties and the Net Cash Proceeds of any such issuance shall be subject to the provisions of Section 2.04(b)(i)(C), in each of clause (a) and (b), without giving effect to any stock splits, reverse stock splits or similar transactions occurring after such date.

“ 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 Parent.

“Subsidiary Loan Party” shall have the meaning assigned to such term in the Guarantee and Collateral Agreement.

“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 Contracts have 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 Contracts, 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).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating

obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“ Taxes ” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“ Term Borrowing ” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a) or Section 2.14, as the case may be.

“ Term Commitment ” means, with respect to each Term Lender, collectively its (a) Closing Date Term Commitment and (b) Incremental Term Commitment, if any.

“ Term Facility ” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Closing Date Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time. As of the Closing Date, the Term Facility is \$60,000,000.

“ Term Lender ” means (a) at any time on or prior to the Closing Date, any Lender that has a Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

“ Term Loan ” means an advance made by any Term Lender under the Term Facility (including any Incremental Term Loans made pursuant to Section 2.14 ).

“ Term Loan Increase Effective Date ” has the meaning specified in Section 2.14(d) .

“ Term Loan Amortization Amount ” means a quarterly amount equal to the product of (a) the sum of (x) the Term Facility on the Closing Date plus (y) the aggregate amount of all Incremental Term Loans made pursuant to Section 2.14 (solely to the extent such Incremental Term Loans are made on the same amortization terms as the Term Facility as in effect on the Closing Date) times (b) the percentage set forth below opposite the applicable period in which the repayment on the principal amount of the Term Loan is made:

Period:	Percentage:
Closing Date through March 31, 2014	1.25%
June 30, 2014 through March 31, 2015	1.25%
June 30, 2015 through March 31, 2016	1.875%
June 30, 2016 through March 31, 2017	1.875%
June 30, 2017 through Maturity Date	2.5%

“ Term Note ” means a promissory note made by the Borrower in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit B .

“ Threshold Amount ” means \$10,000,000.

“ Total Revolving Credit Outstandings ” means the aggregate Outstanding Amount of all Revolving Credit Loans and L/C Obligations.

“ Transactions ” means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are or are intended to be a party, (b) the refinancing of the Indebtedness of the Loan Parties under the Existing Credit Agreement and the termination of all commitments with respect thereto and (c) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“ Type ” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“ UCC ” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “ UCC ” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“ United States ” and “ U.S. ” mean the United States of America.

“ Unreimbursed Amount ” has the meaning specified in Section 2.03(c)(i) .

“ Wells Fargo ” means Wells Fargo Bank, National Association and its successors.

“ Wells Fargo Securities ” means Wells Fargo Securities, LLC and its successors.

**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 definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without

limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules (and in the case of this Agreement, the Disclosure Schedules) to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and other provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) 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.”

(c) 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.

### **1.03 Accounting Terms**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) **Changes in GAAP**. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); **provided** that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. If at any time any change in GAAP, as reflected in an annual report on Form 10-K or in a quarterly report on Form 10-Q following an audit or review, as the case may be, of the financial statements of Parent and its Subsidiaries by their accountants, would cause a re-characterization of operating leases of Parent and its Subsidiaries as Capitalized Leases, the Borrower shall have the right, exercised by providing written notice to the Administrative Agent, to elect to ignore such re-characterization for the purposes of the calculation of any financial ratios and the definition of Indebtedness under this Agreement.

(c) **Consolidation of Variable Interest Entities**. All references herein to consolidated financial statements of Parent and its Subsidiaries or to the determination of any amount for Parent and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that Parent is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

**1.04 Rounding**. Any financial ratios required to be maintained by the Borrower pursuant to 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)

**1.05 Times of Day**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**1.06 Letter of Credit Amounts**. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time (after giving effect to any previous permanent reduction in the original stated amount thereof); **provided**, **however**, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.07 Currency Equivalents Generally**. Any amount specified in this Agreement (other than in Articles II and IX) 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 thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

## ARTICLE II

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### 2.01 The Loans.

(a) The Term Borrowing. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrower on the Closing Date in an amount not to exceed such Term Lender's Closing Date Term Commitment. The Term Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Closing Date Term Commitment. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Revolving Credit Lender's Revolving Credit Commitment. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(b), prepay under Section 2.04, and reborrow under this Section 2.01(b). Revolving Credit Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

## **2.02 Borrowings, Conversions and Continuations of Loans.**

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar 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 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of 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 Eurodollar Rate Loans shall be in a principal amount of \$2,000,000 or a whole multiple of \$500,000 in excess thereof. Except as provided in Section 2.03(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 Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar 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 or Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fail to specify a Type of Loan in a Committed Loan Notice or if the Borrower fail to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit 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 Eurodollar Rate Loans. If the Borrower request a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, the Borrower will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility for the applicable Term Loans or Revolving Credit 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 described in Section 2.02(a). In the case of a Term Borrowing or a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. 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 an account of the Borrower on the books of Wells Fargo 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, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Wells Fargo'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 conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than 6 Interest Periods in effect in respect of the Term Facility. After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than 6 Interest Periods in effect in respect of the Revolving Credit Facility.

## **2.03 Letters of Credit .**

### **(a) The Letter of Credit Commitment .**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit 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 for the account of the Borrower or any other Loan Party, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued

for the account of the Borrower or any other Loan Party and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (y) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, shall not exceed such Revolving Credit Lender's Revolving Credit Commitment and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. 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. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit if:

(A) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date.

(iii) The L/C Issuer shall not be under any 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 the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or

expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$100,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars;

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(F) any Revolving Credit Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Revolving Credit Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the 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.

(vi) The L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in

Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit . Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the 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 L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. 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 satisfactory to the 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; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. 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 satisfactory to the 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 L/C Issuer may require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(i) Promptly after receipt of any Letter of Credit Application, the 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 a Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or the applicable Loan Party) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to,

purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(ii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension 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 “Non-Extension 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 L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iii) 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 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 L/C Issuer shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an “Honor Date”), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the

Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender's Applicable Revolving Credit Percentage thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit 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 Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the 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 Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Revolving Credit Percentage 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 Revolving Credit 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 L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit 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 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 Revolving Credit Lender's payment to the Administrative Agent for the account of the 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 Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Revolving Credit Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the 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 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, however, that each Revolving Credit Lender's obligation to make Revolving Credit 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 L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the 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), then, without limiting the other provisions of this Agreement, the 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 the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Credit 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) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the 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 Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Credit Percentage 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. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit 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 Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any other 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 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 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 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; or



(v) 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, the Borrower or any other Loan Party.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents 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 Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the 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 Revolving Credit 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 Issuer Document. 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, however, 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 Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the 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 prove were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the 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 the L/C Issuer shall not 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) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and a Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage a Letter of Credit fee (the “Letter of Credit Fee”) (i) for each commercial Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit and (ii) for each standby Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) 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 and (ii) computed on a quarterly basis in arrears. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at the rate specified in the Fee Letter, computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed among the Borrower and the L/C Issuer, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), 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. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the 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 on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Other Loan Parties. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Loan Party (other than a Borrower), the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any such Loan Party inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Loan Parties.

## **2.04 Prepayments.**

(a) Optional. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$2,000,000 or a whole multiple of \$250,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$250,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). 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 Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.04(a) shall be applied to the principal repayment installments thereof in the manner directed by the

Borrower, and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(b) Mandatory.

(i) In the event and on such occasion that any Net Cash Proceeds are received by or on behalf of any Loan Party or any Subsidiary of a Loan Party in respect of any Reduction Event, the Borrower shall prepay Loans no later than the fifth Business Day following the occurrence of such Reduction Event (or in the case of a Reduction Event described in clause (a) of the definition of the term "Reduction Event", on or before the fifth Business Day of the month following the month in which such sale occurs) by an amount equal to (A) if such Reduction Event is an event described in clause (a), (b), (c) or (e) of the definition of the term "Reduction Event", 100% of the Net Cash Proceeds received with respect to such Reduction Event and (B) if such Reduction Event is an event described in clause (d) of the definition of the term "Reduction Event", 50% of the Net Cash Proceeds received with respect to such Reduction Event (with such prepayments to be applied as set forth in Section 2.04(b)(iii) and Section 2.04(b)(iv) below), provided that any Net Cash Proceeds from an Asset Sale that is a Reduction Event shall not be applied to prepay Loans, in accordance with this Section 2.04(b)(i) until the aggregate amount of Net Cash Proceeds not yet applied in accordance with this Section 2.04(b)(i) exceeds \$1,000,000, at which time all such Net Cash Proceeds shall be so applied. Notwithstanding the foregoing to the contrary:

(A) (1) if Net Cash Proceeds from an Asset Sale relating to Restaurant Businesses (including any Refranchising Asset Sale), when combined with all other such events occurring in any fiscal year of Parent and its Subsidiaries, results in aggregate Net Cash Proceeds of not more than \$20,000,000 for such fiscal year, to the extent that the Borrower applies the Net Cash Proceeds from such event (or a portion thereof) within the Reinvestment Period to acquire Reinvestment Assets, then no prepayment of Loans shall be required pursuant to Section 2.04(b)(i) in respect of such amount except to the extent of any such Net Cash Proceeds therefrom that have not been so applied by the end of such Reinvestment Period, at which time a prepayment of Loans shall be required in an amount equal to such Net Cash Proceeds that have not been so applied (with such prepayment to be applied as set forth in Section 2.04(b)(iii) and Section 2.04(b)(iv) below); provided that Parent shall deliver to the Administrative Agent a certificate of a Responsible Officer promptly (and in any event no later than the fifth Business Day of the month following the month in which such Net Cash Proceeds were received) following receipt of any Net Cash Proceeds of an Asset Sale relating to Restaurant Businesses (including any Refranchising Asset Sale) for which a prepayment of Loans, may be required pursuant to Section 2.04(b)(i)

setting forth a reasonably detailed calculation of the amount of such Net Cash Proceeds; and

(2) if Net Cash Proceeds from an Asset Sale pursuant to a sale-leaseback arrangement permitted by Section 7.15, when combined with all other such events occurring in any fiscal year of Parent and its Subsidiaries, results in aggregate Net Cash Proceeds of not more than \$10,000,000 for such fiscal year, to the extent that the Borrower applies the Net Cash Proceeds from such event (or a portion thereof) within the Reinvestment Period to acquire Reinvestment Assets, then no prepayment of Loans shall be required pursuant to Section 2.04(b)(i) in respect of such amount except to the extent of any such Net Cash Proceeds therefrom that have not been so applied by the end of such Reinvestment Period, at which time a prepayment of Loans shall be required in an amount equal to such Net Cash Proceeds that have not been so applied (with such prepayment to be applied as set forth in Section 2.04(b)(iii) and Section 2.04(b)(iv) below), provided that Parent shall deliver to the Administrative Agent a certificate of a Responsible Officer promptly (and in any event no later than the fifth Business Day of the month following the month in which such Net Cash Proceeds were received) following receipt of any Net Cash Proceeds of an Asset Sale pursuant to a sale-leaseback arrangement permitted by Section 7.15 for which a prepayment of Loans may be required pursuant to Section 2.04(b)(i) setting forth a reasonably detailed calculation of the amount of such Net Cash Proceeds; and

(B) in the case of any event described in clause (b) or clause (c) of the definition of the term "Reduction Event" which exceeds the dollar thresholds set forth therein, if the Borrower applies the Net Cash Proceeds from such event (or a portion thereof) within the Reinvestment Period to acquire Reinvestment Assets, then no prepayment of Loans shall be required pursuant to Section 2.04(b)(i) in respect of such amount except to the extent of any such Net Cash Proceeds therefrom that have not been so applied by the end of such Reinvestment Period, at which time a prepayment of Loans shall be required in an amount equal to such excess Net Cash Proceeds that have not been so applied (with such prepayment to be applied as set forth in Section 2.04(b)(iii) and Section 2.04(b)(iv) below), provided that Parent shall deliver to the Administrative Agent a certificate of a Responsible Officer promptly (and in any event within five Business Days after the receipt thereof) following receipt of any Net Cash Proceeds of any such Reduction Event for which a prepayment of Loans

may be required pursuant to Section 2.04(b)(i) setting forth a reasonably detailed calculation of the amount of such Net Cash Proceeds; and

(C) in the case of any event described in clause (d) of the definition of the term “Reduction Event”, no prepayment of Loans shall be required pursuant to Section 2.04(b)(i) except to the extent that such Reduction Event, when combined with all other such events, occurring after the Closing Date, results in aggregate Net Cash Proceeds in excess of \$100,000,000 and then a prepayment of Loans shall be required pursuant to Section 2.04(b)(i) only to the extent of 50% of such excess (with such prepayment to be applied as set forth in Section 2.04(b)(iii) and Section 2.04(b)(iv) below), provided that Parent shall deliver to the Administrative Agent a certificate of a Responsible Officer promptly (and in any event within five Business Days after the receipt thereof) following receipt of any Net Cash Proceeds of an equity issuance or capital contribution that is a Reduction Event for which a prepayment of Loans may be required pursuant to Section 2.04(b)(i) setting forth a reasonably detailed calculation of the amount of such Net Cash Proceeds.

(ii) [Reserved]

(iii) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.04(b) shall be applied, first, to the Term Facility and ratably to the remaining principal repayment installments thereof and, second, to the Revolving Credit Facility in the manner set forth in Section 2.04(b)(iv).

(iv) Prepayments of the Revolving Credit Facility made pursuant to this Section 2.04(b), first, shall be applied ratably to the L/C Borrowings, second, shall be applied ratably to the outstanding Revolving Credit Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations; and, the amount remaining, if any, after the prepayment in full of all L/C Borrowings, and Revolving Credit Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable. Prepayments of the Revolving Credit Facility may, at the election of the Borrower, be made without a corresponding reduction in the Revolving Credit Commitments.

(v) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, the Borrower shall immediately prepay Revolving Credit Loans and L/C Borrowings and/or Cash

Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess.

**2.05 Termination or Reduction of Commitments**

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility or the Letter of Credit Sublimit, or from time to time permanently reduce the Revolving Credit Facility or the Letter of Credit Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, or (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit. Upon the election of the Borrower to terminate the Revolving Credit Facility, the Borrower shall, concurrently with the provision of any notification to the Administrative Agent pursuant to this Section 2.05(a), provide notice of such election to terminate the Revolving Credit Facility to each other Secured Party; provided that the Administrative Agent shall have no obligation to any Secured Party or any other Person to verify that any such notification has been provided by the Borrower to any other Secured Party as required by this Section 2.05(a).

(b) Mandatory.

(i) The aggregate Closing Date Term Commitments shall be automatically and permanently reduced to zero on the Closing Date.

(ii) The aggregate Incremental Term Commitments shall be automatically and permanently reduced to zero on the Term Loan Increase Effective Date applicable thereto upon the making of such Incremental Term Loans.

(iii) If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.05, the Letter of Credit Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit or the Revolving Credit Commitment under this Section 2.05. Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of

the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

**2.06 Repayment of Loans.**

(a) Term Loans. On the last Business Day of each March, June, September and December, the Borrower shall repay the principal amount of the Term Loans in an amount equal to the Term Loan Amortization Amount; provided, however, that the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date.

(b) Revolving Credit Loans. The Borrower shall repay to the Revolving Credit Lenders on the Maturity Date the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

**2.07 Interest.**

(a) Subject to the provisions of Section 2.07(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) 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.

**2.08 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 Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a commitment fee (the “Commitment Fee”) equal to the Applicable Rate for commitment fees times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16 . The commitment fee shall accrue at all times during the Availability Period, 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 last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears.

(b) Other Fees.

(i) The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders 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.

**2.09 Computation of Interest and Fees .**

(a) All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year). 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 2.11(a) , bear interest for one day. Each

determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(h) or 2.07(b) or under Article IX. The Borrower's obligations under this paragraph shall survive the termination of the Commitments of all of the Lenders and the repayment of all other Obligations hereunder for a period of one year following the termination of such Commitments and repayment of such Obligations hereunder.

## **2.10 Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive 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, 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 2.10(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of

participations in Letters of Credit. 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.

**2.11 Payments Generally; Administrative Agent's Clawback .**

(a) General. 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 Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (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 be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. 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 on computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent . Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping

period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. 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 promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. 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.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

**2.12 Sharing of Payments by Lenders**. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

### **2.13 Increase in Revolving Credit Facility**

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Revolving Credit Lenders), the Borrower may, not more than three (3) times (including all such requests made pursuant to Section 2.14(a) below) from the Closing Date over the term of this Agreement, request an increase in the Revolving Credit Facility by an aggregate amount (for all such requests) not to exceed \$50,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$5,000,000, (ii) in no event shall the Revolving Credit Facility (after giving effect to all requested increases therein) exceed \$240,000,000 and (iii) in no event shall the aggregate amount of increases in respect of the Revolving Credit Facility effected under this Section 2.13(a), plus the aggregate amount of increases in respect of the Term Facility effected under Section 2.14(a) exceed \$50,000,000. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Revolving Credit Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Revolving Credit Lenders).

(b) Lender Elections to Increase. Each Revolving Credit Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Credit Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Revolving Credit Percentage of such requested increase. Any Revolving Credit Lender not responding within such time period shall be deemed to have declined to increase its Revolving Credit Commitment.

(c) Notification by Administrative Agent; Additional Revolving Credit Lenders. The Administrative Agent shall notify the Borrower and each Revolving Credit Lender of the Revolving Credit Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase, and subject to the approval of the

Administrative Agent, and the L/C Issuer (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees (together with any existing Revolving Credit Lender participating in any such increase, each, an “ Increasing Revolving Credit Lender ”) to become Revolving Credit Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations . If the Revolving Credit Facility is increased in accordance with this Section, the Administrative Agent and the Borrower shall determine (i) the final allocation of such increase among Increasing Revolving Credit Lenders and Schedule 2.01 of the Disclosure Schedules shall be automatically updated to reflect the same and (ii) the effective date (the “ Revolving Credit Increase Effective Date ”) of any such increase. The Administrative Agent shall promptly notify the Borrower and the Revolving Credit Lenders of the final allocation of such increase and the Revolving Credit Increase Effective Date.

(e) Conditions to Effectiveness of Increase . As a condition precedent to such increase, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Revolving Credit Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Revolving Credit Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.13 , the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 , (B) the Parent and its Subsidiaries are in compliance with the Consolidated Leverage Ratio as set forth in Section 7.10(a) , on a pro forma basis after giving effect to such increase, recomputed as of the last day of the most recently ended fiscal quarter of Parent for which financial statements are available and (C) no Default exists. The Borrower shall prepay any Revolving Credit Loans outstanding on the Revolving Credit Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05 ) to the extent necessary to keep the outstanding Revolving Credit Loans ratable with any revised Applicable Revolving Credit Percentages arising from any nonratable increase in the Revolving Credit Commitments under this Section.

(f) Term of Increase . Any incremental Revolving Credit Loans made pursuant to any increase in the Revolving Credit Facility shall be made on the same terms (including, without limitation, interest terms, payment terms and maturity terms), and shall be subject to the same conditions as existing Revolving Credit Loans (it being understood that customary arrangement or commitment fees payable to one or more

arrangers (or their affiliates) or one or more Increasing Revolving Credit Lenders, as the case may be, may be different than those paid with respect to the Lenders under the Revolving Credit Facility on or prior to the Closing Date or with respect to any other Increasing Revolving Credit Lender in connection with any other increase in the Revolving Credit Facility pursuant to this Section 2.13).

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.12 or 10.01 to the contrary.

#### **2.14 Increase in Term Facility.**

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Term Lenders), the Borrower may, not more than three (3) times (including all such requests made pursuant to Section 2.13(a) above) from the Closing Date over the term of this Agreement, request an increase in the Term Facility by an aggregate amount (for all such requests) not to exceed \$50,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$5,000,000, (ii) in no event shall the Term Facility (after giving effect to all requested increases therein) exceed an amount equal to \$110,000,000 minus the aggregate amount of principal payments and prepayments made prior to the applicable Term Loan Increase Effective Date (as defined below) in respect of the Term Facility and (iii) in no event shall the aggregate amount of increases in respect of the Term Facility effected under this Section 2.14(a), plus the aggregate amount of increases in respect of the Revolving Credit Facility effected under Section 2.13(a) exceed \$50,000,000. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Term Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Term Lenders).

(b) Lender Elections to Increase. Each Term Lender shall notify the Administrative Agent within such time period whether or not it agrees to participate in such increase in the Term Facility and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Term Lender not responding within such time period shall be deemed to have declined to participate in such increase in the Term Facility.

(c) Notification by Administrative Agent; Additional Term Lenders. The Administrative Agent shall notify the Borrower and each Term Lender of the Term Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase, and subject to the approval of the Administrative Agent (which approval shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees (together with any existing Term Lender participating in any such increase, each, an “Increasing Term Lender”) to become Term Lenders pursuant to a



joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations . If the Term Facility is increased in accordance with this Section, the Administrative Agent and the Borrower shall determine (i) the final allocation of such increase among Increasing Term Lenders and Schedule 2.01 of the Disclosure Schedules shall be automatically updated to reflect the same and (ii) the effective date (the “ Term Loan Increase Effective Date ”) of any such increase. The Administrative Agent shall promptly notify the Borrower and the Term Lenders of the final allocation of such increase and the Term Loan Increase Effective Date.

(e) Conditions to Effectiveness of Increase . As a condition precedent to such increase, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Term Loan Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Term Loan Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.14, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, (B) the Parent and its Subsidiaries are in compliance with the Consolidated Leverage Ratio as set forth in Section 7.10(a), the Consolidated Leverage Ratio, on a pro forma basis after giving effect to such increase, recomputed as of the last day of the most recently ended fiscal quarter of Parent for which financial statements are available and (C) no Default exists.

(f) Term of Increase . Any Incremental Term Loans made pursuant to any increase in the Term Facility shall be made on the same terms (including, without limitation, interest terms, payment terms and maturity terms), and shall be subject to the same conditions as existing Term Loans; provided, however, that at the election of the Borrower the Incremental Term Loans may be implemented through additional new tranches of term loans instead of being implemented as an increase in the existing Term Facility so long as (i) the final maturity date of any Incremental Term Loans shall be no earlier than the Maturity Date, (ii) the weighted average life to maturity of the Incremental Term Loans shall be no shorter than the weighted average life to maturity of the existing Term Loans, (iii) the interest rate and amortization schedule applicable to the Incremental Term Loans shall be determined by the Borrower and the Increasing Term Lenders, provided that in the event that the interest margins applicable to such

Incremental Term Loans is greater than the interest margins for the existing Term Facility and/or the Revolving Credit Facility by more than 50 basis points, then the interest margins for the existing Term Facility and/or the Revolving Credit Facility shall be increased to the extent necessary so that the interest margins for such Incremental Term Loans are no more than 50 basis points greater than the interest margins for the existing Term Facility and/or the Revolving Credit Facility, provided, further, that in determining the interest margins applicable to the existing Term Facility, the Revolving Credit Facility and the Incremental Term Commitments, (x) original issue discount or upfront fees (which shall be deemed to constitute like amounts of original issue discount) payable by the Borrower to the Lenders under the existing Term Facility, the Revolving Credit Facility or the Incremental Term Loans in the primary syndication thereof shall be included (with original issue discount being equated to interest based on an assumed four-year life to maturity) and (y) customary arrangements or commitment fees paid or payable to the Arrangers (or their Affiliates) in connection with the existing Term Facility and/or the Revolving Credit Facility or to one or more arrangers (or their affiliates) of the Incremental Term Loans shall be excluded and (iv) the Incremental Term Loans shall rank *pari passu* in right of payment and of security with the Revolving Credit Loans and the existing Term Loans.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.12 or 10.01 to the contrary. Notwithstanding any other provision of any Loan Document, the Loan Documents may be amended by the Administrative Agent, the Loan Parties and the applicable Increasing Term Lenders to provide for terms applicable to each Incremental Term Loan.

## **2.15 Cash Collateral.**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the L/C Issuer (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding or (iii) the Borrower shall be required to provide Cash Collateral pursuant to Section 8.02(c), the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Revolving Credit Lender that is a Defaulting Lender, immediately upon the request of the Administrative Agent or the L/C Issuer, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Wells Fargo. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the

control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Revolving Credit Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.16 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Credit Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi))) or (ii) the good faith determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## **2.16 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08, shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15; *sixth*, to the payment of any amounts owing to the Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.08(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees under Section 2.03(h) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any fee payable under Section 2.08(a) or any Letter of Credit Fee under Section 2.03(h) not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Outstanding Amount of the Revolving Credit Loans of any Non-Defaulting Lender, plus such Non-Defaulting Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the L/C Issuer, agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv) ), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Borrower or any other Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Borrower, any other Loan Party or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower, such other Loan Party or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower, any other Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code,

and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower or such other Loan Party, as the case may be, shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower and Other Loan Parties. Without limiting the provisions of subsection (a) above, the Borrower and the other Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Tax Indemnifications.

(i) Without limiting the provisions of subsection (a) or (b) above, the Borrower and the other Loan Parties shall, and do hereby, jointly and severally, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Borrower, and the other Loan Parties or the Administrative Agent or paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Borrower and the other Loan Parties shall also, and do hereby, jointly and severally, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower and the other Loan Parties by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the L/C Issuer shall, and does hereby, indemnify the Borrower, the other Loan Parties and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower,

the other Loan Parties or the Administrative Agent) incurred by or asserted against the Borrower, the other Loan Parties or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the L/C Issuer, as the case may be, to the Borrower, the other Loan Parties or the Administrative Agent pursuant to subsection (e). Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Commitments (including the Revolving Credit Commitments) and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrower, the other Loan Parties or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower, and the Loan Parties or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower and the other Loan Parties shall each deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower and the other Loan Parties, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower, and the other Loan Parties or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

Each Lender that is entitled to an exemption from or reduction of withholding tax shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the



Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, if the Borrower or any other Loan Party, as the case may be is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

- (I) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,
- (II) executed originals of Internal Revenue Service Form W-8ECI,
- (III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation, or

in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower or other Loan Party within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation"

described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN,

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this paragraph (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(E) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01, it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes

giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (E) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (E), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (E) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

**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 Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case 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, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such

suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates** . If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case 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 Eurodollar 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.

**3.04 Increased Costs; Reserves on Eurodollar Rate Loans** .

(a) Increased Costs Generally . If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e) ) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or

Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law

giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, 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 (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar 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), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

**3.05 Compensation for Losses**. 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:

(a) 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 (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) 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; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar 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 Eurodollar Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival**. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## **ARTICLE IV**

### **CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

**4.01 Conditions of Initial Credit Extension**. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

- (ii) a Note executed by the Borrower in favor of each Lender requesting a Note;
- (iii) the Guarantee and Collateral Agreement, duly executed by each Loan Party, together with:
  - (A) certificates representing the Pledged Stock referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt Securities indorsed in blank,
  - (B) proper Financing Statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Guarantee and Collateral Agreement, covering the Collateral described in the Guarantee and Collateral Agreement,
  - (C) completed requests for information, dated on or before the date of the initial Credit Extension, listing all effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements,
  - (D) evidence of the completion of all other actions, recordings and filings of or with respect to the Guarantee and Collateral Agreement that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby,
  - (E) [reserved]
  - (F) a Perfection Certificate with respect to each Loan Party; and
  - (G) evidence that all other action that the Administrative Agent may deem necessary in order to perfect the Liens created under the Guarantee and Collateral Agreement has been taken (including receipt of duly executed payoff letters and landlords' and bailees' waiver and consent agreements (to the extent required pursuant to the terms of the Guarantee and Collateral Agreement));
- (iv) to the extent reasonably requested by the Administrative Agent, fully executed, notarized and recorded amendments to the Mortgages encumbering the Mortgaged Properties, together with evidence that all other actions that the Administrative Agent may deem necessary in order to create valid first and subsisting Liens, subject to Permitted Real Estate Liens, on the Mortgaged Property has been taken;



(v) the IP Security Agreement with respect to each Loan Party's IP Rights, duly executed by each Loan Party, together with evidence that all action that the Administrative Agent may deem necessary in order to perfect the Liens created under the IP Security Agreement has been taken;

(vi) 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 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;

(vii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(viii) a favorable opinion of Alston & Bird LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, covering such matters relating to the Loan Documents and the Transactions as the Administrative Agent and the Required Lenders shall reasonably request;

(ix) a certificate of a Responsible Officer of Parent, on behalf of each Loan Party, either (x) attaching copies of all consents, licenses and approvals required in connection with the consummation by such Loan Party of the Transactions and the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (y) stating that no such consents, licenses or approvals are so required;

(x) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (C) no action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby, or which, in the Administrative Agent's sole discretion, would make it inadvisable to

consummate the transactions contemplated by this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby;

(xi) a business plan and budget of Parent and its Subsidiaries on a consolidated basis, including forecasts prepared by management of Parent, of consolidated balance sheets and statements of income or operations and cash flows of Parent and its Subsidiaries on an annual basis for each fiscal year through the fiscal year ending December 28, 2017;

(xii) a certificate attesting to the Solvency of each Loan Party before and after giving effect to the Transactions, from the chief financial officer of Parent;

(xiii) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance, naming the Administrative Agent, on behalf of the Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(xiv) [reserved]

(xv) documentation and other information from the Borrower and the other Loan Parties requested by the Administrative Agent in order to comply with requirements of the PATRIOT Act; and

(xvi) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer or any Lender reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional reasonable amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings ( provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(d) All of the information made available to the Administrative Agent prior to the Closing Date shall be complete and correct in all material respects; and no changes or developments shall have occurred, and no new or additional information shall have been received or discovered by the Administrative Agent or the Lenders regarding Loan Parties that (A) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (B) purports to adversely affect the Facilities or any other aspect of the Transactions.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this 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.

**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 Eurodollar Rate Loans) 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, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect which such representation and warranty shall be true and correct in all respects, on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect which such representation and warranty shall be true and correct in all respects, as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

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 Eurodollar 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.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that (giving effect to the closing of the Transactions contemplated hereby on the Closing Date):

**5.01 Existence, Qualification and Power**. Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals 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 and consummate the Transactions, and (c) is duly qualified and is licensed and, as applicable, 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 or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention**. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party 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, or require any payment to be made under (i) any material 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 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 Law.

**5.03 Governmental Authorization; Other Consents**. No 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 Transactions, (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 first priority nature 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 the authorizations, approvals, actions, notices and filings listed on Schedule 5.03 of the Disclosure Schedules, all of which have been duly obtained, taken, given or made and are in full force and effect. All applicable waiting periods in connection with the Transactions have expired without any action having been taken by any Governmental Authority

restraining, preventing or imposing materially adverse conditions upon the Transactions or the rights of the Loan Parties or their Subsidiaries freely to transfer or otherwise dispose of, or to create any Lien on, any properties now owned or hereafter acquired by any of them.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

**5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness. Schedule 5.05 of the Disclosure Schedules sets forth, as of December 26, 2012, all material indebtedness and other liabilities, direct or contingent, of Parent and its consolidated Subsidiaries as of such date, including liabilities for taxes, material commitments and Indebtedness.

(b) The most recently delivered unaudited consolidated balance sheet of Parent and its Subsidiaries, and the related consolidated statements of income or operations, shareholders' equity and cash flows of Parent and its Subsidiaries delivered pursuant to Section 6.01(b) (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, 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.

(d) To the best knowledge of the Loan Parties, no Internal Control Event exists or has occurred since December 26, 2012 that has resulted in or could reasonably be expected to result in a misstatement in any material respect, in any financial information (not including, for purposes of this Section 5.05(c), any projected financial information) delivered or to be delivered to the Administrative Agent or the Lenders, of (i) covenant compliance calculations provided hereunder or (ii) the assets, liabilities,

financial condition or results of operations of Parent and its Subsidiaries on a consolidated basis.

**5.06 Litigation** . There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Loan Parties or any of their Subsidiaries or against any of their properties or revenues that (i) purport to affect or pertain to this Agreement, any other Loan Document or the consummation of the Transactions, or (ii) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default** . Neither any Loan Party nor any Subsidiary thereof 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. No Default has occurred and is continuing or would result from the consummation of the Transactions.

**5.08 Ownership of Property; Liens; Investments** .

(a) Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 5.08(b) of the Disclosure Schedules sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the date hereof the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 5.08(b) of the Disclosure Schedules, and as otherwise permitted by Section 7.01 .

(c) Schedule 5.08(c) of the Disclosure Schedules sets forth a complete and accurate list of all real property owned by each Loan Party and each of its Subsidiaries, showing as of the date hereof the street address, county or other relevant jurisdiction, state, record owner and estimated fair value thereof. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Liens created or permitted by the Loan Documents. Except as set forth on Schedule 5.08(c) of the Disclosure Schedules, none of the Loan Parties has received any notice of, or has any knowledge of, any pending or contemplated condemnation proceeding affecting any real property owned by such Loan Party or any of its Subsidiaries or any sale or disposition thereof in lieu of condemnation. None of the Loan Parties or any Subsidiary of any of them is obligated under any right of first refusal,

option or other contractual right to sell, assign or otherwise dispose of any real property owned by such Loan Party or such Subsidiary or any interest therein.

(d) (i) Each lease of real property to which a Loan Party or any Subsidiary of a Loan Party is a party as lessee is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms. Each Loan Party and each of their respective Subsidiaries has complied with all material obligations under all material leases to which it is a party and all such leases are in full force and effect. Each Loan Party and each of their respective Subsidiaries enjoys peaceful and undisturbed possession under all such material leases, subject to the rights of subtenants and assignees, as applicable.

(ii) Each lease of real property to which a Loan Party or any Subsidiary of a Loan Party is a party as lessor is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms.

(e) Schedule 5.08(e) of the Disclosure Schedules sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

#### **5.09 Environmental Compliance .**

(a) The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The properties owned or operated by the Loan Parties and their respective Subsidiaries do not contain any Hazardous Materials in amounts or concentrations which (i) constitute, or constituted a violation of, (ii) require remedial or response action under, or (iii) could otherwise give rise to any Environmental Liability under, Environmental Laws, which violations, remedial or response action and liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(c) The businesses, operations and properties of the Loan Parties and their respective Subsidiaries are in compliance, and in the last five years have been in compliance, with all Environmental Laws, and all necessary Environmental Permits have been obtained and are in effect, except to the extent that such non-compliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(d) There have been no releases or other discharges or threatened releases or other discharges at, from, under or proximate to the properties or otherwise in connection with the Businesses of the Loan Parties and their respective Subsidiaries, which releases or other discharges or threatened releases or other discharges, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(e) None of the Loan Parties or any of their Subsidiaries has received any notice of a claim under Environmental Law in connection with the businesses, operations and properties of the Loan Parties and their respective Subsidiaries or with regard to any Person whose Environmental Liabilities any Loan Party or any of their Subsidiaries has retained or assumed, in whole or in part, contractually, by operation of Law or otherwise, which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect, nor do the Loan Parties or any of their Subsidiaries have reason to believe that any such claim will be received or is being threatened.

(f) Hazardous Materials have not been transported from the businesses, operations and properties of the Loan Parties and their respective Subsidiaries, nor have Hazardous Materials been generated, treated, stored or disposed of at, on or under any of the businesses, operations and properties of the Loan Parties and their respective Subsidiaries in a manner that could give rise to any Environmental Liability, nor have the Loan Parties or their respective Subsidiaries retained or assumed any Environmental Liability contractually, by operation of law or otherwise, with respect to the generation, treatment, storage or disposal of Hazardous Materials, which transportation, generation, treatment, storage or disposal, or retained or assumed liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

**5.10 Insurance.** The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or their applicable Subsidiaries operate.

**5.11 Taxes.** The Loan Parties and their Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.



## **5.12 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401 (a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Loan Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Loan Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) neither the Loan Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Loan Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Loan Parties or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 5.12(d) of the Disclosure Schedules and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

**5.13 Subsidiaries; Equity Interests; Loan Parties** . No Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13 of the Disclosure Schedules, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 of the Disclosure Schedules free and clear of all Liens except those created under the Collateral Documents. No Loan Party has any equity Investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13 of the Disclosure Schedules. All of the outstanding Equity Interests in the Borrower has been validly issued, are fully paid and non-assessable and are owned by Parent free and clear of all Liens except those created under the Collateral Documents. Set forth on Part (d) of Schedule 5.13 of the Disclosure Schedules is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. The copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a) is a true and correct copy of each such document, each of which is valid and in full force and effect.

**5.14 Margin Regulations; Investment Company Act** .

(a) No Loan Party or any Subsidiary is engaged and will not 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. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the FRB, including Regulation U or Regulation X.

(b) None of the Loan Parties, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure** . Each Loan Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) 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 misleading; provided that, with respect to projected financial

information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**5.16 Compliance with Laws** . Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17 Intellectual Property; Licenses, Etc** . Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “ IP Rights ”) that are reasonably necessary for the operation of their respective businesses as presently conducted, without conflict with the rights of any other Person, and Schedule 5.17 of the Disclosure Schedules sets forth a complete and accurate list of all such IP Rights owned or used by each Loan Party and each of its Subsidiaries. To the best knowledge of the Loan Parties, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any of its Subsidiaries infringes in any material respect upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Loan Parties, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.18 Solvency** . Each Loan Party is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

**5.19 Casualty, Etc** . Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.20 Labor Matters** . There are no collective bargaining agreements or Multiemployer Plans covering the employees of any Loan Party or any of its Subsidiaries as of the Closing Date and neither the Loan Parties nor any Subsidiary of any Loan Party has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years. The hours worked by and payments made to employees of each Loan Party and each Subsidiary of a Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters (except for any violations that, individually or in the aggregate, would not be material). All payments due from each Loan Party and each Subsidiary of a Loan Party, or for which any claim may be made against such Loan Party or such Subsidiary, on account of wages and employee health and

welfare insurance and other benefits (except for any payments or claims that, individually or in the aggregate, if not paid, would not be material), have been paid or accrued as a liability on the books of such Loan or such Subsidiary, as applicable. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any Subsidiary of a Loan Party is bound.

**5.21 Collateral Documents .** The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 7.01 ) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

**5.22 Foreign Assets Control Regulations, Etc .**

(a) Each Loan Party and each Subsidiary of a Loan Party is in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control (“ OFAC ”), and all applicable anti–money laundering and counter–terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Loan Party or any Subsidiary of a Loan Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the “ SDN List ”) with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of economic sanctions laws of the United States of America such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person or entity on the SDN List or a foreign government that is the target of economic sanctions laws of the United States of America prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under any requirement of Law.

(b) No part of the proceeds from the Loans or Letters of Credit hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, assuming in all cases that such act applies to the Loan Parties.

(c) Each Loan Party and its Subsidiaries are in compliance, in all material respects, with the (i) PATRIOT Act, (ii) the Trading with the Enemy Act of the United

States (50 U.S.C. App. §§ 1 et seq.), as amended and (iii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

**6.01 Financial Statements.** Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days (or within 5 days after any shorter period as the SEC shall specify for the filing of Annual Reports on Form 10-K) after the end of each fiscal year of Parent, a consolidated balance sheet of Parent and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' 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 an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted 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 45 days (or within 5 days after any shorter period as the SEC shall specify for the filing of Quarterly Reports on Form 10-Q) after the end of each of the first three fiscal quarters of each fiscal year of Parent, a consolidated balance sheet of Parent and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of Parent's 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, certified by the chief executive officer, chief financial officer, treasurer or controller of Parent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event not later than March 31 of each year, a business plan and budget of Parent and its Subsidiaries on a consolidated basis,

including projections prepared by the management of Parent of statements concerning selected financial data (consisting of net sales, earnings before interest and taxes, working capital items, capital expenditures and depreciation), balance sheets, income statements and cash flow statements, on a quarterly basis, for such fiscal year.

**6.02 Certificates; Other Information** . Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended June 26, 2013, (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Parent, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, Parent shall also provide, if necessary for the determination of compliance with Section 7.10 , a statement of reconciliation conforming such financial statements to GAAP and (ii) a summary of (A)(w) the amount of Net Cash Proceeds received from each Asset Sale, the Net Cash Proceeds from which are to be applied to acquire Reinvestment Assets pursuant to Section 2.04(b) , (x) the date of such Asset Sale, (y) the amount of such Net Cash Proceeds applied to acquire Reinvestment Assets during such period and the nature of such Reinvestment Assets (if any) and (z) the amount of such Net Cash Proceeds required to be applied to reduce the Loans as set forth in Section 2.04(b) , and (B)(x) the amount of Net Cash Proceeds received from each equity issuance or capital contribution, (y) the date of such equity issuance or capital contribution and (z) the amount of such Net Cash Proceeds required to be applied to reduce the Loans as set forth in Section 2.04(b) (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Parent, and copies of all annual, regular, periodic and special reports and registration statements which the Loan Parties may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) as soon as available, but in any event within 30 days after the end of each fiscal year of Parent, (i) a report supplementing Schedules 5.08(c) of the Disclosure Schedules, including an identification of all owned real property disposed of by any Loan Party or any Subsidiary thereof during such fiscal year, a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof) of all real property acquired or leased during such fiscal year and a description of

such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; (ii) a report supplementing Schedule 5.17 of the Disclosure Schedules, setting forth (A) a list of registration numbers for all patents, trademarks, service marks, trade names and copyrights awarded to any Loan Party or any Subsidiary thereof during such fiscal year and (B) a list of all patent applications, trademark applications, service mark applications, trade name applications and copyright applications submitted by any Loan Party or any Subsidiary thereof during such fiscal year and the status of each such application; and (iii) a report supplementing Schedules 5.08(e) and 5.13 of the Disclosure Schedules containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent; and

(d) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(b) (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 a Borrower's website on the Internet at the website address listed on Schedule 10.02 of the Disclosure Schedules; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet 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: the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) 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. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Administrative Agent and/or Wells Fargo Securities will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, Intralinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Loan Parties or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agree that it will use commercially reasonable efforts to

identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Loan Parties shall be deemed to have authorized the Administrative Agent, Wells Fargo Securities, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to any Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent and Wells Fargo Securities shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

**6.03 Notices.** Promptly notify the Administrative Agent and each Lender:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any 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; or (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;
- (c) notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law;
- (d) of the occurrence of any ERISA Event;
- (e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (f) the determination by KPMG LLP (or other independent public accountants of recognized national standing providing the opinion required under Section 6.01(a)) (in connection with its preparation of such opinion) or any Loan Party's determination at any time of the occurrence or existence of any Internal Control Event; and



(g) of the occurrence of any Reduction Event for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.04(b)(i).

Each notice pursuant to Section 6.03 (other than Section 6.03(e) or (f).) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations**. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies (other than any tax, assessment or governmental charge or levy in an aggregate amount less than \$250,000, provided that the failure to pay or discharge the same, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect) upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Loan Party or such Subsidiary; (b) all lawful claims (other than claims for an aggregate amount less than \$250,000, provided that the failure to pay or discharge the same, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect) which, if unpaid, would by law become a Lien upon its property; and (c) all material Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

**6.05 Preservation of Existence, Etc**. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04; provided, however, that the Loan Parties may consummate any merger, consolidation or other transaction permitted under Section 7.04; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties**. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

**6.07 Maintenance of Insurance**. Maintain with financially sound and reputable insurance companies not Affiliates of the Loan Parties, 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 as are customarily carried

under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

**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 in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records** . Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

**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, all at the 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 Loan Parties; provided, however, 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 without advance notice; and provided, further, that the inspection rights provided herein shall be subject to the terms and provisions of Section 10.07 hereof regarding the treatment of material, non-public information of the Loan Parties.

**6.11 Use of Proceeds** . Use the proceeds of (a) the Term Loans made on the Closing Date to (i) repay existing Indebtedness and (ii) costs and expenses incurred in connection with the Transactions, and (b) the Credit Extensions consisting of Revolving Credit Loans to repay existing Indebtedness and for other general corporate purposes not in contravention of any Law or of any Loan Document.

**6.12 Covenant to Guarantee Obligations and Give Security** .

(a) Upon the formation or acquisition of any new direct or indirect Subsidiary (other than (x) any CFC or a Subsidiary that is held directly or indirectly by a CFC, (y) any Designated Subsidiary and (z) Denny's Employee Disaster Relief Fund, Inc. (for so long as such entity remains a charitable entity under Section 501(c)(3) of the Code)) by any Loan Party, then the Borrower shall promptly, and in any event within three (3) Business Days thereafter, notify the Administrative Agent of the occurrence of such event and, at the Administrative Agent's request, the Borrower shall, at the Borrower's expense:

(i) within 10 days after such formation or acquisition, cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents,

(ii) within 10 days after such formation or acquisition, furnish to the Administrative Agent a description of the real and personal properties of such Subsidiary, in detail satisfactory to the Administrative Agent,

(iii) within 15 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, Guarantee and Collateral Agreement Supplements, IP Security Agreement supplements and other security and pledge agreements, as specified by and in form and substance satisfactory to the Administrative Agent (including delivery of all Pledged Stock in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)(iii)), securing payment of all the Obligations of such Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such real properties (owned in fee simple interest) and personal properties (other than any real property of any Loan Party located in the State of Florida, Maryland or New York),

(iv) within 30 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties (other than any real property of any Loan Party located in the State of Florida, Maryland or New York or any leasehold real property of any Loan Party) purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, Guarantee and Collateral Agreement Supplements, IP Security Agreement supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(v) within 60 days after such formation or acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to

the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request, and

(vi) as promptly as practicable after such formation or acquisition, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to each parcel of real property (other than any real property of any Loan Party located in the State of Florida, Maryland or New York or any leasehold real property of any Loan Party) owned or held by the entity that is the subject of such formation or acquisition title reports, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(b) Upon the acquisition of any property (other than any real property of any Loan Party located in the State of Florida, Maryland or New York) by any Loan Party, if such property, in the judgment of the Administrative Agent, shall (i) not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties and (ii) have a Fair Market Value of \$500,000 (either individually or in the aggregate with all other property so acquired that is not subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties), then the Borrower shall, at the Borrower's expense:

(i) within 10 days after such acquisition, furnish to the Administrative Agent a description of the property so acquired in detail satisfactory to the Administrative Agent,

(ii) within 15 days after such acquisition, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, Guarantee and Collateral Agreement Supplements, IP Security Agreement supplements and other security and pledge agreements, as requested by and in form and substance satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties,

(iii) within 30 days after such acquisition, cause the applicable Loan Party to take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the

opinion of the Administrative Agent, and requested by the Administrative Agent, to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on such property, enforceable against all third parties,

(iv) within 60 days after such acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above and as to such other matters as the Administrative Agent may reasonably request, and

(v) as promptly as practicable after any acquisition of a real property, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to such real property such title reports, surveys and engineering, soils and other reports, and environmental assessment reports as the Loan Parties have obtained or are otherwise available to the Loan Parties,

(c) Upon the request of the Administrative Agent following the occurrence and during the continuance of a Default, the Borrower shall, at the Borrower's expense:

(i) within 10 days after such request, furnish to the Administrative Agent a description of the real and personal properties of the Loan Parties and their respective Subsidiaries in detail satisfactory to the Administrative Agent,

(ii) within 15 days after such request, duly execute and deliver, and cause each Loan Party and Subsidiary (other than any CFC or a Subsidiary that is held directly or indirectly by a CFC) of each Loan Party (if it has not already done so) to duly execute and deliver, to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Guarantee and Collateral Agreement Supplements, IP Security Agreement supplements and other security and pledge agreements, as specified by and in form and substance satisfactory to the Administrative Agent (including delivery of all Pledged Stock and Pledged Debt Securities in and of such Loan Party and such Subsidiary, as applicable, and other instruments of the type specified in Section 4.01(a)), securing payment of all the Obligations of such Loan Party or such Subsidiary, as the case may be, under the Loan Documents and constituting Liens on all such properties,

(iii) within 30 days after such request, take, and cause each Loan Party and Subsidiary (other than any CFC or a Subsidiary that is held directly or indirectly by a CFC) of each Loan Party to take, whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title

documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Guarantee and Collateral Agreement Supplements, IP Security Agreement supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(iv) within 60 days after such request, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above, and as to such other matters as the Administrative Agent may reasonably request, and

(v) as promptly as practicable after such request, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to each parcel of real property owned or held by each Loan Party and its Subsidiaries, title reports, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(d) At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Guarantee and Collateral Agreement Supplements, IP Security Agreement supplements and other security and pledge agreements.

(e) To the extent that the Borrower has not disposed of the real property located 2943 South Arlington Road, Akron, OH 44312 on or prior to June 30, 2013 pursuant to an Asset Sale permitted pursuant to the terms of this Agreement (whether in the form of a sale-leaseback arrangement permitted by Section 7.15 or otherwise), then (i) such real property shall be deemed to be included as “Mortgaged Property” hereunder and under the other Loan Documents and (ii) the Borrower shall, at the Borrower's expense, (A) execute and deliver to the Administrative Agent deeds of trust, mortgages, and other security and pledge agreements, as requested by and in form and substance satisfactory to the Administrative Agent, securing payment of all the Obligations of the

Borrower under the Loan Documents and constituting Liens on all such property and (B) provide such other items as required pursuant to Section 6.12(b) within the time frames referenced therein, with respect to such property.

**6.13 Compliance with Environmental Laws** . Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and 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, to the extent required under and in accordance with the requirements of all Environmental Laws; provided, however, that neither the Loan Parties nor any of their Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

**6.14 Preparation of Environmental Reports** . If a Default caused by reason of a breach of Section 5.09 or 6.13 shall have occurred and be continuing, at the request of the Required Lenders from time to time, provide to the Lenders within 60 days after such request, at the expense of the Borrower, an environmental site assessment report for any of its properties described in such request, prepared by an environmental consulting firm acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance, removal or remedial action in connection with any Hazardous Materials on such properties; without limiting the generality of the foregoing, if the Administrative Agent determines at any time that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrower, and the Borrower hereby grants and agrees to cause any Subsidiary that owns any property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof an irrevocable non-exclusive license, subject to the rights of tenants, to enter onto their respective properties to undertake such an assessment.

**6.15 Further Assurances** . Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) 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, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more

effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

**6.16 Material Contracts** . Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect (except to the extent no longer useful or beneficial to the Loan Parties in the conduct of their business), enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so.

**6.17 Cash Management Arrangements** . As and to the extent provided in the Guarantee and Collateral Agreement, establish and maintain cash management procedures, including restricted accounts, reasonably satisfactory to the Administrative Agent.

## ARTICLE VII

### NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Loan Parties shall not, nor shall it permit any Subsidiary to, directly or indirectly:

**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, or sign or file or suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names Parent or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following:

(a) Liens on property or assets of the Loan Parties and their Subsidiaries existing on the Closing Date and set forth on Schedule 5.08(b) of the Disclosure Schedules and extensions, renewals, refinancings or replacements thereof; provided , however , that (i) no such extensions, renewals, refinancings or replacements will extend to or cover any property not theretofore subject to the Lien being extended, renewed, refinanced or replaced (except that the Loan Parties may substitute for the property subject to any such Lien other property with substantially the same Fair Market Value and not otherwise subject to the Lien of a Loan Document, so long as the property for which such substitution is made is fully and effectively released from such Lien), (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(i) , (iii) the direct or any contingent obligor with respect thereto is



not changed (except that a Loan Party may become an obligor with respect to any such Lien of another Loan Party), and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(i);

(b) any Lien created pursuant to any Indebtedness permitted under Section 7.02(c) and extensions, renewals, refinancings, or replacements thereof to the same extent permitted under clause (a) above; provided that any such Liens shall be placed on such property (and the Indebtedness secured by such Liens shall be created) within 180 days following the acquisition of such property, such Liens do not apply to any other property or assets of any Loan Party or any Subsidiary of any Loan Party and the Indebtedness secured by such Liens does not exceed 100% of the lesser of the cost or Fair Market Value of such property at the time of acquisition;

(c) Permitted Liens;

(d) Liens pursuant to any Loan Document;

(e) unperfected Liens on property of a Loan Party in favor another Loan Party arising in connection with intercompany transactions among the Loan Parties; and

(f) any Lien created pursuant to any Indebtedness permitted under Section 7.02(l); provided, however, that the aggregate amount of Indebtedness secured by such Liens shall not exceed \$10,000,000 at any time outstanding.

**7.02 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 of the Disclosure Schedules;

(b) Indebtedness under the Loan Documents;

(c) Indebtedness incurred by any Loan Party subsequent to the Closing Date secured by purchase money Liens; provided that the aggregate amount of Indebtedness permitted under this Section 7.02(c) shall not exceed \$15,000,000 at any one time outstanding;

(d) Subject to Sections 7.11, and in addition to Indebtedness permitted under Section 7.02(c), Capital Lease Obligations entered into after the Closing Date;

(e) Indebtedness arising subsequent to the Closing Date under (i) any purchasing card program established to enable headquarters and field staff of any Loan Party to purchase goods and supplies from vendors and (ii) any travel and entertainment card program established to enable headquarters and field staff of any Loan Party to make payments for expenses incurred related to travel and entertainment, provided that the

aggregate amount of such Indebtedness shall not exceed \$10,000,000 at any time outstanding;

(f) Indebtedness arising from Investments among the Loan Parties that are permitted hereunder;

(g) Indebtedness owed to any Lender or any of its banking Affiliates in respect of any Cash Management Agreements of any Loan Party or any Subsidiary of a Loan Party, provided that the aggregate principal amount of such Indebtedness shall not exceed \$30,000,000 at any one time outstanding;

(h) Indebtedness under Swap Contracts permitted by Section 7.17;

(i) in the case of any Loan Party with respect to any Indebtedness of such Loan Party permitted under this Section 7.02, all principal, interest, fees, reimbursement and indemnification amounts, and all other accruals and obligations under any renewals, extensions, modifications or refinancings, from time to time, of such Indebtedness, provided that such renewals, extensions, modifications and refinancings (i) do not increase the outstanding principal amount of the Indebtedness being renewed, extended, modified or refinanced, or shorten the maturity thereof to a date earlier than one year after the Maturity Date, and (ii) are otherwise on terms consistent with prudent business practice and then prevailing market practices and prices in the applicable geographic area;

(j) unsecured Indebtedness arising from Investments permitted under Section 7.03(h);

(k) Indebtedness of any Person that becomes a Subsidiary of a Loan Party after the date hereof in accordance with the terms of Section 7.03(i), which Indebtedness is existing at the time such Person becomes a Subsidiary of such Loan Party (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of such Loan Party); provided that the aggregate amount of all such Indebtedness of all such Subsidiaries shall not exceed \$20,000,000 at any time outstanding; and

(l) additional Indebtedness aggregating not more than \$10,000,000 in principal amount at any one time outstanding.

**7.03 Investments.** Make or hold any Investments, except:

(a) Investments by the Loan Parties and their Subsidiaries existing on the Closing Date in the Equity Interests of their respective Subsidiaries and Investments existing on the Closing Date and set forth in Schedule 5.08(e) of the Disclosure Schedules;

(b) Permitted Investments;

(c) advances and loans made by Parent or any Subsidiary of Parent to, and Investments (other than any Restricted Payments) made by Parent or any Subsidiary of Parent in, the Borrower or other Loan Party in the ordinary course of business;

(d) Investments resulting from any Restricted Payments made pursuant to Section 7.05(a)(i), Section 7.05(a)(iii) and Section 7.05(a)(iv);

(e) non-cash consideration received from any sale, lease, transfer or other disposition of assets permitted under Section 7.04;

(f) loans or advances to employees made in the ordinary course of business consistent with prudent business practice and in an aggregate amount not to exceed \$2,000,000 at any one time outstanding;

(g) additional Investments in an amount not to exceed (x) \$20,000,000 (in the aggregate together with any other additional Investments made pursuant to this clause (g) outstanding at such time) if at the time such Investment is consummated and after giving effect to such Investment on a pro forma basis, the Consolidated Leverage Ratio is greater than or equal to 2.00 to 1.0 or (y) \$40,000,000 (in the aggregate together with any other additional Investments made pursuant to this clause (g) outstanding at such time) if at the time such Investment is consummated and after giving effect to such Investment on a pro forma basis, the Consolidated Leverage Ratio is less than 2.00 to 1.0; provided that the aggregate amount of Investments made pursuant to this clause (g) in any single Person (including any franchisee) shall not exceed \$2,000,000 at any time outstanding;

(h) Investments consisting of Guarantees by any Loan Party of obligations of franchisees or licensees, consistent with past practices and on usual and customary terms for transactions of this type, in an amount not to exceed, (x) the greater of (I) \$30,000,000 and (II) an amount equal to 5.0% of Consolidated Total Assets (in the aggregate together with any other Investments made pursuant to this clause (h) outstanding at such time), if at the time such Investment is consummated and after giving effect to such Investment on a pro forma basis, the Consolidated Leverage Ratio is greater than or equal to 2.00 to 1.0 or (y) the greater of (I) \$40,000,000 and (II) an amount equal to 10.0% of Consolidated Total Assets (in the aggregate together with any other Investments made pursuant to this clause (h) outstanding at such time), if at the time such Investment is consummated and after giving effect to such Investment on a pro forma basis, the Consolidated Leverage Ratio is less than 2.00 to 1.0;

(i) Investments consisting of the purchase or other acquisition of all of the Equity Interests in, or all or substantially all of the property of, any Person that, upon the consummation thereof, will be wholly-owned directly by a Loan Party or one or more of its wholly-owned Subsidiaries (including as a result of a merger or consolidation); provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.03(i);

(i) any such purchase or other acquisition shall be consummated in accordance with all applicable Laws and in conformity with all applicable approvals and consents of any Governmental Authority;

(ii) such acquisition shall be consensual and shall have been approved by the board of directors of the Person so acquired;

(iii) any newly-created or acquired Subsidiary shall comply with the requirements of Section 6.12;

(iv) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same lines of business as, or complementary to, one or more of the principal businesses of the Loan Parties and their Subsidiaries in the ordinary course;

(v) such purchase or other acquisition shall not include or result in any contingent liabilities that could reasonably be expected to be material to the business, financial condition, operations or prospects of the Loan Parties and their Subsidiaries, taken as a whole (as determined in good faith by the board of directors (or the persons performing similar functions) of the Loan Parties or any such Subsidiary if the board of directors is otherwise approving such transaction and, in each other case, by a Responsible Officer);

(vi) (A) 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 (B) immediately after giving effect to such purchase or other acquisition, (1) Parent and its Subsidiaries shall be in *pro forma* compliance with the Incurrence Ratio, 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 had been consummated as of the first day of the fiscal period covered thereby and (2) the amount by which the Revolving Credit Facility exceeds the Total Revolving Credit Outstandings shall be no less than \$20,000,000; and

(vii) the Borrower shall have delivered to the Administrative Agent and each Lender, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, certifying that all of the requirements set forth in clauses (ii), (iv), (v) and (vi) above have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(j) any Loan Party may purchase inventory, fixtures and equipment in the ordinary course of business consistent with past practices; and

(k) any Loan Party may purchase, lease or otherwise acquire (in one transaction or a series of transactions) the assets of any other Person in connection with its application or reinvestment of Net Cash Proceeds from any Reduction Event to the extent that such Reduction Event or the application or reinvestment of such proceeds does not result in a mandatory prepayment pursuant to Section 2.04(b).

**7.04 Mergers, Consolidations and Sales of Assets** . Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of its assets (whether now owned or hereafter acquired) or any Equity Interest of any Subsidiary, except that:

(a) any Loan Party may sell inventory, fixtures and equipment in the ordinary course of business consistent with past practices;

(b) any Loan Party may sell or otherwise dispose of damaged, obsolete or worn out property, in each case in the ordinary course of business and consistent with past practice, provided that the aggregate Fair Market Value of all such assets disposed of pursuant to this clause (b) in any fiscal year shall not exceed \$5,000,000;

(c) Any Loan Party may exchange real property, fixtures and improvements for other real property, fixtures and improvements, provided that any consideration (other than real property, fixtures and improvements) received by any Loan Party in connection with such exchanges is received by such Loan Party in cash;

(d) subject to Section 7.06, any Subsidiary may sell, transfer or otherwise dispose of any of its assets to any Loan Party;

(e) any Loan Party may sell, transfer, sell a franchise in or otherwise dispose of restaurants or property (including real property, improvements, fixtures and equipment) relating to current or former restaurants of such person (such restaurants and property are collectively referred to as “ Restaurant Businesses ”) for consideration equal to the Fair Market Value of the Restaurant Businesses sold, transferred or otherwise disposed of, provided that the aggregate Fair Market Value of all assets disposed of pursuant to this clause (e) shall not exceed \$25,000,000 in any fiscal year;

(f) any Loan Party may merge or consolidate with or transfer all or substantially all of its assets to any other Loan Party;

(g) any Loan Party may enter into a Refranchising Asset Sale; and

(h) (i) any Loan Party may effect any transaction permitted by Section 7.02(i) and (ii) any Loan Party or any Subsidiary of a Loan Party may enter into sale-leaseback transactions permitted by Section 7.15;

provided, however, that any sale, transfer, exchange or other disposition of assets (x) permitted by clause (b), (c), or (e) above shall not be permitted unless such disposition is for Fair Market Value and (y) shall be for at least 60% cash consideration.

**7.05 Dividends and Distributions, Restrictions on Ability of Subsidiaries to Pay Dividends**

(a) Declare or pay any Restricted Payment or set aside any amount for any such purpose; provided, however, that

(i) any Subsidiary of Parent may make Restricted Payments to Parent, the Borrower or to any other Loan Party;

(ii) Parent may declare and distribute to its stockholders a dividend comprised of rights to purchase preferred stock and/or common stock of Parent;

(iii) each fiscal year, commencing with the 2013 fiscal year of Parent, the Loan Parties may make any Restricted Payment not otherwise permitted by this Section 7.05 so long as (A) the aggregate amount of all Restricted Payments made pursuant to this clause (iii) in any fiscal year shall not exceed the Stockholder Dividend Amount for such fiscal year, (B) after giving effect to any such Restricted Payment, Parent shall be in *pro forma* compliance with each of the financial covenants set forth in Section 7.10, and (C) at the time of the making of such Restricted Payment and immediately after giving effect thereto, no Default or Event of Default shall have occurred and is continuing or would result therefrom; and

(iv) commencing with the 2013 fiscal year of Parent, the Loan Parties may make Restricted Payments in any fiscal year not otherwise permitted by this Section 7.05 in an aggregate amount not to exceed \$40,000,000 if at the time such Restricted Payment is made and after giving effect to any such Restricted Payment on a pro forma basis, the Consolidated Leverage Ratio is greater than or equal to 2.00 to 1.00; provided, however, if the Consolidated Leverage Ratio is less than 2.00 to 1.00 at the time any such Restricted Payment is made and after giving effect to any such Restricted Payment on a pro forma basis, the Loan Parties may make unlimited Restricted Payments in any fiscal year; provided, further, however that in each case, (x) at the time of the making of any such Restricted Payment and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom and (y) after giving effect to any such Restricted Payment, there is at least \$20,000,000 in availability under the Revolving Credit Facility.

(b) Permit any Subsidiary of Parent to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Subsidiary to (i) pay any dividends or make any other distributions

on its capital stock or any other interest or (ii) make or repay any loans or advances to Parent, the Borrower, any Subsidiary of Parent or the parent of such Subsidiary (subclauses (i) and (ii) above are collectively referred to as an “ Upstream Payment ”) except for such encumbrances or restrictions existing under or by reason of (A) applicable law, (B) this Agreement, any other Loan Document or any other agreement entered into hereunder or thereunder or as contemplated hereby or thereby, (C) customary provisions restricting (1) subletting or assignment of any lease governing a leasehold interest of Parent or any of the Subsidiaries of Parent, (2) the transfer of intellectual property rights held by Parent or any of the Subsidiaries of Parent through license agreements with the owners of such rights and (3) the assignment of supply contracts, (D) any instrument governing Indebtedness permitted under Section 7.02 of a Person acquired by any Loan Party or Subsidiary of a Loan Party after the Closing Date, provided that (1) such instrument was in existence at the time of such acquisition and was not created in contemplation of or in connection with such acquisition, (2) the officers of Parent reasonably believe at the time of such acquisition that the terms of such instrument will not encumber or restrict the ability of such acquired Person to make an Upstream Payment and (3) such instrument contains no express encumbrances or restrictions on the ability of such acquired Person to make an Upstream Payment or (E) Indebtedness and other contractual obligations of Parent or any of the Subsidiaries existing on the Closing Date and set forth on Schedule 7.05 of the Disclosure Schedules and, in the case of any of the foregoing, any amendment, modification, renewal, extension, replacement, refinancing or refunding thereof permitted under the terms of this Agreement, provided that the encumbrances and restrictions contained in any such amendment, modification, renewal, extension, replacement, refinancing or refunding are in the aggregate no less favorable in all material respects to the Lenders.

(c) Directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of Parent, the Borrower or any other Subsidiary of Parent to create, incur or permit to exist any Lien upon any its property or assets, provided that the foregoing shall not apply to (i) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or (ii) customary provisions in leases and other contracts restricting the assignment thereof.

**7.06 Nature of Business** . Engage at any time in any business or business activity other than the conduct of restaurant operations and other business currently conducted by such Person and business activities reasonably incidental or complementary thereto.

**7.07 Transactions with Affiliates** . Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (other than any Loan Party), except that any Loan Party or any Subsidiary of a Loan Party may engage in any of the foregoing transactions in the ordinary course of business at prices and on terms and conditions not less favorable to such Loan Party or

such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties; provided that Parent may issue and distribute to its stockholders that are Affiliates rights to purchase preferred stock and/or common stock of Parent to the extent that such rights are permitted to be issued and distributed to Parent's stockholders pursuant to Section 7.05(a)(ii).

**7.08 OFAC, Etc.** . The Loan Parties shall not, and shall not permit any of its Subsidiaries to fail to comply with any of the requirements set forth in Section 5.22.

**7.09 Use of Proceeds** . Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.10 Financial Covenants** .

(a) Consolidated Leverage Ratio . Permit the Consolidated Leverage Ratio as of each Measurement Period ending on or about the dates set forth below to be greater than the ratio set forth below opposite such date:

Measurement Period Ending	Maximum Consolidated Leverage Ratio
June 30, 2013	3.25 to 1.00
September 30, 2013	3.25 to 1.00
December 31, 2013	3.00 to 1.00
March 31, 2014	3.00 to 1.00
June 30, 2014	3.00 to 1.00
September 30, 2014	3.00 to 1.00
December 31, 2014	2.75 to 1.00
March 31, 2015	2.75 to 1.00
June 30, 2015	2.75 to 1.00
September 30, 2015	2.75 to 1.00
December 31, 2015 and thereafter	2.50 to 1.00

(b) Consolidated Fixed Charge Coverage Ratio . Permit the Consolidated Fixed Charge Coverage Ratio as of each Measurement Period to be less than 1.25 to 1.0.

**7.11 Capital Expenditures** . Incur Consolidated Capital Expenditures for any fiscal year (commencing with the 2013 fiscal year) in excess of \$30,000,000 in the aggregate; provided, that, notwithstanding anything to the contrary contained in this Section 7.11, an



amount equal to the Capex Carryover Amount may be carried forward to the succeeding fiscal year, provided that, in any fiscal year, amounts permitted under this Section 7.11 shall be applied towards Consolidated Capital Expenditures before any Capex Carryover Amount shall be so applied.

**7.12 Amendments of Organization Documents** . Amend, modify or waive any of its rights under its Organization Documents, provided that any Organization Document may be amended or modified (other than in any manner to change the legal name or jurisdiction of organization of any Loan Party without the prior written consent of the Administrative Agent), and any rights thereunder may be waived, in any respect that is not materially adverse to the interests of the Lenders.

**7.13 Accounting Changes** . Change in any material respect its accounting policies or change the end of its fiscal year from the last Wednesday of December to any other date.

**7.14 Other Indebtedness and Agreements** .

(a) Make any voluntary or optional payments, prepayments or redemptions of principal or premium or voluntarily repurchase, acquire or retire for value prior to the stated maturity with respect to Indebtedness (other than Indebtedness arising under the Loan Documents); provided that

(i) any Loan Party shall have the right to prepay Indebtedness permitted under Section 7.02, after the Closing Date up to an aggregate amount of \$15,000,000;

(ii) any Loan Party may repay Indebtedness to the extent required under a “due on sale” clause applicable to any disposition of assets permitted under Section 7.04; and

(iii) any Loan Party shall have the right to prepay Indebtedness in connection with any renewal, extension, or refinancing of Indebtedness permitted by Section 7.02(i) .

(b) Permit any waiver, supplement, modification, amendment, termination or release of any indenture, instrument or agreement pursuant to which any Indebtedness or preferred stock is outstanding; provided that the foregoing shall not prohibit any waiver, supplement, modification or amendment which (i) extends the date or reduces the amount of any required repayment, prepayment or redemption of the principal of such Indebtedness, (ii) reduces the rate or extends the date for payment of the interest, premium or fees payable on such Indebtedness or (iii) makes the covenants, events of default or remedies relating to such Indebtedness less restrictive on the applicable Loan Party or Subsidiary of a Loan Party.

**7.15 Sale and Lease-Back Transactions** . Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer (other than pursuant to Section 7.04(c)) any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred; provided, however, that any Loan Party of any Subsidiary of any Loan Party may enter into such a transaction provided that the Fair Market Value of all property sold or transferred pursuant to such transactions since the Closing Date shall not exceed in the aggregate \$25,000,000.

**7.16 Operating Leases** . Permit the aggregate amount of payments under Operating Leases of any Loan Party or any Subsidiary of any Loan Party to be in excess of the fair rental value of the properties subject to such Operating Leases.

**7.17 Swap Contracts** . Enter into any Swap Contract, other than Swap Contracts entered into in the ordinary course of business to hedge or mitigate risks to which the Loan Parties or any of their respective Subsidiaries are exposed in the conduct of their respective businesses or the management of their respective liabilities.

**7.18 Designated Subsidiary** . In the case of the Designated Subsidiary, engage in any material business or activity other than (a) maintaining its corporate existence, (b) participating in tax, accounting and other administrative activities as a Subsidiary of a consolidated group of companies, including the Loan Parties, and (c) activities incidental to the businesses or activities described in clauses (a) and (b) of this Section, unless, the Designated Subsidiary shall become a Guarantor hereunder and shall take all such actions reasonably requested by the Administrative Agent pursuant to Section 6.12 .

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**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 (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) pay within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) pay within three days after notice from the Administrative Agent, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants . Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03 , 6.05(a) (with respect to legal existence only), 6.07 , 6.11 , 6.12 or Article VII ; 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 10 days; or

(d) Representations and Warranties. (i) 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 connection with any Borrowing or issuance of any Letters of Credit hereunder shall be incorrect or misleading when made or deemed made or (ii) any material representation, warranty, certification or material statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to this Agreement or any other Loan Document, shall be incorrect or misleading when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (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 be demanded or 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, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary (other than the Designated Subsidiary) thereof 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 or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 30 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 30 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 Subsidiary (other than the Designated Subsidiary) thereof becomes unable or admits in writing its inability or fails generally to pay its debts 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 any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments . There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; 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 the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower 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 in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents . (i) any Lien purported to be created by any Collateral Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Collateral Document) Lien in the Collateral covered thereby, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent to maintain possession of certificates representing securities pledged under the Guarantee and Collateral Agreement or, subject to compliance by the Loan Parties with Sections 6.12 and 6.15 hereof and with the other Loan Documents, any

other action or inaction of the Administrative Agent with respect to any of its obligations or duties under this Agreement or any other Loan Document and except to the extent that such loss is covered by a lender's title insurance policy and the related insurer promptly after such loss shall have acknowledged in writing that such loss is covered by such title insurance policy, (ii) any Guarantee purported to be created by any Collateral Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and enforceable obligation of the applicable Loan Party or (iii) 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 or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or;

(k) Change of Control. There occurs any Change of Control; or

(l) Subordination. (i) The subordination provisions of the documents evidencing or governing any subordinated Indebtedness required to be subordinated hereunder (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable subordinated Indebtedness; or (ii) the Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Administrative Agent, the Lenders and the L/C Issuer or (C) that all payments of principal of or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

**8.02 Remedies upon Event of Default**. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, 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 Issuer 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 Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer 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.

**8.03 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 (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer 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, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks 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 Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; 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. Excluded Swap Obligations with respect to any Subsidiary Loan Party shall not be paid with amounts received from such Subsidiary Loan Party or such Subsidiary Loan Party's assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX

### ADMINISTRATIVE AGENT

#### **9.01 Appointment and Authority .**

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “ collateral agent ” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer 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 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 9.05 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 and Article X (including Section 10.04(c)), 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.

**9.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good



faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by a Loan Party, a Lender or the L/C Issuer; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for a Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The

Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06 Resignation of Administrative Agent**. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the

Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

**9.07 Non-Reliance on Administrative Agent and Other Lenders** . Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc** . Anything herein to the contrary notwithstanding, none of the Co-Syndication Agents, Bookrunners, Arrangers or Co-Documentation Agents (whether or not listed on the cover page hereof) shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim** . In case of the pendency of any proceeding under any Debtor Relief Law or any 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 or any other Loan Party) 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, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i) , 2.08 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 and the L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the

making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.08 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 or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer or authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

**9.10 Collateral and Guaranty Matters.** Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank and on behalf of its Affiliates in such capacities) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements; unless the Administrative Agent has received written notice, at least two (2) Business Days prior to the proposed date of any such release of Liens, stating that arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank in respect of obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements have not been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01;

(b) (i) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder and (ii) to terminate this Agreement and the other Loan Documents (other than Secured Cash Management Agreements and Secured Hedge Agreements) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements; unless the Administrative Agent has received written notice, at least two (2) Business Days prior to the proposed date of any such release of Liens, stating that arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank in respect of obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements have not been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made); and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01 (b).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, to release any Guarantor from its obligations under the Guarantee and Collateral Agreement, or to terminate the Loan Documents (other than Secured Cash Management Agreements and Secured Hedge Agreements), in each case, pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, 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 of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, to release such Guarantor from its obligations under the Guarantee and Collateral Agreement, or to evidence the termination of the Loan Documents (other than Secured Cash Management Agreements and Secured Hedge Agreements), in each case in accordance with the terms of the Loan Documents and this Section 9.10.

**9.11 Secured Cash Management Agreements and Secured Hedge Agreements**. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, the Guarantee under the Guarantee and Collateral Agreement or any Collateral by virtue of the provisions hereof or of any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents (it being understood that Administrative Agent may take any and all action expressly specified in Section 9.10). Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements except to the extent (a) as expressly specified in Section 9.10 and (y) the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

## ARTICLE X

### MISCELLANEOUS

**10.01 Amendments, Etc.** No amendment 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 applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the

specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c) ), or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for (i) any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment or (ii) any scheduled reduction of any Facility hereunder or under any other Loan Document without the written consent of each Appropriate Lender;

(d) reduce 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 entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(e) change (i) the third sentence of Section 2.11(a) (or the definition of Applicable Percentage as used therein) or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender adversely affected thereby or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.04(b) or 2.05(b), respectively, in any manner that materially and adversely affects the Lenders without the written consent of the Required Lenders;

(f) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender other than in connection with the enforcement of remedies against the Loan Parties hereunder;

(h) release all or substantially all of the value of the Guarantee made by the Guarantors under the Guarantee and Collateral Agreement, without the written consent of each Lender, except (i) in connection with the enforcement of remedies against the Loan Parties hereunder, and (ii) to the extent the release of any Subsidiary from its obligations under the Guarantee and Collateral Agreement is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(i) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document 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 Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (iv) any waiver, or modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement or such other Loan Documents of the Revolving Credit Lenders (but not the Term Lenders) or the Term Lenders (but not the Revolving Credit Lenders) may be effected by an agreement or agreements in writing entered into by the Borrower, Parent, and the other Loan Parties and the requisite percentage in interest of such Revolving Credit Lenders or such Term Lenders, as applicable, that would be required to consent thereto under this Section as if such Lenders were the only Lenders hereunder, and (v) the Administrative Agent, the Loan Parties and the applicable Increasing Term Lender may effect any amendment to the Loan Documents to reflect terms applicable to any Incremental Term Loan as provided in Section 2.14(g) without the consent of any other Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

## **10.02 Notices; Effectiveness; Electronic Communications**

(a) Notices Generally . Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, 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 or any other Loan Party, the Administrative Agent or the L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 of the Disclosure Schedules; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications . Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its or their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available,



return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Administrative Agent and the L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such

Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of any Loan Party 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 Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies; Enforcement**. No failure by any Lender, the L/C Issuer 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.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.12), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in

addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.12, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses . The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower . The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) any execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the 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), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries,

or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.11(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent and the L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside**. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer 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 the Administrative Agent, the L/C Issuer 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 and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative 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. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**10.06 Successors and Assigns**.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(e) (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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$3,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Term Commitment or Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment of the Revolving Credit Facility that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Loan Party or any of the Loan Parties' Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including

funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at their 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 subsection 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 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), 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 of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a



Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or any Loan Party or any of the Loan Parties' Affiliates or Subsidiaries) (each, a “Participant”) in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer 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 to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.12 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that

such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (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 or any central 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.

(f) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Wells Fargo assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to Section 10.06(b), Wells Fargo may, upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Wells Fargo as L/C Issuer. If Wells Fargo resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as 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)). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Wells Fargo to effectively assume the obligations of Wells Fargo with respect to such Letters of Credit.

**10.07 Treatment of Certain Information; Confidentiality**. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners) or in connection with any pledge or assignment

permitted under Section 10.06(e), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.13(c) or Section 2.14(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary of a Loan Party, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness;

provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 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 the Administrative 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 the Administrative 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.

**10.10 Counterparts; Integration; Effectiveness** . This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 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 the Administrative Agent and each Lender, regardless of any investigation made by the

Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative 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 or any Letter of Credit shall remain outstanding.

**10.12 Severability .** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12 , if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or the L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders .** If any Lender requests compensation under Section 3.04 , or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 , or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06 ), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04 ) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b) ;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05 ) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) 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 thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed change, waiver, discharge or termination with respect to any Loan Document, the applicable replacement bank, financial institution or Fund consents to the proposed change, waiver, discharge or termination; provided that the failure by such Non-Consenting Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Lender and the mandatory assignment of such Non-Consenting Lender's Commitments and outstanding Loans and participations in L/C Obligations pursuant to this Section 10.13 shall nevertheless be effective without the execution by such Non-Consenting Lender of an Assignment and Assumption.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW 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 STATE).

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY 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 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 COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT

IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE . THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS . EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 . NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

**10.15 Waiver of Jury Trial** . EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility . In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or

other modification hereof or of any other Loan Document), the Borrower and each of the other Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arrangers are arm's-length commercial transactions between the Borrower, the other Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent and the Arrangers on the other hand, (B) the Borrower and each of the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each of the other Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, the other Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor any Arranger has any obligation to the Borrower, the other Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and each Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any Arranger has any obligation to disclose any of such interests to the Borrower, the other Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, the Borrower and each of the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent and each Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 Electronic Execution of Assignments and Certain Other Documents**. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) 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.

**10.18 USA PATRIOT Act**. Each Lender that is subject to the PATRIOT Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "PATRIOT Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent



or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the PATRIOT Act.

**10.19 Release of Collateral.**

(a) In connection with any permitted Asset Sale (certified as such by the applicable Loan Party) and promptly following the reasonable written request of any Loan Party, which request shall be accompanied by, to the extent necessary, a report supplementing Schedule 5.08(c) of the Disclosure Schedules, and a description of changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent, the Administrative Agent will execute and deliver documents prepared by such Loan Party and appropriate under local law, to release any mortgage, filing under the Uniform Commercial Code of the applicable state or other Lien arising under any Loan Document, as to any asset to be sold under such permitted Asset Sale.

(b) Promptly following the written reasonable request of a Loan Party from time to time, Administrative Agent will execute and deliver documents: (i) to consent to, or subordinate any mortgage, filing under the Uniform Commercial Code of the applicable state, or other security interest arising under any Loan Document to, any Permitted Real Estate Lien that such Loan Party determines, in the exercise of its reasonable business judgment, is in the interest of such Loan Party's business on any Mortgaged Property and (ii) required in connection with the subdivision of any Mortgaged Property.

(c) In furtherance of, and not in limitation of authorizations contained in Section 9.10, each of the Lenders and the L/C Issuer agrees to the foregoing provisions of this Section 10.19 and irrevocably authorizes the Administrative Agent, at its option and in its discretion, to executed and deliver any such releases or subordinations in accordance with the provisions of this Section 10.19.

(d) In connection with the foregoing, the Borrower shall provide the Administrative Agent a report supplementing Schedule 5.08(c) of the Disclosure Schedules and a description of changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent.

**10.20 Amendment and Restatement.** On the Closing Date, this Agreement shall amend, restate and supersede the Existing Credit Agreement in its entirety, except as provided in this Section 10.20. On the Closing Date, the rights and obligations of the parties evidenced by the Existing Credit Agreement shall be evidenced by this Agreement and the other Loan Documents and the giving of guarantees and the grant of security interests in and Liens on the

Collateral by the relevant Loan Parties under the “Loan Documents” (as defined in the Existing Credit Agreement) shall continue under but as amended by this Agreement and the other Loan Documents, and shall not in any event be terminated, extinguished or annulled but shall hereafter be governed by this Agreement and the other Loan Documents. All references to the Existing Credit Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Agreement and the provisions hereof. Without limiting the generality of the foregoing and to the extent necessary, the Existing Lenders and Wells Fargo, in its capacity as the administrative agent and collateral agent thereunder reserve all of their rights under the Existing Credit Agreement and the other “Loan Documents” (as defined in the Existing Credit Agreement) which by their express terms survive the termination of the Existing Credit Agreement and each of the Loan Parties hereby obligates itself again in respect of all such present and future “Obligations” (as defined in the Existing Credit Agreement) except as modified hereby. Nothing contained herein shall be construed as a novation of the “Obligations” outstanding under and as defined in the Existing Credit Agreement, which shall remain in full force and effect, except as modified hereby.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their duly authorized officers, all as of the day and year first written above.

BORROWER: DENNY'S, INC.,  
a Florida corporation

By: /s/ Ross Nell  
Name: Ross Nell

Title: Vice President, Tax and Treasurer

GUARANTORS: DENNY'S CORPORATION,  
a Delaware corporation

By: /s/ Ross Nell

Name: Ross Nell

Title: Vice President, Tax and Treasurer

DENNY'S REALTY, LLC,  
a Delaware limited liability company

By: DFO, LLC, its Sole Member

By: Denny's Inc., its Sole Member

By: /s/ Ross Nell  
Name: Ross Nell  
Title: Vice President, Tax and Treasurer

DFO, LLC,  
a Delaware limited liability company

By: Denny's Inc., its Sole Member

By: /s/ Ross Nell  
Name: Ross Nell  
Title: Vice President, Tax and Treasurer

AGENTS AND LENDERS:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Administrative Agent,  
Issuing Lender and Lender

By: /s/ Stephen A. Leon

Name: Stephen A. Leon

Title: Managing Director

REGIONS BANK

By: /s/ Jake Nash

Name: Jake Nash

Title: Managing Director

GE CAPITAL BANK,  
A Utah industrial loan corporation

By: /s/ Jennifer Jakway

Name: Jennifer Jakway

Title: Vice President

CADENCE BANK, N.A.

By: /s/ John M. Huss

Name: John M. Huss

Title: Managing Director

RBS CITIZENS, N.A.

By: /s/ Fanghui Helen Ye

Name: Fanghui Helen Ye

Title: Vice President

FIFTH THIRD BANK

By: /s/ Richard C. Hardison

Name: Richard C. Hardison

Title: Managing Director

COMPASS BANK

By: /s/ Stephen H. Lee

Name: Stephen H. Lee

Title: Senior Vice President

SYNOVUS BANK

By: /s/ Michael Sawicki

Name: Michael Sawicki

Title: Corporate Banker

UNION BANK, N.A.

By: /s/ Thomas Lass

Name: Thomas Lass

Title: Vice President

BANK OF AMERICA, N.A.

By: /s/ John H. Schmidt

Name: John H. Schmidt

Title: Senior Vice President

BRANCH BANKING AND TRUST COMPANY

By: /s/ Stuart M. Jones

Name: Stuart M. Jones

Title: Senior Vice President

**FORM OF COMMITTED LOAN NOTICE**

Date: \_\_\_\_\_, \_\_\_\_\_

To: Wells Fargo Bank, National Association, as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of April 24, 2013 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”; the terms defined therein being used herein as therein defined), among **DENNY'S, INC.**, a Florida corporation (“Borrower”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Wells Fargo Bank, National Association, as Administrative Agent and L/C Issuer.

The undersigned hereby requests (select one):

A Borrowing of [Revolving Credit][Term] Loans

A conversion or continuation of [Revolving Credit] [Term] Loans

- 1. On \_\_\_\_\_ (a Business Day).
- 2. In the amount of \$\_\_\_\_\_.
- 3. Comprised of \_\_\_\_\_ [Type of Loan requested]
- 4. For Eurodollar Rate Loans: with an Interest Period of \_\_\_\_\_ months.

[The Revolving Credit Borrowing requested herein complies with the proviso to the first sentence of Section 2.01 (b) of the Agreement.] Include this sentence in the case of a Revolving Credit Borrowing.

The Borrower hereby represents and warrants that the conditions specified in Sections 4.02(a) and (b), shall be satisfied on and as of the date of the applicable Credit Extension.

**DENNY'S, INC.**

By:

Name:

Title:

**FORM OF TERM NOTE**

**FOR VALUE RECEIVED**, the undersigned (the “Borrower”), hereby unconditionally promises to pay to \_\_\_\_\_ or registered assigns (the “Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of the Term Loan made by the Lender to the Borrower under that certain Amended and Restated Credit Agreement, dated as of April 24, 2013 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”; the terms defined therein being used herein as therein defined), among the Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Wells Fargo Bank, National Association, as Administrative Agent and L/C Issuer.

The Borrower promises to pay interest on the unpaid principal amount of the Term Loan made by the Lender from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Term Note is one of the Term Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Term Note is also entitled to the benefits of the Guarantee and Collateral Agreement and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. The Term Loan made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Term Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term Note.



THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAW 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 STATE).

**DENNY'S, INC.**

By:

Name:

Title:

## LOANS AND PAYMENTS WITH RESPECT THERETO

Date	Type of Loan Made	Amount of Loan Made	End of Interest Period	Amount of Principal or Interest Paid This Date	Outstanding Principal Balance This Date	Notation Made By
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**FORM OF REVOLVING CREDIT NOTE**

**FOR VALUE RECEIVED**, the undersigned (the “Borrower”), hereby unconditionally promises to pay to \_\_\_\_\_ or registered assigns (the “Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Revolving Credit Loan from time to time made by the Lender to the Borrower under that certain Amended and Restated Credit Agreement, dated as of April 24, 2013 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among the Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Wells Fargo Bank, National Association, as Administrative Agent and L/C Issuer.

The Borrower promises to pay interest on the unpaid principal amount of each Revolving Credit Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Revolving Credit Note is one of the Revolving Credit Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Revolving Credit Note is also entitled to the benefits of the Guarantee and Collateral Agreement and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Revolving Credit Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Revolving Credit Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Revolving Credit Note and endorse thereon the date, amount and maturity of its Revolving Credit Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Revolving Credit Note.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAW 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 STATE).

**DENNY'S, INC.**

By:

Name:

Title:

LOANS AND PAYMENTS WITH RESPECT THERETO

Date	Type of Loan Made	Amount of Loan Made	End of Interest Period	Amount of Principal or Interest Paid This Date	Outstanding Principal Balance This Date	Notation Made By
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**FORM OF COMPLIANCE CERTIFICATE**

Financial Statement Date: \_\_\_\_\_, \_\_\_\_\_

To: Wells Fargo Bank, National Association, as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of April 24, 2013 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”; the terms defined therein being used herein as therein defined), among **DENNY'S, INC.**, a Florida corporation (“Borrower”), **DENNY'S CORPORATION**, a Delaware corporation (“Parent” and, together with each other guarantor from time to time party thereto, collectively, the “Guarantors”), the Lenders from time to time party thereto, and Wells Fargo Bank, National Association, as Administrative Agent and L/C Issuer.

The undersigned Responsible Officer This certificate must be from the chief executive officer, chief financial officer, treasurer or controller of Parent. hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of Parent, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of Parent, the Borrower and the other Loan Parties, and that:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. Parent has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of Parent ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal quarter-end financial statements]*

2. Parent has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of Parent ended as of the above date. Such financial statements fairly present the financial condition, results of operations and cash flows of Parent and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

3. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of each of Parent, the Borrower and the other Loan Parties during the accounting period covered by such financial statements.

4. A review of the activities of Parent, the Borrower and the other Loan Parties during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period Parent, the Borrower and the other Loan Parties performed and observed all of their respective Obligations under the Loan Documents, and

*[select one]*

[to the best knowledge of the undersigned, during such fiscal period each of Parent, the Borrower and the other Loan Parties performed and observed each covenant and condition of the Loan Documents applicable to such Person, and no Default has occurred and is continuing.]

--or--

[to the best knowledge of the undersigned, the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]

5. The representations and warranties of Parent, the Borrower and the other Loan Parties contained in Article V of the Agreement and all representations and warranties of the Loan Parties that are contained in any document furnished at any time under or in connection with the Loan Documents, are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Compliance Certificate, the representations and warranties contained in subsections (a) and (b) of Section 5.05 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 of the Agreement, including the statements in connection with which this Compliance Certificate is delivered.

6. The financial covenant analyses and information set forth on Schedules 1, 2, 3 and 4 attached hereto are true and accurate on and as of the date of this Certificate.



**IN WITNESS WHEREOF** , the undersigned has executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_.

**DENNY'S CORPORATION**, as Parent

By:

Name:

Title:

For the Quarter/Year ended \_\_\_\_\_, \_\_\_\_\_ (“Statement Date”)

## SCHEDULE 1

to the Compliance Certificate

(\$ in 000's)

### I. Section 7.10(a) - Consolidated Leverage Ratio .

- A. Consolidated Funded Indebtedness at Statement Date: \$\_\_\_\_\_
- B. Consolidated EBITDA for Measurement Period ending on above
- C. date (“Subject Period”) (Part A of Schedule II): \$\_\_\_\_\_
- D. Consolidated Leverage Ratio (Line I.A ÷ Line I.B): \_\_\_\_ to 1

#### **Maximum Permitted:**

<u>Measurement Period Ending On or About:</u>	<u>Maximum Consolidated Leverage Ratio</u>
June 30, 2013	3.25 to 1.00
September 30, 2013	3.25 to 1.00
December 31, 2013	3.00 to 1.00
March 31, 2014	3.00 to 1.00
June 30, 2014	3.00 to 1.00
September 30, 2014	3.00 to 1.00
December 31, 2014	2.75 to 1.00
March 31, 2015	2.75 to 1.00
June 30, 2015	2.75 to 1.00
September 30, 2015	2.75 to 1.00
December 31, 2015 and each fiscal quarter thereafter	2.50 to 1.00

### II. Section 7.10 (b) - Consolidated Fixed Charge Coverage Ratio .

- A. Consolidated EBITDAR for Subject Period (Part B of Schedule II): \$\_\_\_\_\_
- B. Consolidated Maintenance Capital Expenditures for Subject Period: \$\_\_\_\_\_
  
- C. Consolidated Cash Taxes for Subject Period: \$\_\_\_\_\_
- D. Consolidated Cash Interest Expense for Subject Period:  
(Part C of Schedule II) \$\_\_\_\_\_
  
- E. Consolidated Scheduled Funded Debt Payments for Subject Period: \$\_\_\_\_\_
- F. Consolidated Lease Expense for Subject Period: \$\_\_\_\_\_
- G. Consolidated Fixed Charge Coverage Ratio ([Line II.A - Line
- H. II.B - Line II.C] / [Line II.D + Line II.E + Line II.F]): \_\_\_\_ to 1

#### **Minimum Permitted:** 1.25 to 1.0

### III. Section 7.11 -- Capital Expenditures .

- A. Consolidated Capital Expenditures made during fiscal year to date: \$\_\_\_\_\_
- B. Consolidated Capital Expenditures that could have been made
- C. during prior fiscal year but which were not made: \$\_\_\_\_\_
- D. Maximum permitted Consolidated Capital Expenditures

E. (\$30,000,000 + [50% x Line III.B]): \$\_\_\_\_\_

F. Excess (deficient) for covenant compliance

G. (Line III.C - III.A): \$\_\_\_\_\_

**Maximum Permitted:** \$30,000,000

For the Quarter/Year ended \_\_\_\_\_, \_\_\_\_\_ (“Statement Date”)

## SCHEDULE 2

to the Compliance Certificate

(\$ in 000's)

A. **Consolidated EBITDA** after the occurrence of any acquisition of any person by Parent or any Subsidiary of Parent, Consolidated EBITDA for each Measurement Period that includes the date of occurrence of such acquisition will, solely for purposes of determining compliance with Section 7.10, be determined on a pro forma basis, based on the actual historical results of operations of such Person, as if such acquisition had occurred on the first day of such Measurement Period. **for Subject Period:**

Consolidated Net Income for Subject Period: \$\_\_\_\_\_

(a) *plus*, the sum of each of the following for such Subject Period

(b) (to the extent deducted in calculating Consolidated Net Income):

1. Consolidated Interest Expense: \$\_\_\_\_\_
2. Federal, state, local and foreign income taxes: \$\_\_\_\_\_
3. depreciation expense: \$\_\_\_\_\_
4. amortization expense: \$\_\_\_\_\_
5. other non-cash charges (including, without limitation, stock
6. compensation expenses, deferred compensation adjustments,
7. impairment charges, restructuring and exit costs and other
8. non-operating expenses (income)) \$\_\_\_\_\_
9. cumulative effect of any change in accounting principles: \$\_\_\_\_\_
10. net loss attributable to an Asset Sale: \$\_\_\_\_\_
11. non-recurring expenses related to the Transactions: \$\_\_\_\_\_
12. lease buy-out payments in an amount not to exceed \$1,000,000: \$\_\_\_\_\_

(c) *minus*, the sum of each of the following for such Subject Period (to the extent included in calculating Consolidated Net Income):

1. cash expended in respect of any non-cash charges included in
2. item (a)(5) (for current Subject Period or any prior period) in
3. determining Consolidated EBITDA \$\_\_\_\_\_
4. any net gain from an Asset Sale: \$\_\_\_\_\_
5. Federal, state, local and foreign income tax credits: \$\_\_\_\_\_
6. other non-cash items increasing Consolidated Net Income \$\_\_\_\_\_

*Total:* \$\_\_\_\_\_

### B. Consolidated EBITDAR

Consolidated EBITDAR for Subject Period \$\_\_\_\_\_

(a) *plus*, Consolidated Lease Expense to the extent deducted in determining Consolidated Net Income for the Measurement Period most recently ended \$\_\_\_\_\_

*Total:* \$\_\_\_\_\_

### C. Consolidated Cash Interest Expense for Subject Period:

Consolidated Interest Expense for Subject Period:



(a) *minus*, the sum, without duplication, of the following for such Subject Period:

1. interest not paid in cash in connection with the incurrence of
2. Indebtedness to the extent included in interest expense in
3. accordance with GAAP \$\_\_\_\_\_
4. interest expense related to discounted liabilities that is treated
5. as interest in accordance with GAAP \$\_\_\_\_\_

*Total:* \$\_\_\_\_\_

For the Quarter /Year ended \_\_\_\_\_, \_\_\_\_\_ (“ Statement Date ”)

**SCHEDULE 3**

to the Compliance Certificate

(\$ in 000's)

Summary of Asset Sales

[To be Agreed to by Parent and the Administrative Agent, and in Form and Substance

Reasonably Satisfactory to the Administrative Agent]

For the Quarter /Year ended \_\_\_\_\_, \_\_\_\_\_ (“Statement Date”)

**SCHEDULE 4**

to the Compliance Certificate

(\$ in 000's)

Summary of Equity Issuances and Capital Contributions

[To be Agreed to by Parent and the Administrative Agent, and in Form and Substance

Reasonably Satisfactory to the Administrative Agent]



**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][each] For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language. Assignor identified in item 1 below ([the][each, an] “ Assignor ”) and [the][each] For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language. Assignee identified in item 2 below ([the][each, an] “ Assignee ”) . [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] Select as appropriate. hereunder are several and not joint.] Include bracketed language if there are either multiple Assignors or multiple Assignees. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the “ Credit Agreement ”), 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][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], 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][the respective Assignors'] rights and obligations in [its capacity as a Lender] [their respective capacities as Lenders] 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] [the respective Assignors] under the respective facilities identified below (including, without limitation, the Letters of Credit included in such facilities) 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)][the respective Assignors (in their respective capacities as Lenders)] 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 by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “ Assigned Interest ”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]:
  2. Assignee[s]:  
[for each Assignee, indicate [Affiliate][Approved Fund] of *[identify Lender]* ]
  3. Borrower: Denny's, Inc., a Florida corporation
  4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Credit Agreement
  5. Credit Agreement: Amended and Restated Credit Agreement, dated as of April 24, 2013, among the Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Wells Fargo Bank, National Association, as Administrative Agent and L/C Issuer
  6. Assigned Interest:
-

<u>Assignor[s]</u> List each Assignor, as appropriate.	<u>Assignee[s]</u> List each Assignee, as appropriate.	Facility <u>Assigned</u> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Credit Commitment", "Term Commitment", etc.).	Aggregate Amount of Commitment/Loans for all Lenders Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.	Amount of Commitment /Loans <u>Assigned</u>	Percentage Assigned of Commitment/ <u>Loans</u> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.	<u>CUSIP Number</u>

7. Trade Date: \_\_\_\_\_ ] To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.  
Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

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The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By:

Name:

Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By:

Name:

Title:

[Consented to and] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.  
Accepted:

**WELLS FARGO BANK, NATIONAL ASSOCIATION, as**

Administrative Agent

By:  
Name: Title:

[Consented to:] To be added only if the consent of the Borrower and/or other parties (e.g. L/C Issuer) is required by the terms of the Credit Agreement.

**DENNY'S, INC.**

By:  
Name: Title:

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**WELLS FARGO BANK,  
NATIONAL ASSOCIATION, as L/C Issuer**

By:

Name:

Title:

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STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] 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 (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by any Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

2. Assignee. [The][Each] 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 meets all the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (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][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the] [any] Assignor 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 Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

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Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

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 telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT**

dated as of

April 24, 2013,

among

**DENNY'S, INC. ,**

**DENNY'S REALTY, LLC ,**

**DENNY'S CORPORATION ,**

**DFO, LLC ,**

the other Subsidiaries of Parent from time to time party hereto,

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION ,**

as Administrative Agent

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## Table of Contents

Page

<u>ARTICLE I Definitions</u>	2
<u>Section 1.01 Credit Agreement .</u>	2
<u>Section 1.02 Other Defined Terms .</u>	2
<u>ARTICLE II Guarantee</u>	6
<u>Section 2.01 Guarantee .</u>	6
<u>Section 2.02 Guarantee of Payment .</u>	7
<u>Section 2.03 No Limitations, Etc .</u>	7
<u>Section 2.04 Reinstatement .</u>	10
<u>Section 2.05 Agreement To Pay; Subrogation .</u>	10
<u>Section 2.06 Information .</u>	10
<u>Section 2.07 Keepwell .</u>	11
<u>ARTICLE III Pledge of Securities</u>	11
<u>Section 3.01 Pledge .</u>	11
<u>Section 3.02 Delivery of the Pledged Collateral .</u>	12
<u>Section 3.03 Representations, Warranties and Covenants .</u>	12
<u>Section 3.04 Certification of Limited Liability Company and Limited Partnership Interests .</u>	13
<u>Section 3.05 Registration in Nominee Name; Denominations .</u>	13
<u>Section 3.06 Voting Rights; Dividends and Interest, etc .</u>	14
<u>ARTICLE IV Security Interests in Personal Property</u>	15
<u>Section 4.01 Security Interest .</u>	15
<u>Section 4.02 Representations and Warranties .</u>	17
<u>Section 4.03 Covenants.</u>	19
<u>Section 4.04 Other Actions .</u>	23
<u>Section 4.05 Covenants Regarding Patent, Trademark and Copyright Collateral .</u>	25
<u>ARTICLE V Remedies</u>	27
<u>Section 5.01 Remedies Upon Default .</u>	27
<u>Section 5.02 Application of Proceeds .</u>	29
<u>Section 5.03 Grant of License to Use Intellectual Property .</u>	29
<u>Section 5.04 Securities Act, etc .</u>	29
<u>ARTICLE VI Indemnity, Subrogation and Subordination</u>	30
<u>Section 6.01 Indemnity and Subrogation .</u>	30

---



[Section 6.02 Contribution and Subrogation .](#) 30

[Section 6.03 Subordination .](#) 31

[ARTICLE VII Miscellaneous](#)31

[Section 7.01 Notices .](#) 31

[Section 7.02 Security Interest Absolute .](#) 31

[Section 7.03 Survival of Agreement .](#) 32

[Section 7.04 Binding Effect; Several Agreement .](#) 32

[Section 7.05 Successors and Assigns .](#) 32

[Section 7.06 Administrative Agent's Fees and Expenses; Indemnification .](#) 32

[Section 7.07 Administrative Agent Appointed Attorney-in-Fact .](#) 33

[Section 7.08 GOVERNING LAW .](#) 34

[Section 7.09 Waivers; Amendment .](#) 34

[Section 7.10 WAIVER OF JURY TRIAL .](#) 35

[Section 7.11 Severability .](#) 35

[Section 7.12 Counterparts .](#) 35

[Section 7.13 Headings .](#) 35

[Section 7.14 Jurisdiction; Consent to Service of Process .](#) 35

[Section 7.15 Termination or Release .](#) 36

[Section 7.16 Additional Subsidiaries .](#) 37

[Section 7.17 Right of Setoff .](#) 37

[Section 7.18 Amendment and Restatement .](#) 37

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## Schedules

Schedule I Subsidiary Loan Parties

Schedule II Pledged Equity Securities; Pledged Debt Securities

Schedule III Intellectual Property

Schedule IV Insurance Requirements

## Exhibits

Exhibit I Form of Supplement to the Guarantee and Collateral Agreement

Exhibit II Form of Perfection Certificate

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## **AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT**

**AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT** dated as of April 24, 2013 (this “Agreement”), by and among Denny's, Inc., a Florida corporation (the “Borrower”), Denny's Corporation, a Delaware corporation (“Parent”), DFO, LLC, a Delaware limited liability company (“DFO”), Denny's Realty, LLC, a Delaware limited liability company (“Denny's Realty”), each other Subsidiary of Parent from time to time party hereto and Wells Fargo Bank, National Association (“Wells Fargo”), as administrative agent and collateral agent (in such capacities under any of the Loan Documents (as defined in the Credit Agreement referred to below), the “Administrative Agent”) for the Secured Parties (as defined in the Credit Agreement referred to below).

**WHEREAS**, the Borrower, Parent, certain subsidiaries of the Parent party thereto, the lenders from time to time party thereto and Wells Fargo, as Administrative Agent are parties to that certain Credit Agreement dated as of April 12, 2012 (as amended prior to the date hereof, the “Existing Credit Agreement”), pursuant to which the lenders thereto have, subject to the terms and conditions set forth therein, made loans and otherwise extended credit to Borrower;

**WHEREAS**, the Borrower, Parent, certain subsidiaries of the Parent party thereto and the Administrative Agent entered into that certain Guarantee and Collateral Agreement, dated as of April 12, 2012 (as amended prior to the date hereof, the “Existing Guarantee and Collateral Agreement”);

**WHEREAS**, as of the date hereof, the Existing Credit Agreement is being amended and restated in its entirety pursuant to the terms and conditions set forth in the Amended and Restated Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, waived or otherwise modified from time to time, the “Credit Agreement”), among Borrower, Parent, DFO, Denny's Realty, the lenders from time to time party thereto (the “Lenders”), and the Administrative Agent;

**WHEREAS**, the obligations of the Lenders, the Administrative Agent and the L/C Issuer to enter into the Credit Agreement and to extend credit to the Borrower thereunder are conditioned upon, among other things, the Borrower, Parent, DFO, Denny's Realty and the Administrative Agent entering into an Amended and Restated Guarantee and Collateral Agreement in the form of this Agreement and the execution and delivery of this Agreement by the parties hereto;

**WHEREAS**, Parent, DFO and Denny's Realty are affiliates of the Borrower and will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders, the Administrative Agent and the L/C Issuer to extend such credit; and

**WHEREAS**, each Grantor wishes to (a) grant a security interest in all of its “Article 9 Collateral” (as defined herein) in favor of the Administrative Agent, as collateral agent, for the benefit of the “Secured Parties” (as defined herein), (b) pledge and assign, and grant a security

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interest in, all of its “Pledged Collateral” (as defined herein) to the Administrative Agent, as collateral agent, for the benefit of the Secured Parties and (c) guarantee to the Administrative Agent, as collateral agent, for the benefit of the Secured Parties, the payment and performance of the “Obligations” (as defined herein), in each case, as herein provided.

**NOW THEREFORE** , in consideration of the mutual covenants and agreement herein contained, the parties hereto covenant and 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 Section 1.02 of the Credit Agreement also apply to this Agreement.

**Section 1.02 Other Defined Terms** . As used in this Agreement, the following terms shall have the meanings set forth 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.

“Administrative Agent” has the meaning assigned to such term in the preamble of this Agreement.

“Article 9 Collateral” has the meaning assigned to such term in Section 4.01.

“Claiming Guarantor” has the meaning assigned to such term in Section 6.02.

“Collateral” means Article 9 Collateral and Pledged Collateral.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Contributing Guarantor” has the meaning assigned to such term in Section 6.02.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any third party under any copyright now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or granting any right to any Grantor under any copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

“ Copyrights ” means all of the following now owned or hereafter acquired by any Grantor: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise; and (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 III .

“ Credit Agreement ” has the meaning assigned to such term in the preliminary statement of this Agreement.

“ Deposit Account Bank ” has the meaning assigned to such term in Section 4.04(b).

“ Equity Interests ” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person of whatever nature and rights, warrants or options to acquire any of the foregoing.

“ Excluded Swap Obligation ” means, with respect to any Subsidiary Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Subsidiary Loan Party of, or the grant under a Loan Document by such Subsidiary Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Subsidiary Loan Party's failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 2.07 hereof and any and all guarantees of such Subsidiary Loan Party's Swap Obligations by other Loan Parties) at the time the Guarantee of such Subsidiary Loan Party, or grant by such Subsidiary Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest becomes illegal.

“ Federal Securities Laws ” has the meaning assigned to such term in Section 5.04.

“ General Intangibles ” means all “general intangibles” as defined in the New York UCC, including payment intangibles, all choses in action and causes of action and all other intangible personal property of any Grantor of every kind and nature (other than Accounts) now owned or hereafter acquired by any Grantor, including corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Swap Contracts, franchise agreements and other agreements) and rights to payment, Intellectual Property, software, 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 to secure payment by an Account Debtor of any of the Accounts.

“ Grantors ” means Parent, the Borrower and the Subsidiary Loan Parties.

“ Guarantors ” means Parent, the Borrower and the Subsidiary Loan Parties.

“ Intellectual Property ” means all intellectual and similar property of every kind and nature now owned or hereafter acquired by any Grantor, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information, know-how, show-how or other data or information, software and databases 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.

“ Investment Property ” means a security, whether certificated or uncertificated, security entitlement, securities account, financial asset, commodity contract or commodity account.

“ License ” means any Patent License, Trademark License, Copyright License or other license or sublicense agreement to which any Grantor is a party, other than those license or sublicense agreements (a) in existence on the date hereof and (b) entered into after the date hereof, in each case that by their terms prohibit a grant of a security interest by such Grantor as licensee thereunder; provided that (i) in the case of clause (b), such Grantor has used commercially reasonable efforts to prevent the inclusion of such a prohibition over such license or sublicense and (ii) in the case of any licenses or sublicenses excluded pursuant to clauses (a) and (b), such licenses or sublicenses, individually or in the aggregate, are not material to the business of such Grantor. For the avoidance of doubt, any money or property received in respect of any license that is not a License shall not be excluded from the Collateral solely as a result of the exclusion of such license from the Collateral.

“ New York UCC ” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“ Obligations ” means all “Obligations” as defined in the Credit Agreement and includes, without limitation, (a) the due and punctual payment by the Borrower of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Borrower under the Credit Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest and fees thereon and obligations to provide cash collateral in respect of such Letters of Credit, and (iii) all other monetary obligations of the Borrower to any of the Secured Parties under the Credit Agreement and each of the other Loan Documents, including obligations to pay fees, expense and reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of the Borrower under or pursuant to the Credit Agreement and each of the other

Loan Documents, (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents and (d) the due and punctual payment and performance of all the obligations of the Borrower and each other Loan Party under or pursuant to any Secured Cash Management Agreement or Secured Hedge Agreement; provided, that with respect to a Subsidiary Loan Party, “Obligations” shall exclude any Excluded Swap Obligations with respect to such Subsidiary Loan Party.

“Patent License” means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a patent, now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement.

“Patents” means all of the following now owned or hereafter acquired by any Grantor: (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 III; and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

“Perfection Certificate” means a certificate substantially in the form of Exhibit II, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by the Loan Parties.

“Pledged Collateral” has the meaning assigned to such term in Section 3.01.

“Pledged Debt Securities” has the meaning assigned to such term in Section 3.01.

“Pledged Securities” means any promissory notes, stock certificates or other securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“Pledged Stock” has the meaning assigned to such term in Section 3.01.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the Guarantee under Section 2.01 or the grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Loan Party that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“ Security Interest ” has the meaning assigned to such term in Section 4.01.

“ Subsidiary Loan Parties ” means DFO, Denny's Realty and each other Subsidiary of Parent from time to time party hereto.

“ Swap Obligations ” means, with respect to any Subsidiary Loan Party, an obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of § 1a(47) of the Commodity Exchange Act.

“ Trademark License ” means any written agreement, now or hereafter in effect, granting to any third party any right to use any trademark now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or 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.

“ Trademarks ” means all of the following now owned or hereafter acquired by any Grantor: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, 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 III; (b) all goodwill associated therewith or symbolized thereby; and (c) all other assets, rights and interests that uniquely reflect or embody such goodwill.

“ USCO ” means the United States Copyright Office and any successor agency.

“ USPTO ” means the United States Patent and Trademark Office and any successor agency.

## ARTICLE II

### GUARANTEE

**Section 2.01 Guarantee.** Each Guarantor hereby unconditionally and irrevocably guarantees, jointly with the other Guarantors and severally, to the Administrative Agent, for the benefit of the Secured Parties, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Obligations. Each Guarantor further agrees that the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Obligation. Each Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.



**Section 2.02 Guarantee of Payment**. Each Guarantor 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 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 the Borrower or any other Person.

**Section 2.03 No Limitations, Etc.** (a) Except for termination of a Guarantor's obligations hereunder as expressly provided in Section 7.15, 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 setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, 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 exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement; (iii) the failure to perfect any security interest in, or the release of, any security held by the Administrative Agent or any other Secured Party for the Obligations; (iv) any default, failure or delay, willful or otherwise, in the performance of the Obligations; (v) 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 Obligations) or (vi) any law or regulation of any jurisdiction or any other event affecting any term of a guaranteed obligation. Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the 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 Obligations, all without affecting the obligations of any Guarantor hereunder. Anything contained in this Section 3 to the contrary notwithstanding, the obligations of any Guarantor under this Section 3 at any time shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Section 3 subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code (Title 11, United States Code) or any comparable provisions of any similar federal or state law.

(b) (i) To the fullest extent permitted by applicable law, each Guarantor waives any defense based on or arising out of any defense of the Borrower or any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower or any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations. The Administrative Agent may, at its election, foreclose on any security held by it by one or

more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with the Borrower or any other Loan Party or exercise any other right or remedy available to the Administrative Agent against the Borrower or any other Loan Party, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the 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 Loan Party, as the case may be, or any security.

(ii) Each Guarantor waives any right it may have to require the Administrative Agent or the Lenders to proceed against the Borrower or any other Guarantor, proceed against or exhaust any security held from the Borrower or any other Guarantor, or pursue any other remedy in their respective power to pursue, as well as any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of the Borrower. To the extent that the laws of the State of California may be deemed to apply to the Guarantees, the rights which each Guarantor hereby waives include all rights of subordination, reimbursement, indemnification and contribution and any other rights and defenses that are or may become available to such Guarantor by reason of Section 2787 to 2855, inclusive, of the California Civil Code; *provided* that these waivers shall not limit the express rights of the Guarantors that are set forth in Sections 6.01 and 6.02 hereof.

(iii) Each Guarantor understands and acknowledges that if the Administrative Agent forecloses judicially or non-judicially against any real property security for the Obligations, such foreclosure could impair or destroy any right or ability that any Guarantor may have to seek reimbursement, contribution or indemnification for any amounts paid by such Guarantor under its Guarantee. To the extent that the laws of the State of California may be deemed to apply to the Guarantees, each Guarantor further understands and acknowledges that, in the absence of this waiver, such potential impairment or destruction of the Guarantor's rights, if any, may entitle the Guarantor to assert a defense to its Guarantee based on California Code of Civil Procedure §580d as interpreted in Union Bank v. Gradsky, (1968) 265 CA 2d 40, 71 CR 64, on the grounds, among others, that a lender should be estopped from pursuing a guarantor when the lender's election to foreclose has impaired or destroyed the guarantor's rights of subrogation, reimbursement, contribution or indemnification rights. By execution of this Agreement, each Guarantor intentionally, freely, irrevocably, and unconditionally: (A) waives and relinquishes that defense and agrees that such Guarantor will be liable under its Guarantee even though the Administrative Agent had foreclosed judicially or non-judicially against any real or personal

property collateral for the Obligations or any of the Guarantees; and (B) agrees that such Guarantor will not assert that defense in any action or proceeding which the Administrative Agent or the Lenders may commence to enforce its Guarantee. Without limiting the foregoing, each Guarantor waives all rights and defenses arising out of an election of remedies by the Administrative Agent or the Lenders, even though that election of remedies, such as non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Guarantor's rights of subrogation and reimbursement against the principal or another Guarantor by the operation of Section 580d of the California Code of Civil Procedure.

(iv) To the extent that the laws of the State of California may be deemed to apply to the Guarantees, each Guarantor intentionally, freely, irrevocably and unconditionally waives and relinquishes all rights which may be available to it under any provision of California law or under any California judicial decision, including Section 580a and 726(b) of the California Code of Civil Procedure, to seek to limit the amount of any deficiency judgment or other judgment which may be obtained against such Guarantor under its Guarantee to not more than the amount by which the unpaid Obligations guaranteed hereby exceed the fair market value or fair value of any real or personal property securing said Obligations, including, without limitation, all rights to an appraisal of, judicial or other hearing on, or other determination of the value of said property.

(v) To the extent that the laws of the State of California may be deemed to apply to the Guarantees, and without limiting any of the other waivers and provisions set forth herein, if the debt of the Borrower or another Guarantor's Guarantee is secured by real property, each Guarantor hereby intentionally, freely, irrevocably and unconditionally waives all rights and defenses that Guarantor may have because the debt of the Borrower or another Guarantor's Guarantee is secured by real property; this means, among other things: (A) the Administrative Agent and the Lenders may collect from that Guarantor without first foreclosing on any real or personal property collateral pledged by the Borrower or another Guarantor; (B) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is determined to be worth more than the sale price; and (C) the Administrative Agent and the Lenders may collect from that Guarantor even if the Administrative Agent, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Borrower or another Guarantor. This is an unconditional and irrevocable waiver of any rights and defenses that such Guarantor may have under circumstances where the debt of the Borrower or another Guarantor's Guarantee is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(c) Each Guarantor hereby waives diligence, promptness, presentment, demand for payment or performance and protest and notice of protest, notice of acceptance and any other notice in respect of the Obligations or any part of them, any defense which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, including, without limitation, any defense arising by reason of any disability or other defense of the Borrower or any other Guarantor, any right to require the marshalling of assets of the Borrower, any other Guarantor or any other entity or other person primarily or secondarily liable with respect to any of the Obligations, and all suretyship defenses generally. To the fullest extent permitted by law, each Guarantor hereby expressly waives any and all rights or defenses arising by reason of (A) any “one action” or “anti-deficiency” law which would otherwise prevent the Administrative Agent or any other Secured Party from bringing any action, including any claim for a deficiency, or exercising any other right or remedy (including any right of set-off), against such Guarantor before or after the Administrative Agent's or other Secured Party's commencement or completion of any foreclosure action, whether judicially, by exercise of power of sale or otherwise, or (B) any other law which in any other way would otherwise require any election of remedies by the Administrative Agent or any other Secured Party. Each Guarantor covenants that its obligations hereunder shall not be discharged, except by complete performance.

**Section 2.04 Reinstatement** . Each Guarantor agrees that 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 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, any other Loan Party or otherwise.

**Section 2.05 Agreement To Pay; Subrogation** . 99In 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 Loan Party to pay any 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 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 Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article VI .

**Section 2.06 Information** . Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's and each other Loan Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the 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.

**Section 2.07 Keepwell**. Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of its obligations under the Loan Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 2.07 for the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article II voidable under Debtor Relief Laws, and not for any greater amount). Each Qualified ECP Guarantor intends that this Section 2.07 constitute, and this Section 2.07 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of, each other Guarantor for all purposes of the Commodity Exchange Act.

### ARTICLE III

#### PLEDGE OF SECURITIES

**Section 3.01 Pledge**. Each Grantor hereby assigns and pledges to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Administrative 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 (a) all shares of capital stock and other Equity Interests owned by it (including those listed on Schedule II) and any other Equity Interests obtained in the future by such Grantor and the certificates representing all such Equity Interests (the “Pledged Stock”); provided that the Pledged Stock shall not include (i) more than 65% of the issued and outstanding voting Equity Interests of any Foreign Subsidiary, or (ii) to the extent applicable law requires that a subsidiary of such Grantor issue directors' qualifying shares, such qualifying shares; (b)(i) all debt securities owned by it (including those listed opposite the name of such Grantor on Schedule II), (ii) any debt securities in the future issued to such Grantor and (iii) the promissory notes and any other instruments, if any, evidencing such debt securities (the “Pledged Debt Securities”); (c) all other property that may be delivered to and held by the Administrative Agent pursuant to the terms of this Section 3.01; (d) 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 (a) and (b) above and the property referred to in clause (c) above; (e) all rights and privileges of such Grantor with respect to the securities and other property referred to in clauses (a), (b), (c) and (d) above; and (f) all Proceeds of any of the foregoing (the items referred to in clauses (a) through (f) 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 Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, forever; subject, however, to the terms, covenants and conditions hereinafter set forth.

**Section 3.02 Delivery of the Pledged Collateral.**

(a) Each Grantor agrees promptly to deliver or cause to be delivered to the Administrative Agent certificates, instruments and other documents representing or evidencing any Pledged Securities having a value in excess of \$25,000.

(b) Each Grantor will cause any Indebtedness for borrowed money (other than trade debt incurred in the ordinary course of business) owed to such Grantor by any Person in excess of \$25,000 in principal amount to be evidenced by a duly executed promissory note that is pledged and delivered to the Administrative Agent pursuant to the terms hereof.

(c) Upon delivery to the Administrative Agent, (i) any Pledged Securities shall be accompanied by stock powers duly executed in blank or other instruments of transfer satisfactory to the Administrative Agent and by such other instruments and documents as the Administrative Agent may reasonably request to perfect its security interest therein and (ii) all other property composing part of the Pledged Collateral shall be accompanied by proper instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Administrative Agent may reasonably request to perfect its security interest therein. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be attached hereto as Schedule II and made a part hereof; provided that failure to attach any such schedule 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 3.03 Representations, Warranties and Covenants.** The Grantors jointly and severally represent, warrant and covenant to and with the Administrative Agent, for the benefit of the Secured Parties, that:

(a) Schedule II correctly sets forth the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and includes all Equity Interests, debt securities and promissory notes required to be pledged by the terms of this Agreement;

(b) the Pledged Stock and Pledged Debt Securities have been duly and validly authorized and issued by the issuers thereof and (i) in the case of Pledged Stock issued by a corporation, are fully paid and non-assessable, (ii) in the case of Pledged Debt Securities, other than Pledged Debt Securities issued by a Loan Party or any other Subsidiary, to the knowledge of the Grantor pledging any such Pledged Debt Securities, are legal, valid and binding obligations of the issuers thereof and (iii) in the case of Pledged Debt Securities issued by a Loan Party or any other Subsidiary, are legal, valid and binding obligations of the issuer thereof;

(c) each Grantor is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct, beneficial and record owner of the Pledged Securities listed on Schedule II as owned by such Grantor and each Grantor (i) holds the Pledged Securities free and clear of all Liens, other than Liens created by this Agreement and Permitted Liens, (ii) 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 Liens created by this Agreement and Permitted Liens and (iii) will defend its title to or interest in the Pledged Collateral against any and all Liens (other than Liens created by this Agreement and Permitted Liens), however arising, of all Persons;

(d) except for restrictions and limitations imposed by the Loan Documents, the Pledged Collateral is and will continue to be freely transferable and assignable (subject to restrictions imposed under applicable law), 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 the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Administrative Agent of rights and remedies hereunder;

(e) each Grantor 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 for the pledge effected hereby to be valid (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 Administrative Agent in accordance with this Agreement, the Administrative Agent will obtain a legal, valid and perfected first priority lien upon and security interest in such Pledged Securities as security for the payment and performance of the Obligations; and

(h) the pledge effected hereby is effective to vest in the Administrative Agent, for the benefit of the Secured Parties, the rights of the Administrative Agent in the Pledged Collateral as set forth herein.

**Section 3.04 Certification of Limited Liability Company and Limited Partnership Interests.** Each interest in any limited liability company or limited partnership controlled by any Grantor and pledged hereunder shall be represented by a certificate, shall be a “security” within the meaning of Article 8 of the New York UCC and shall be governed by Article 8 of the New York UCC.

**Section 3.05 Registration in Nominee Name; Denominations.** The Administrative 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 Administrative Agent. Upon Administrative Agent's request, each Grantor will promptly give to the Administrative Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. The Administrative Agent shall at all times have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

**Section 3.06 Voting Rights; Dividends and Interest, etc.** (a) Unless and until an Event of Default shall have occurred and be continuing:

(i) Each 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 thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; provided that such rights and powers shall not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Securities, the rights and remedies of any of the Administrative Agent or any other Secured Party under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Administrative Agent or any other Secured Parties to exercise the same.

(ii) Subject to paragraphs (b) and (c) of this Section 3.06, the Administrative Agent authorizes each Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above and to receive the cash dividends it is entitled to receive pursuant to subparagraph (iii) below.

(iii) 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 Pledged Securities to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws; provided that any noncash dividends, interest, principal or other distributions that would constitute Pledged Stock or Pledged Debt Securities, whether resulting from a subdivision, combination or reclassification 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 redemption 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 and become part of the Pledged Collateral, and, if received by any Grantor shall be held in trust for the benefit of the Administrative Agent (and shall not be commingled by such Grantor with any of its other funds or property but shall be held separate and apart) and shall be



forthwith delivered to the Administrative Agent in the same form as so received (with any necessary endorsement).

(b) Upon the occurrence and during the continuance of an Event of Default, 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 3.06 shall cease, and all such rights shall thereupon become vested in the Administrative 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 3.06 shall be held in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith delivered to the Administrative Agent in the same form as so received (with any necessary endorsement). Any and all money and other property paid over to or received by the Administrative Agent pursuant to the provisions of this paragraph (b) shall be retained by the Administrative Agent in an account to be established by the Administrative Agent upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 5.02.

(c) Upon the occurrence and during the continuance of an Event of Default, 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 3.06, and the authorizations of the Administrative Agent under paragraph (a)(ii) of this Section 3.06, shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that the Administrative 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 and the Borrower has delivered to the Administrative Agent a certificate to that effect, each Grantor will have the right to exercise the voting and consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (a)(i) above.

## ARTICLE IV

### SECURITY INTERESTS IN PERSONAL PROPERTY

**Section 4.01 Security Interest.** (a) Each Grantor, as security for the payment and performance in full of the Obligations, hereby assigns and pledges to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest (the “Security Interest”) in all right, title and 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”):

- (i) all accounts (including accounts receivable and healthcare insurance receivables);
- (ii) all chattel paper (whether tangible or electronic);
- (iii) all cash, money and deposit accounts;
- (iv) all documents (including electronic documents);
- (v) all goods (including all equipment, fixtures and any accessions thereto);
- (vi) all General Intangibles;
- (vii) all instruments (including promissory notes);
- (viii) all inventory;
- (ix) all Investment Property;
- (x) all insurance claims and proceeds;
- (xi) all letter-of-credit rights;
- (xii) all books and records pertaining to the Article 9 Collateral; and
- (xiii) to the extent not otherwise included, all proceeds, supporting obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

(b) Each Grantor hereby irrevocably authorizes the Administrative Agent 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 contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including (i) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor, (ii) 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 and (iii) a description of collateral that describes such property in any other manner as the Administrative Agent may reasonably determine is necessary or advisable to ensure the perfection of the security interest in the Article 9 Collateral granted to the Administrative Agent, including

describing such property as “all assets” or “all property”. Each Grantor agrees to provide such information to the Administrative Agent promptly upon request.

Each Grantor also ratifies its authorization for the Administrative Agent to file in any relevant jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

The Administrative Agent is further authorized to file with the United States Patent and Trademark Office and the United States Copyright Office (or any successor office or any similar office in any other country) such documents as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Administrative Agent as secured party.

(c) The Security Interest is granted as security only and shall not subject the Administrative 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.

**Section 4.02 Representations and Warranties**. The Grantors jointly and severally represent and warrant to the Administrative Agent and the Secured Parties that:

(a) 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 Administrative 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 and is in full force and effect.

(b) The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein, including the exact legal name of each Grantor, is correct and complete as of the Closing Date. Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations containing a description of the Article 9 Collateral have delivered by the Grantors to the Administrative Agent and such filings, recordings or registrations are consistent with the information provided to the Administrative Agent in the Perfection Certificate delivered in connection with this Agreement and are appropriate for filing in each governmental, municipal or other office specified in Schedule 6 to the Perfection Certificate, and constitute all the filings, recordings and registrations (other than filings required to be made in the USPTO and the USCO in order to perfect the Security Interest in Article 9 Collateral consisting of United States Patents, Trademarks and Copyrights) that are necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Administrative 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. Each Grantor represents and warrants that no further or subsequent filing, re-filing, recording, re-recording, registration or re-registration is necessary in any such jurisdiction, except as provided under applicable law with respect to the filing of continuation statements or amendments. Each Grantor represents and warrants that a fully executed agreement in the form hereof or in a form reasonably satisfactory to the Administrative Agent containing a description of all Article 9 Collateral consisting of Intellectual Property with respect to Patents registered with the USPTO (and Patents for which registration applications are pending with the USPTO), Trademarks registered with the USPTO (and Trademarks for which registration applications are pending with the USPTO) and Copyrights registered with the USCO (and Copyrights for which registration applications are pending with the USCO) has been delivered to the Administrative Agent for recording with the USPTO and USCO, as applicable, and otherwise as may be required pursuant to the laws of any other applicable jurisdiction and reasonably requested by the Administrative Agent, to protect the validity of and to establish a legal, valid and perfected security interest in favor of the Administrative Agent, for the benefit of the Secured Parties, in respect of all Article 9 Collateral consisting of such Intellectual Property in which a security interest may be perfected by recording with the USPTO and the USCO. Each Grantor represents and warrants that no further or subsequent filing, re-filing, recording, re-recording, registration or re-registration is necessary (other than such actions as are necessary to perfect the Security Interest with respect to any Article 9 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 Obligations, (ii) subject to the filings described in Section 4.02(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 or other applicable law in such jurisdictions and (iii) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of this Agreement with the USPTO and the USCO, as applicable, and otherwise as may be required pursuant to the laws of any other applicable jurisdiction. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, other than Liens expressly permitted to be prior to the Security Interest 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, other than 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 Article 9 Collateral with the USPTO or the USCO 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) None of the Grantors holds any commercial tort claim as of the Closing Date except as indicated on the Perfection Certificate.

(f) All accounts have been originated by the Grantors and all inventory has been acquired by the Grantors in the ordinary course of business.

#### **Section 4.03 Covenants.**

(a) Each Grantor agrees promptly to notify the Administrative Agent in writing of any change (i) in its corporate name, (ii) in the location of any office in which it maintains books or records relating to Article 9 Collateral owned by it or any office or facility at which Article 9 Collateral owned by it is located (including the establishment of any new such office or facility), (iii) in its identity or type of organization or corporate structure, (iv) in its Federal Taxpayer Identification Number or organizational identification number or (v) in its jurisdiction of organization. Each Grantor agrees promptly to provide the Administrative Agent with certified organizational documents reflecting any of the changes described in clauses (i), (iii) and (v) of the immediately preceding sentence. Each Grantor agrees not to effect or permit any change referred to in the first sentence of this paragraph (a) unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Article 9 Collateral. Each Grantor agrees promptly to notify the Administrative Agent if any material portion of the Article 9 Collateral owned or held by such Grantor is damaged or destroyed.

Each Grantor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Article 9 Collateral owned by it as is consistent with its current practices and in accordance with reasonably prudent and standard practices used in industries that are the same as or similar to those in which such Grantor is engaged, but in any event to include complete accounting records indicating all payments and proceeds received with respect to any part of the Article 9 Collateral, and, at such time or times as the Administrative Agent may reasonably request, promptly to prepare and deliver to the Administrative Agent a duly certified schedule or schedules in form and detail satisfactory to the Administrative Agent showing the identity, amount and location of any and all Article 9 Collateral.

(c) Each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 6.01(a) of the Credit Agreement, the Borrower shall deliver to the Administrative Agent a certificate executed by an officer of the Borrower (i) setting forth the information required pursuant to Schedule 6 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 4.03(c) and (ii) certifying that all Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations, including all re-filings, re-recordings and re-registrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) of this Section 4.03(c) to the extent necessary to protect and perfect the Security Interest for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period). Each certificate delivered pursuant to this Section 4.03(c) shall identify in the format of Schedule III to this Agreement all Intellectual Property of any Grantor in existence on the date thereof and not then listed on such Schedules or previously so identified to the Administrative Agent.

(d) Each Grantor shall, at its own expense, take any and all actions necessary to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Administrative Agent in the Article 9 Collateral and the priority thereof against any Lien not expressly permitted to be prior to the Security Interest pursuant to Section 7.01 of the Credit Agreement.

(e) Each Grantor agrees, 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 Administrative 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.

Without limiting the generality of the foregoing, each Grantor hereby authorizes the Administrative Agent, with prompt notice thereof to the Grantors, to supplement this Agreement by supplementing Schedule III or adding additional schedules hereto to specifically identify any asset or item that may constitute Copyrights, Licenses, Patents or Trademarks; provided that any Grantor shall have the right, exercisable within 10 days after it has been notified by the Administrative Agent of the specific identification of such Article 9 Collateral, to advise the Administrative Agent in writing of any inaccuracy of the representations and warranties made by such Grantor hereunder with respect to such Article 9 Collateral. Each Grantor agrees that it will use its commercially reasonable efforts to take such action as shall be necessary in order that all representations and warranties hereunder shall be true and correct with respect to such Article 9

Collateral within 30 days after the date it has been notified by the Administrative Agent of the specific identification of such Article 9 Collateral.

(f) The Administrative Agent and such Persons as the Administrative Agent may reasonably designate shall have the right, at the Grantors' own cost and expense, to inspect the Article 9 Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the Article 9 Collateral is located, at reasonable times and intervals during normal business hours upon reasonable advance notice to the respective Grantor, to discuss the Grantors' affairs with the officers of the Grantors and their independent accountants and to verify under reasonable procedures, in accordance with Section 6.10 of the Credit Agreement, the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. Subject to Section 10.07 of the Credit Agreement, the Administrative Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.

(g) At its option, the Administrative 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 each Grantor jointly and severally agrees to reimburse the Administrative Agent on demand for any payment made or any expense incurred by the Administrative Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.03(g) shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Administrative 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.

(h) If at any time any Grantor shall take a security interest in any property of an account debtor or any other Person to secure payment and performance of an account, such Grantor shall promptly assign such security interest to the Administrative Agent to the extent permitted by any contracts or arrangements to which such property is subject. Such assignment need not be filed in a public record unless such filing is 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.

(i) Each Grantor shall remain liable 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 Administrative Agent and the Secured Parties from and against any and all liability for such performance.

(j) None of the Grantors shall make or permit to be made an assignment, pledge or hypothecation of the Article 9 Collateral or shall grant any other Lien in respect of the Article 9 Collateral, except as expressly permitted by the Credit Agreement. None of the Grantors shall make or permit to be made any transfer of the Article 9 Collateral and each Grantor shall remain at all times in possession of the Article 9 Collateral owned by it, except that (i) inventory may be sold in the ordinary course of business and (ii) unless and until the Administrative Agent shall notify the Grantors that an Event of Default shall have occurred and be continuing and that during the continuance thereof the Grantors shall not sell, convey, lease, assign, transfer or otherwise dispose of any Article 9 Collateral (which notice may be given by telephone if promptly confirmed in writing), the Grantors may use and dispose of the Article 9 Collateral in any lawful manner not inconsistent with the provisions of this Agreement, the Credit Agreement or any other Loan Document. Without limiting the generality of the foregoing, each Grantor agrees that it shall not permit any inventory to be in the possession or control of any warehouseman, bailee, agent or processor at any time unless such warehouseman, bailee, agent or processor shall have been notified of the Security Interest and shall have acknowledged in writing, in form and substance reasonably satisfactory to the Administrative Agent, that such warehouseman, agent, bailee or processor holds the Inventory for the benefit of the Administrative Agent subject to the Security Interest and shall act upon the instructions of the Administrative Agent without further consent from the Grantor, and that such warehouseman, bailee, agent or processor further agrees to waive and release any Lien held by it with respect to such Inventory, whether arising by operation of law or otherwise; provided that such written acknowledgment shall not be required until the fair market value of all Inventory in such possession or under such control exceeds \$1,000,000 in aggregate amount.

(k) None of the Grantors will, without the Administrative Agent's prior written consent, grant any extension of the time of payment of any accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with its past practices and in accordance with reasonably prudent and standard practice used in industries that are the same as or similar to those in which such Grantor is engaged.

(l) The Grantors, at their own expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the goods, inventory and equipment in accordance with the requirements set forth in Schedule IV hereto and Section 6.07 of the Credit Agreement. Each Grantor irrevocably makes, constitutes and



appoints the Administrative Agent (and all officers, employees or agents designated by the Administrative Agent) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of 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 of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Administrative Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Administrative Agent deems advisable. All sums disbursed by the Administrative Agent in connection with this Section 4.03(1), including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Administrative Agent and shall be additional Obligations secured hereby.

(m) Each Grantor shall maintain, in form and manner reasonably satisfactory to the Administrative Agent, its chattel paper and its books, records and documents evidencing or pertaining thereto with an appropriate reference to the fact that such chattel paper has been assigned to the Administrative Agent for the benefit of the Secured Parties and that the Administrative Agent has a security interest therein.

**Section 4.04 Other Actions** . In order to further insure the attachment, perfection and priority of, and the ability of the Administrative Agent to enforce the Administrative Agent's security interest in the Article 9 Collateral, 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 and Tangible Chattel Paper . If any Grantor shall at any time hold or acquire any tangible chattel paper having a value in excess of \$25,000, such Grantor shall forthwith endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time reasonably request.

(b) Deposit Accounts .

(i) Grantors will maintain cash management systems reasonably acceptable to the Administrative Agent (it being understood that the cash management system as in effect on the Closing Date is acceptable to the Administrative Agent).

(ii) Each Grantor acknowledges and agrees that (x) the funds on deposit in the deposit accounts shall continue to be collateral security for all the Obligations and (y) upon the occurrence and during the continuance of an Event of Default, upon the election of the Administrative Agent, the funds on deposit in

such deposit accounts shall be applied as provided in Section 5.02. Each Grantor irrevocably authorizes the Administrative Agent to (A) notify each bank with which such Grantor maintains such deposit accounts (each such bank a “Deposit Account Bank”) of the occurrence of an Event of Default and (B) following the occurrence of an Event of Default, at the election of the Administrative Agent, instruct each Deposit Account Bank to apply the funds on deposit in such deposit account in accordance with Section 5.02. Each Grantor hereby agrees to irrevocably direct each Deposit Account Bank to comply with the instructions of the Administrative Agent with respect to the relevant deposit account without further consent from the Grantor or any other Person. The Administrative Agent agrees with each of the Grantors that the Administrative Agent shall not give any such instructions or directions and shall not withhold its consent to any withdrawal or other action by any Grantor with respect thereto, unless an Event of Default has occurred and is continuing or, after giving effect to any such withdrawal or action, would occur.

(c) Investment Property. Except to the extent otherwise provided in Article III, if any Grantor shall at any time hold or acquire any certificated security having a value in excess of \$25,000 such Grantor shall forthwith endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time specify. 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, such Grantor shall immediately notify the Administrative Agent thereof and, at the Administrative Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, either (i) cause the issuer to agree to comply with instructions from the Administrative Agent as to such securities, without further consent of any Grantor or such nominee, or (ii) arrange for the Administrative Agent to become the registered owner of the securities. The Administrative Agent agrees with each of the Grantors that the Administrative Agent shall not give any such instructions or directions to any such issuer and shall not withhold its consent to the exercise of any withdrawal (with respect to any investment accounts, if any) or dealing rights by any Grantor, unless an Event of Default has occurred and is continuing or, after giving effect to any such investment and withdrawal rights, would occur.

(d) Electronic Chattel Paper and Transferable Records. If any Grantor at any time holds or acquires an interest in any electronic chattel paper or any “transferable record” having a value in excess of \$25,000, as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify the Administrative Agent thereof and, at the request of the Administrative Agent, shall take such action as the Administrative Agent may reasonably request to vest in the Administrative Agent control under New York UCC Section 9-105 of such electronic chattel paper or control under Section 201 of the Federal Electronic

Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Administrative Agent agrees with such Grantor that the Administrative Agent will arrange, pursuant to procedures reasonably satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent's loss of control, for the Grantor to make alterations to the electronic chattel paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such electronic chattel paper or transferable record.

(e) Letter-of-Credit Rights. If any Grantor is at any time a beneficiary under a letter of credit having a stated amount in excess of \$25,000 now or hereafter issued in favor of such Grantor, such Grantor shall promptly notify the Administrative Agent thereof and, at the request and option of the Administrative Agent, such Grantor shall, pursuant to an agreement in form and substance satisfactory to the Administrative Agent, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Administrative Agent of the proceeds of any drawing under the letter of credit or (ii) arrange for the Administrative Agent to become the transferee beneficiary of the letter of credit, with the Administrative Agent agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be paid to the applicable Grantor unless an Event of Default has occurred or is continuing.

(f) Commercial Tort Claims. If any Grantor shall at any time hold or acquire a Commercial Tort Claim in an amount reasonably estimated to exceed \$1,000,000, the Grantor shall promptly notify the Administrative Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Administrative Agent in writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Administrative Agent.

#### **Section 4.05 Covenants Regarding Patent, Trademark and Copyright Collateral**

(a) Each Grantor agrees that it will not do any act or omit to do any act (and will exercise commercially reasonable efforts to prevent its licensees from doing any act or omitting to do any act) whereby any Patent that is material to the conduct of such Grantor's business may become invalidated or dedicated to the public, and agrees that it shall continue to mark any products covered by a Patent with the relevant patent number as necessary and sufficient to establish and preserve its maximum rights under applicable patent laws.

(b) Each Grantor (either itself or through its licensees or its sublicensees) will, for each Trademark material to the conduct of such Grantor's business, (i) maintain such Trademark in full force free from any claim of abandonment or invalidity for non-use, (ii) maintain the quality of products and services offered under such Trademark, (iii) display such Trademark with notice of Federal or foreign registration to the extent necessary and sufficient to establish and preserve its maximum rights under applicable law and (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third-party rights.

(c) Each Grantor (either itself or through its licensees or its sublicensees) will, for each work covered by a Copyright material to the conduct of such Grantor's business, continue to publish, reproduce, display, adopt and distribute the work with appropriate copyright notice as necessary and sufficient to establish and preserve its maximum rights under applicable copyright laws.

(d) Each Grantor shall notify the Administrative Agent immediately if it knows or has reason to know that any Patent, Trademark or Copyright material to the conduct of such Grantor's business may become abandoned, lost or dedicated to the public, or of any materially adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the USPTO, USCO or any court or similar office of any country) regarding such Grantor's ownership of any such Patent, Trademark or Copyright, its right to register the same or its right to keep and maintain the same.

(e) In no event shall any Grantor, either itself or through any agent, employee, licensee or designee, file an application for any Patent or for the registration of any Trademark or Copyright with the USPTO, the USCO or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, unless it promptly informs the Administrative Agent thereof, and, upon the request of the Administrative Agent, executes and delivers any and all agreements, instruments, documents and papers as the Administrative Agent may reasonably request to evidence the Administrative Agent's security interest in such Patent, Trademark or Copyright, and each Grantor hereby appoints the Administrative Agent as its attorney-in-fact to execute and file such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable.

(f) Each Grantor will take all necessary steps that are consistent with the practice in any proceeding before the USPTO, the USCO or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof to maintain and pursue each material application relating to the Patents, Trademarks and/or Copyrights (and to obtain the relevant grant or registration) and to maintain each issued Patent and each registration of the Trademarks and Copyrights that is material to the conduct of such Grantor's business, including timely

filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent with good business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(g) In the event that any Grantor has reason to believe that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright has been or is about to be infringed, misappropriated or diluted by a third party, such Grantor shall promptly notify the Administrative Agent and shall, if consistent with good business judgment and if it is reasonably determined by the Grantor that there is a potential risk of material damage to the Patent, Trademark or Copyright, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as are appropriate under the circumstances to protect such Article 9 Collateral.

(h) Upon and during the continuance of an Event of Default, each Grantor shall use commercially reasonable efforts to obtain all requisite consents or approvals from the licensor under each Copyright License, Patent License or Trademark License to effect the assignment of all such Grantor's right, title and interest thereunder to the Administrative Agent or its designee.

## **ARTICLE V**

### **REMEDIES**

**Section 5.01 Remedies Upon Default** . Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Administrative Agent on demand, and it is agreed that the Administrative Agent shall have the right to take any of or all the following actions at the same or different times: (a) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Administrative Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Administrative Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained); and (b) with or without legal process and with or without prior notice or demand for performance, to take possession of the Article 9 Collateral and without liability for trespass to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of or removing the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing, each Grantor agrees that the Administrative Agent shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral 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 Administrative Agent shall deem appropriate. The

Administrative Agent shall be authorized at any such sale of securities (if it deems it advisable to do so) to restrict the prospective bidders or purchasers 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 of Collateral the Administrative 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 such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that 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 Administrative 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 Administrative 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 Administrative 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 Administrative Agent may (in its sole and absolute discretion) determine. The Administrative 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 Administrative 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 Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative 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 Section 5.01, any Secured Party may bid for or purchase for cash, 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 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 Administrative 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 Administrative Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power

of sale herein conferred upon it, the Administrative 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.

**Section 5.02 Application of Proceeds**. The Administrative Agent shall apply the proceeds of any collection or sale of Collateral, as well as any Collateral consisting of cash, that it has obtained as provided in Section 8.03 of the Credit Agreement. The Administrative 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 Administrative Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Administrative 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 Administrative Agent or such officer or be answerable in any way for the misapplication thereof.

**Section 5.03 Grant of License to Use Intellectual Property**. For the purpose of enabling the Administrative Agent to exercise rights and remedies under this Agreement at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Administrative Agent an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Grantors) to use, license or sublicense any of the Article 9 Collateral consisting of Intellectual Property now owned or hereafter acquired by such Grantor, 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 Administrative Agent may be exercised, at the option of the Administrative Agent and, upon the occurrence and during the continuation of an Event of Default; provided that any license, sublicense or other transaction entered into by the Administrative Agent in accordance herewith shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default.

**Section 5.04 Securities Act, etc.**.. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Administrative Agent if the Administrative Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other

legal restrictions or limitations affecting the Administrative Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor recognizes that in light of such restrictions and limitations the Administrative Agent may, with respect to any sale of the Pledged Collateral, limit the purchasers to those who will agree, among other things, to acquire such Pledged Collateral for their own account, for investment, and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Administrative Agent, in its sole and absolute discretion, (a) may proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws and (b) may approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Administrative Agent shall incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Administrative Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.04 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Administrative Agent sells.

## ARTICLE VI

### INDEMNITY, SUBROGATION AND SUBORDINATION

**Section 6.01 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 6.03), the Borrower agrees that (a) in the event a payment shall be made by any Guarantor under this Agreement in respect of any Obligation, the Borrower 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 and (b) in the event any assets of any Guarantor shall be sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part an Obligation, the Borrower shall indemnify such Guarantor in an amount equal to the greater of the book value or the fair market value (as reasonably determined by the Borrower) of the assets so sold.

**Section 6.02 Contribution and Subrogation.** Each Guarantor (a “Contributing Guarantor”) agrees (subject to Section 6.03) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Obligation or assets of any other Guarantor shall be sold pursuant to any Loan Document to satisfy any Obligation owed to any Secured Party and such other Guarantor (the “Claiming Guarantor”) shall not have been fully indemnified by the Borrower as provided in Section 6.01, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or



the fair market value of such assets, as the case may be, in each case multiplied by a fraction of which the numerator shall be the net worth of the Contributing Guarantor on the date hereof and the denominator shall be the aggregate net worth of all the Guarantors on the date hereof (or, in the case of any Guarantor becoming a party hereto pursuant to Section 7.16, the date of the supplement hereto executed and delivered by such Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Guarantor under Section 6.01 to the extent of such payment.

**Section 6.03 Subordination .**

(a) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors 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 Obligations. No failure on the part of the Borrower or any Guarantor 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 Guarantor with respect to its obligations hereunder, and each Guarantor shall remain liable for the full amount of the obligations of such Guarantor hereunder.

(b) Each Guarantor hereby agrees that all Indebtedness and other monetary obligations owed by it to any other Guarantor or any Subsidiary shall be fully subordinated to the indefeasible payment in full in cash of the Obligations.

**ARTICLE VII**

**MISCELLANEOUS**

**Section 7.01 Notices ..** All communications and notices hereunder shall (except as otherwise expressly permitted herein) be given as provided in Section 10.02 of the Credit Agreement.

**Section 7.02 Security Interest Absolute ..** All rights of the Administrative Agent hereunder, the Security Interest, the security interest in the Pledged Collateral and all obligations of each Grantor and 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 agreement with respect to any of the 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 Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document 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 Obligations, (d) any law or regulation of any jurisdiction or any other event affecting any term of a guaranteed obligation or (e) any other circumstance that

might otherwise constitute a defense available to, or a discharge of, any Grantor or Guarantor in respect of the Obligations or this Agreement.

**Section 7.03 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 the issuance of any Letters of Credit, regardless of any investigation made by any Lender or on its behalf and notwithstanding that the Administrative Agent or any Lender or L/C Issuer 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 7.04 Binding Effect; Several 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 permitted 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 7.05 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 Administrative Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns. No Guarantor or Grantor may assign any of its rights or obligations hereunder without the written consent of the Administrative Agent.

**Section 7.06 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 Loan Documents, each Grantor jointly and severally agrees to indemnify the Administrative Agent and the other Indemnitees (as defined in Section 10.04 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 or performance of this Agreement or any claim, litigation, investigation or proceeding relating hereto, 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 final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) Any such amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Security Documents. The provisions of this Section 7.06 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 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 Administrative Agent or any other Secured Party. All amounts due under this Section 7.06 shall be payable on written demand therefor.

**Section 7.07 Administrative Agent Appointed Attorney-in-Fact ..** Each Grantor hereby appoints the Administrative 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 Administrative Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Administrative Agent shall have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Administrative 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 ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral; (d) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (e) to send verifications of Accounts to any Account Debtor; (f) 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; (g) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (h) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Administrative Agent; and (i) 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 Administrative Agent were the absolute owner of the Collateral for all purposes; provided, that nothing herein contained shall be construed as requiring or obligating the Administrative Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Administrative 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 Administrative 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.

**Section 7.08 GOVERNING LAW ..** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE 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 STATE).

**Section 7.09 Waivers; Amendment ..**

(a) No failure or delay by the Administrative Agent or any other Secured Party in exercising any right, power or remedy hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Administrative Agent and the other Secured Parties hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights, powers 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 7.09, 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 the issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any other Secured Party 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 10.03 of the Credit Agreement.

**Section 7.10 WAIVER OF JURY TRIAL** .. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 7.11 Severability** .. If any provision of this Agreement is held to be invalid, illegal or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 7.12 Counterparts** . This Agreement 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, and shall become effective as provided in Section 7.04 . Delivery of an executed signature page to this Agreement by facsimile or electronic transmission shall be effective as delivery of a manually signed counterpart of this Agreement.

**Section 7.13 Headings** . Article and Section headings used herein are for the purpose 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 7.14 Jurisdiction; Consent to Service of Process** .

(a) Each of the Loan Parties hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York sitting in New York County 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 court or, to the extent permitted by law, 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 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 Grantor or Guarantor, or its properties, in the courts of any jurisdiction.

(b) Each of the Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that 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 (a) of this Section 7.14. 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.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.02 of the Credit Agreement. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable law.

#### **Section 7.15 Termination or Release .**

(a) This Agreement, the guarantees and undertakings made herein, the Security Interest and all other security interests granted hereby shall terminate when the Obligations have been indefeasibly paid in full and the Aggregate Commitments have been terminated, the LC Obligations have been reduced to zero or Cash Collateralized in a manner acceptable to the Administrative Agent and the L/C Issuer and the L/C Issuer has no further obligations to issue Letters of Credit under the Credit Agreement.

(b) A Subsidiary Loan Party shall automatically be released from its obligations hereunder and the security interests in the Collateral of such Subsidiary Loan Party shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Subsidiary Loan Party ceases to be a 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) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement to any Person that is not a Grantor, 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; provided that the Proceeds resulting

from such sale or other transfer shall not be released and shall be included in the Collateral.

(d) In connection with any termination or release pursuant to paragraph (a), (b) or (c) of this section, the Administrative Agent shall execute and deliver to any Grantor at such Grantor's expense all documents that such Grantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this section shall be without recourse to or warranty by the Administrative Agent.

**Section 7.16 Additional Subsidiaries.** Pursuant to Section 6.12 of the Credit Agreement, each Subsidiary of a Loan Party that was not in existence or not a Subsidiary on the date of the Credit Agreement is required to enter into this Agreement upon becoming such a Subsidiary. Upon execution and delivery by the Administrative Agent and a Subsidiary of an instrument in the form of Exhibit I hereto, such Subsidiary shall become a party hereto with the same force and effect as if originally named as a party hereto. 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 7.17 Right of Setoff.** Subject to Section 10.08 of the Credit Agreement, if an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement and although such obligations may be contingent or unmaturred.

**Section 7.18 Amendment and Restatement.** This Agreement amends, restates, supersedes, and replaces in its entirety the Existing Guarantee and Collateral Agreement. Nothing contained herein shall be construed as a novation of the obligations outstanding under the Existing Guarantee and Collateral Agreement.

*[Signature Page Follows]*

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

**DENNY'S, INC. ,**

a Florida corporation

By: /s/ Ross Nell

Name: Ross Nell

Title: Vice President, Tax and Treasurer

**DENNY'S REALTY, LLC ,**

a Delaware limited liability company

By: DFO, LLC, its Sole Member

By: Denny's Inc., its Sole Member

By: /s/ Ross Nell

Name: Ross Nell

Title: Vice President, Tax and Treasurer

**DENNY'S CORPORATION ,**

a Delaware corporation

By: /s/ Ross Nell

Name: Ross Nell

Title: Vice President, Tax and Treasurer

**DFO, LLC ,**

a Delaware limited liability company

By: Denny's Inc., its Sole Member

By: /s/ Ross Nell

Name: Ross Nell

Title: Vice President, Tax and Treasurer



**WELLS FARGO BANK, NATIONAL ASSOCIATION ,**

as Administrative Agent,

By: /s/ Stephen A. Leon

Name: Stephen A. Leon

Title: Managing Director

**Subsidiary Loan Parties**

<b>Subsidiary of Denny's Corporation</b>	<b>Jurisdiction of Incorp/Formation</b>	<b>Number of Shares of Capital Stock</b>	<b>Number and Percentage of Outstanding Shares</b>	<b>Shares Certificated?</b>
Denny's, Inc.	Florida	10,000	100%	yes

<b>Subsidiary of Denny's, Inc.</b>	<b>Jurisdiction of Incorp/Formation</b>	<b>Number of Shares of Capital Stock</b>	<b>Number and Percentage of Outstanding Shares</b>	<b>Shares Certificated?</b>
DFO, LLC	Delaware	—	—	Yes
La Mirada Enterprises #1, LLC	Texas	—	—	yes

<b>Subsidiary of DFO, LLC</b>	<b>Jurisdiction of Incorp/Formation</b>	<b>Number of Shares of Capital Stock</b>	<b>Number and Percentage of Outstanding Shares</b>	<b>Shares Certificated?</b>
Denny's Realty, LLC	Delaware	—	—	yes

These LLCs are Member managed

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### EQUITY INTERESTS

Name	State of Incorporation	Owner / % of Ownership Interest
Denny's, Inc.	Florida	Denny's Corporation / 100%
La Mirada Enterprises #1, LLC	Texas	Denny's, Inc. / 100%
DFO, LLC	Delaware	Denny's, Inc. / 100%
Denny's Realty, LLC	Delaware	DFO, LLC / 100%
Dennyven#1		Denny's Corporation, General Partner, Partnership Interest at 50%
K-II Telecommunications		Denny's Corporation, General Partner, Partnership Interest at 3.51%
New York Equity Fund 1988 L.P.		Denny's Corporation, Limited Partner, Partnership Interest at 2.20%

### DEBT SECURITIES

Notes Receivable - Denny's, Inc.									
As of 03/28/12									
Unit	Payor	Type	Interest Rate	Note Balance	Interest Balance	Note Date	Maturity Date	Note Payment	Payment Frequency
8,823	Dawn Lafreeda	Franchisee	7%	26,828.74	—	12/8/2011	5/29/2013	2,702.80	Weekly
7,841	Kevin Coveney	Franchisee	—%	55,288.43	—	4/26/2012	6/3/2015	480.77	Weekly
Various***	Various	Franchisee	0-5%	1,726,270.97	—	Various	12-36 months	Various	Weekly
Various**	Various	Franchisee	—%	2,674,413.64	—	Various	12 months	Various	Weekly

\*\*Represents Coffee Equipment. Individual unit notes range from \$1,104 to \$2,371.

\*\*\*Represents Dine Financing Notes. Individual unit notes range from \$18,000 to \$25,000

**OWNED COPYRIGHTS**

**None.**

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**OWNED PATENTS**

**None.**

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## OWNED TRADEMARK/TRADE NAMES

### U.S. Trademarks

Domestic Mark	Reg./Serial #	Reg./Filing Date
\$2 \$4 \$6 \$8	3,964,768	24-May-11
\$2 \$4 \$6 \$8 VALUE MENU	3,972,843	7-Jun-11
ALL-AMERICAN SLAM	1,950,994	23-Jan-96
ALLNIGHTER	3,974,615	7-Jun-11
AMERICA'S DINER IS ALWAYS OPEN	4,129,406	17-Apr-12
CHILLACCINO	85,403,677	22-Aug-11
DANNY'S DONUTS	3,768,961	30-Mar-10
DENNY'S (stylized)	862,087	17-Dec-68
DENNY'S (stylized)	866,599	11-Mar-69
DENNY'S (stylized)	1,903,868	4-Jul-95
DENNY'S (word mark)	736,161	14-Aug-62
DENNY'S (word mark)	740,359	6-Nov-62
DENNY'S (word mark)	1,053,390	23-Nov-76
DENNY'S CLASSIC DINER and Design (blue circle)	2,512,281	27-Nov-01
DENNY'S CLASSIC DINER and Design with neon	2,469,928	17-Jul-01
DENNY'S CLASSIC DINER and Design with tubes	2,469,927	17-Jul-01
DENNY'S DINER 2000 and Design	2,372,959	1-Aug-00
Denny's Diner 2000 and Design	2,377,637	15-Aug-00
DENNY'S DINER 2000 w/o "Diner"	2,653,324	26-Nov-02
DENNY'S FRESH EXPRESS (word)	3,498,403	9-Sep-08
DENNY'S TIL DAWN	1,720,991	29-Sep-92
DENNY'S within a French Diamond	1,720,986	29-Sep-92
DENNY'S within a French Diamond	1,886,750	28-Mar-95
DENNY'S within a French Diamond	2,320,275	22-Feb-00
DENVER SCRAMBLE	2,964,207	28-Jun-05
FIT FARE (word mark)	1,996,275	20-Aug-96
FIT FARE (word mark)	3,381,648	12-Feb-08
French Diamond design	2,761,133	9-Sep-03
FRENCH SLAM	1,735,075	24-Nov-92
GET YOUR CRAVE ON	3,375,730	29-Jan-08
GRAND SLAM	1,813,884	28-Dec-93
GRAND SLAM	4,104,436	28-Feb-12
GRAND SLAM BREAKFAST	1,277,223	8-May-84
GRAND SLAM SLUGGER	3,857,076	5-Oct-10
GREAT FOOD AND GREAT SERVICE BY GREAT PEOPLE...EVERY TIME!	2,802,016	6-Jan-04



HEARTLAND SCRAMBLE	3,086,695	25-Apr-06
JR. GRAND SLAM	1,270,950	20-Mar-84
MOONS OVER MY HAMMY	1,946,766	9-Jan-96
NANERPUS (design mark)	3,800,808	8-Jun-10
NANERPUS (word mark)	3,711,864	17-Nov-09
PANCAKE PUPPIES	3,707,894	10-Nov-09
PLAY IT AGAIN SLAM	1,736,807	1-Dec-92
RIGHT ON THE MONEY	3,856,292	5-Oct-10
SENIOR BELGIAN WAFFLE SLAM	1,757,060	3/9/1993
SIEMPRE ABIERTOS, SIEMPRE A GUSTO	4,034,282	4-Oct-11
SLAM	2,592,374	9-Jul-02
SLAMWICH	2,805,903	13-Jan-04
SOUTHERN SLAM	1,743,375	29-Dec-92
SUPER BIRD	1,378,319	14-Jan-86
SUPER SLAM	1,944,101	26-Dec-95
ULTIMATE OMELETTE	1,645,411	21-May-91
WAFFELINI	3,904,258	11-Jan-11

### Pending U.S. Trademark Applications

None

### Foreign Trademarks

International Mark	Country	App. #/Filing Date	Reg. #/Date
DENNY'S	Aruba	4-Aug-03	5/28/22933
DENNY'S (word mark)	Australia	714,263 07/31/96	10/7/714263
SUPER BIRD	Australia	A454717A	A454717 10/11/86
DELY	Austria		100,159 07/21/82
DENNY'S	Bahamas	3/24/762	3/24/762
DENNY'S and design	Bahamas	34,060 10/18/2010	
GRAND SLAM	Bahamas	34,058 10/18/2010	
SLAM	Bahamas	34,059 10/18/2010	
SLAMWICH	Bahamas	34,061 10/18/2010	
SUPER BIRD	Bahamas	34,057 10/18/2010	
DENNY'S and design	Bahrain	SM90409 01/23/2012	
DENNY'S	Barbados	4-Aug-93	81/8407 02/25/99
DENNY'S	Barbados	4-Aug-93	81/8408 02/25/99
DENNY'S	Barbados	4-Aug-93	81/8406 02/25/99
Denny's within a French Diamond	Barbados	4-Aug-93	81/8405
Denny's within a French Diamond	Barbados	4-Aug-93	81/8403





Denny's within a French Diamond	Barbados	4-Aug-93	81/8404
ALL AMERICAN SLAM	Belize	31-Jan-08	1/8/5145
DENNY'S (word mark)	Belize	31-Jan-08	1/8/5416
DENNY'S and design	Belize	31-Jan-08	1/8/5147
FIT FARE	Belize	31-Jan-08	1/8/5148
French Diamond design	Belize	31-Jan-08	1/8/5149
GRAND SLAM	Belize	31-Jan-08	1/8/5150
GRAND SLAM SLUGGER	Belize	31-Jan-08	1/8/5151
MOONS OVER MY HAMMY	Belize	31-Jan-08	1/8/5152
SLAM	Belize	31-Jan-08	1/8/5153
SLIM SLAM	Belize	31-Jan-08	1/8/5154
SUPER BIRD	Belize	31-Jan-08	3/8/5155
DENNY'S	Benelux		5/12/175818
DENNY'S	Bolivia	9/7/1830	C-64209 09/07/1994
DENNY'S	Bolivia	SM-1071-07 3/23/2007	
DENNY'S and design	Brazil	9/1/902918729	
DENNY'S	Brazil	813.342.961 02/26/87	813.342.961 12/01/92
ALL-AMERICAN SLAM	Canada	Serial No. 1,341,036	TMA746,419 08/27/2009
Denny's and (maple leaf) Design (in B&W) (old)	Canada	Serial No. 1,142,698	TMA601,698 02/09/2004
Denny's and (maple leaf) Design (in color) (old)	Canada	Serial No. 1,129,676	12/18/598001
Denny's and (French Diamond) Design (in color) (new)	Canada	Serial No. 1,122,162	TMA601,581 02/06/2004
Denny's and (French Diamond) Design (in B&W) (new)	Canada	Serial No. 1,122,165	TMA601,912 02/11/2004
Denny's and (Maple Leaf) Design (in B&W) (new)	Canada	Serial No. 1,122,164	TMA601,728 02/10/2004
Denny's and (Maple Leaf) Design (in color) (new)	Canada	Serial No. 1,122,166	TMA601,580 02/06/2004
DENNY'S	Canada	4/12/321494	TMA169,549 06/05/70
DENNY'S and design (cartoon)	Canada	321,495	TMA169,550 06/05/70
FIT FARE	Canada	Serial No. 1,341,035 03/27/07	TMA706,260 02/01/08
French Diamond design	Canada	Serial No. 1,341,024 03/27/2007	TMA710,297 03/27/2008
MOONS OVER MY HAMMY	Canada	Serial No. 1,341,029 3/27/2007	TMA714,986 05/23/2008
SLAM	Canada	TMA750,793	10/22/2009
SLIM SLAM	Canada	Serial No. 1,341,027	TMA708,640 02/29/2008
SUPER BIRD	Canada	687,647 08/14/91	TMA404,315 10/30/92
SUPER SLAM	Canada	1,135,704 04/05/02	TMA569,070 10/18/02
THE ULTIMATE OMLETTE	Canada	687,649 08/14/91	TMA404,316 10/30/92

Denny's, Inc.	Chile	6/3/3677	395,511 12/02/82 653.999 01/08/03
DENNY'S and design	Chile		12/3/975929
French Diamond design	Chile		12/3/975927
DENNY'S and design - old Eldoon Mark	China		222,322
DENNY'S in Chinese characters - old Eldoon Mark	China		222,321
DENNY'S in Chinese characters plus DENNY'S - old Eldoon mark	China		1,726,785
DENNY'S in Chinese characters plus DENNY'S (design) - old Eldoon mark	China		1,726,788
Denny's In Chinese Characters	China	9/30/93094339	2/6/777369
Denny's Stylized	China		7/5/180767
Denny's Stylized	China		7/5/180766
DENNY'S	China	8/31/8626860	
DENNY'S	China	8/31/8626970	
DENNY'S	China	8/31/8627058	
DENNY'S	China	8/31/8627082	
DENNY'S	China	8/31/8627115	
DENNY'S	China	8/31/8627136	
"Dan Ni Shi" DENNY'S In Chinese Characters (word mark)	China	9/1/8629223	
"Dan Ni Shi" DENNY'S In Chinese Characters (word mark)	China	9/1/8629432	
"Dan Ni Shi" DENNY'S In Chinese Characters (word mark)	China	9/1/8629472	
"Dan Ni Shi" DENNY'S In Chinese Characters (word mark)	China	9/1/8629497	
"Dan Ni Shi" DENNY'S In Chinese Characters (word mark)	China	9/1/8629513	
"Dan Ni Shi" DENNY'S In Chinese Characters (word mark)	China	9/1/8629538	
"Dan Ni Shi" DENNY'S In Chinese Characters (word mark)	China	9/1/8629610	
"Dan Ni Shi" DENNY'S In Chinese Characters (B&W French diamond logo)	China	8/25/9889624	
"Dan Ni Shi" DENNY'S In Chinese Characters (B&W French diamond logo)	China	8/25/9889623	
"Dan Ni Shi" DENNY'S In Chinese Characters (B&W French diamond logo)	China	8/25/9889622	

"Dan Ni Shi" DENNY'S In Chinese Characters (B&W French diamond logo)	China	8/25/9889621	
GRAND SLAM	China / UK Madrid	1/12/4841	
Denny's	Colombia	8/28/275278	
Denny's	Columbia	1/1/275279	
Denny's	Community Trademark (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia)		7/26/789709
ALL-AMERICAN SLAM	Costa Rica	4/10/2007	4/28/173724
DENNY'S	Costa Rica		68.227 10/26/87
DENNY'S (stylized)	Costa Rica		4/19/113265
DENNY'S (stylized in a French diamond)	Costa Rica		4/19/113266
DENNY'S logo	Costa Rica	4/10/2007	4/29/173987
FIT FARE	Costa Rica	4/10/2007	6/24/2008
French Diamond design	Costa Rica	4/10/2007	
GRAND SLAM	Costa Rica	4/10/2007	4/28/173739
GRAND SLAM SLUGGER	Costa Rica	4/10/2007	4/28/173736
MOONS OVER MY HAMMY	Costa Rica	4/10/2007	4/28/173759
SLAM	Costa Rica	4/10/2007	4/28/173734
SLIM SLAM	Costa Rica	4/10/2007	4/28/173722
SUPER BIRD	Costa Rica	4/10/2007	4/28/173785
SUPER SCRAMBLES	Costa Rica	4/10/2007	4/28/173725
ULTIMATE OMELETTE	Costa Rica	4/10/2007	October 17, 180973
Denny's	Denmark	27-Jan-87	VR 01.493198 04/04/87
Denny's	Denmark	27-Jan-87	1493/1987 04/24/87
DENNY'S	Dominican Rep	6/26/190408	9/30/190408
DENNY'S and design	Dominican Rep	6/28/189950	9/15/189950
Denny's and French Diamond Design	Dominican Rep.	24-Apr-95	64,633
Denny's and French Diamond Design	Dominican Rep.	4/23/739	78,566 07/15/95
DENNY'S and design - Flag in apostrophe	Dominican Rep.	2/20/2013	
FIT FARE	Dominican Rep.	9/22/2011	
GRAND SLAM	Dominican Rep.	9/22/2011	
MOONS OVER MY HAMMY	Dominican Rep.	9/22/2011	
SLAM	Dominican Rep.	9/22/2011	
SLAMWICH	Dominican Rep.	9/22/2011	
SUPER BIRD	Dominican Rep.	9/22/2011	
ULTIMATE OMELETTE	Dominican Rep.	9/22/2011	
DENNY'S	Ecuador	9/8/388	793/95 09/18/95

DENNY'S	Ecuador	151.200 11/24/2004	9/5/1194
DENNY'S	Egypt	234,192	
DENNY'S	El Salvador	3466/94 09/20/94	171 Book 165
DENNY'S and design	El Salvador		No. 160 book 188 pages 327328 02/10/2005
DENNY'S	El Salvador	5/7/2007	54 Book 91 09/03/2007
DENNY'S and design (logo)	El Salvador	5/7/2007009284	84 Book 91 09/04/2007
French Diamond design	El Salvador	5/7/2007	86 Book 91 09/04/2007
MOONS OVER MY HAMMY	El Salvador	5/7/2007	35 Book 91 09/03/2007
SLIM SLAM	El Salvador	20,070,092,898	43 Book 113 09/19/2008
SUPER BIRD	El Salvador	5/7/2007	36 Book 91 09/03/2007
SUPER SCRAMBLES	El Salvador	5/7/2007	52 Book 91 09/03/2007
ULTIMATE OMELETTE	El Salvador	5/7/2007	66 Book 98 01/04/2008
Denny's	Fed. Republic of Germany		6/6/1043588
Denny's	Fed. Republic of Germany		1/20/923334
Denny's and French Diamond Design	Finland	1255/95 02/17/95	12/31/203660
Denny's within a French Diamond	France	93/478.461 07/29/93	1/14/93478461
Denny's & Device	France	958,088 09/30/88	9/30/1491529
ALL-AMERICAN SLAM	Guatemala	2007-3439 8/5/2007	11/5/186087
DENNY'S and design	Guatemala	5/4/64909	165,381 Page 252 volume 409 08/26/2009
DENNY'S	Guatemala		3/9/112566
DENNY'S	Guatemala	M-7590-2002	4/14/123365
FIT FARE	Guatemala	5/4/67805	163,022 page 292 volume 401 04/29/2009
French Diamond design	Guatemala	2007-3440 09/03/2008	177,465 page 36 vol 450 08/05/2011
GRAND SLAM	Guatemala	2007-3442 8/5/07	
GRAND SLAM SLUGGER	Guatemala	2007-3443 8/5/2007	
MOONS OVER MY HAMMY	Guatemala	2007-3432 08/05/2007	11/5/186086
SLAM	Guatemala	2007-3433 08/05/2007	177,454 page 25 vol 450 08/05/2011
SLAM	Guatemala	2007-3434 08/05/2007	177,401 page 272 volu 449 08/03/2011
SLIM SLAM	Guatemala	2007-3435 08/05/2007	177,339 page 270 vol 449 8/3/2011
SUPER BIRD	Guatemala	5/4/64905	163,085 pg 55 vol 402 May 4, 2009
SUPER SCRAMBLES	Guatemala	2007-3438 08/05/2007	
ULTIMATE OMELETTE	Guatemala	5/4/67800	
DENNY'S	Haiti		No. 289 Reg - 160 03/26/2008
DENNY'S	Honduras	11476/2002 9/30/02	9/5/1993
ALL-AMERICAN SLAM	Honduras	9-Apr-07	106.333 08/29/2008

DENNY'S and design logo	Honduras	4/7/11630	12/10/719
FIT FARE	Honduras	4/7/11639	10/10/2007
French Diamond design	Honduras	4/7/11629	12/10/737
GRAND SLAM	Honduras	9-Apr-07	105.375 06/25/2008
GRAND SLAM SLUGGER	Honduras	4/7/11637	103.148 12/26/2007
MOONS OVER MY HAMMY	Honduras	4/7/11636	103.128 12/26/2007
SLAM	Honduras	4/7/11634	
SLAM	Honduras	4/7/11635	103.142 12/26/2007
SUPER BIRD	Honduras	4/7/11632	103.123 12/26/2007
SUPER SCRAMBLES	Honduras	4/7/11641	102.312 10/10/2007
DENNY'S	Hong Kong	9/6/301708713	
DENNY'S in Chinese Characters	Hong Kong	9/6/301709370	
DENNY'S	India	8/13/2008519	
DENNY'S	Indonesia	T002011037978 09/27/2011	
DENNY'S and design	Indonesia	T002011037979 09/27/2011	
DENNY'S	Indonesia	t02011037989 09/27/2011	
DENNY'S and design	Indonesia	T002011037980 09/27/2011	
Denny's	Israel	on hold until 9/14/01	10/2/50964
Denny's	Israel	on hold until 9/14/01	10/2/50965
Denny's and Device	Italy	F198C001182 10/30/98	1/16/832214
Denny's and Device	Italy	32948C/82 02/02/1982	3/9/489672
Denny's Stylized	Italy	6-Oct-88	10/16/550713
DENNY'S	Jordan	5/2/111926	5/2/111926
DENNY'S and design	Jordan	12/28/48843	2/11/122885
Denny's (word mark)	Korea (South)	78 1990	11/14/2776
DENNY'S and design	Korea (South)	41-2010-0022418 09/01/2010	41-0220864 11/9/2011
Denny's and French Diamond Design (green checkerboard)	Korea (South)	94-10053 12/09/94	9/6/32941
Denny's with French Diamond (cartoon letters)	Korea (South)	51-2003-866 reclass app 56-2003-8728 06/26/03	7/29/20818
GRAND SLAM	Korea (South)	96-53144 12/07/96	7/6/407949
DENNY'S	Kuwait	12/28/126483	
DENNY'S and design	Kuwait	12/31/126484	
DENNY'S	Lebanon	12/28/11043	
DENNY'S and design	Lebanon	12/28/11048	
ULTIMATE OMELETTE	Madrid - UK	1,050,242	8/31/2010
Denny's and French Diamond Design	Malaysia	94/08482 09/17/94	94/08482 09/26/01
DENNY'S and design	Macau		N/063734 11/12/2012
Denny's	Malaysia	12/28/4020457	12/28/4020457
ALL AMERICAN SLAM	Mexico	1/12/221523	6/30/580276

ALL AMERICAN SLAM	Mexico	1/12/221508	5/2/490594
DENNY'S	Mexico	6/11/101064	7/13/204331
DENNY'S	Mexico	1/30/160416	3/13/242337
DENNY'S & design	Mexico	9/7/675753	10/26/856647
DENNY'S DINER & design	Mexico	464,926	7/27/707755
DENNY'S TIL DAWN	Mexico	1/12/221494	7/26/498610
FIT FARE	Mexico	2/21/225137	4/21/488121
FIT FARE	Mexico	1/12/221492	4/12/487283
French diamond design	Mexico	4/11/847883	June 19, 988267
FRENCH SLAM	Mexico	1/12/221496	5/2/490589
FRENCH SLAM	Mexico	1/12/221498	2/20/517044
GRAND SLAM	Mexico		726539 0919/2001
GRAND SLAM	Mexico		9/19/726540
GRAND SLAM BREAKFAST	Mexico	1/12/221507	7/14/497174
GRAND SLAM BREAKFAST	Mexico	1/12/221506	7/14/409593
GRAND SLAM SLUGGER	Mexico	4/11/847884	5/23/985322
MOONS OVER MY HAMMY	Mexico	1/12/221517	5/2/490596
MOONS OVER MY HAMMY	Mexico	1/12/221516	7/14/497177
SCRAM SLAM	Mexico	1/12/221493	7/14/497171
SCRAM SLAM	Mexico	1/12/221510	5/2/490595
SLAM	Mexico	4/11/847885	5/23/985323
SLAM	Mexico	4/11/847886	5/23/985324
SLIM SLAM	Mexico	4/11/847887	5/23/985325
SUPER SLAM	Mexico	1/12/221514	7/14/497176
SUPER SLAM	Mexico	1/12/221515	5/22/491992
The SUPER BIRD	Mexico	1/12/221500	6/12/494073
The SUPER BIRD	Mexico	1/12/221499	5/2/490590
DENNY'S	Netherlands Antilles	08/05/2003 D-30042	9/30/10044
DENNY'S and design logo	New Zealand	4/10/766515	4/10/766515
DENNY'S	New Zealand		B143209 07/19/82
DENNY'S	New Zealand		B143208 07/19/82
DENNY'S	New Zealand		
DENNY'S	New Zealand		B92476 01/01/70
DENNY'S	New Zealand		B92477 01/20/77
Denny's (checkerboard background with Kiwi bird)	New Zealand	1/30/672625	1/30/672625
French Diamond design	New Zealand	4/10/766517	
GRAND SLAM	New Zealand	4/10/766518	766,518 04/10/2007
GRAND SLAM SLUGGER	New Zealand	4/10/766519	766,519 04/10/2007
MOONS OVER MY HAMMY	New Zealand	4/10/766520	766,520 04/10/2007
SLAM	New Zealand	4/10/766522	766,522 04/10/2007
SLIM SLAM	New Zealand	4/10/766523	766,523 04/10/2007
SUPER BIRD	New Zealand	4/10/766525	766,525 04/10/2007

ALL AMERICAN SLAM	Nicaragua	2007-01542 05/09/2007	0801426LM 06/18/2008
DENNY'S	Nicaragua		11/10/567200
DENNY'S	Nicaragua	2007-01543 05/09/2007	0801427LM 06/18/2008
DENNY'S and design (logo)	Nicaragua	2007-01544 05/09/2007	0801428LM 06/18/2008
FIT FARE	Nicaragua	2007-01545 05/09/2007	0801429LM 06/18/2008
French diamond design	Nicaragua	2007-01546 05/09/2007	0801430LM 06/18/2008
GRAND SLAM	Nicaragua	2007-01547 05/09/2007	0801138 LM 05/20/2008
GRAND SLAM SLUGGER	Nicaragua	2007-01548 5/9/2007	0801105LM 05/19/2008
MOONS OVER MY HAMMY	Nicaragua	2007-01549 05/09/2007	0801106LM 05/19/2008
SLAM	Nicaragua	2007-01550 05/09/2007	080079LM 04/16/2008
SLIM SLAM	Nicaragua	2007-01551 05/09/2007	
SUPER BIRD	Nicaragua	2007-01552 05/09/2007	0801107LM 05/19/2008
SUPER SCRAMBLES	Nicaragua	2007-01554 05/09/2007	0801109LM 05/19/2008
ULTIMATE OMELETTE	Nicaragua	2007-01555 05/09/2007	0801110LM 05/19/2008
Denny's	Norway	2/23/810540	9/23/112099
Denny's	Panama		8/2/1032
DENNY'S and design	Panama	10/15/194196	7/18/9540
Denny's	Paraguay	5/27/9693	6/14/268787
Denny's	Paraguay	5/27/9692	272.708 10/26/04
Denny's and Design	Paraguay	9/30/9420250	6/14/268787
DENNY'S	Peru		1/23/59814
DENNY'S and design	Peru		1/23/59815
Denny's	Philippines	119,857 04/18/97	4-1997-119857 08/28/2004
DENNY'	Qatar	1/1/72242	
DENNY'S and design	Qatar	1/1/72243	
DENNY'S	Saudi Arabia	11/17/23002	11/20/325
DENNY'S and design	Saudi Arabia	1/28/177990	
GRAND SLAM	Saudi Arabia	1/28/177993	
GRAND SLAM	Saudi Arabia	1/12/177994	
SLAM	Saudi Arabia	1/28/177991	
SLAM	Saudi Arabia	1/28/177992	
Denny's	Singapore	S/10167/94 11/22/94	
Denny's	Singapore	S/2555/97 03/05/97	T97/02555E 03/05/97
Denny's	Singapore	24-Jul-02	T02/11157B 07/24/02
Denny's	Spain	1/4/2285170	1/24/2285170
Denny's	Spain	3/6/2588786	9/24/2588786
Denny's	Spain		2,285,169
Denny's	Sweden		4/22/186206
Denny's	Switzerland	60528/2009 9/24/09	9/14/592
Denny's	Taiwan		10/1/1631
DENNY'S and design (color)	Taiwan	9/2/99043567	7/1/1463436
Denny's (word mark)	Thailand	7/17/459786	SM17054 08/13/02
Denny's and Sunburst Design	Trinidad & Tobago		



DENNY'S	Turkey	13-Jan-00	2000 00540 01/13/00
DENNY'S	United Arab Emirates	10/12/64281	2/27/58106
DENNY'S and design	United Arab Emirates	2/2/168717	
GRAND SLAM	United Arab Emirates	1/30/168543	
GRAND SLAM	United Arab Emirates	1/30/168544	
SLAM	United Arab Emirates	1/30/168541	
SLAM	United Arab Emirates	1/30/168542	
DENNY'S	United Kingdom (Madrid filing)		
DENNY'S	Uruguay	367.206 11/30/2005	
Denny's	Venezuela	12/8/5494	
DENNY'S	Venezuela	12/8/49406	
Denny's	Venezuela	1,053.83	13783-D 10/19/78
Denny's	Venezuela		136,159 09/23/88

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Insurance Requirements

(a) In furtherance of Section 6.07 of the Credit Agreement, (i) all insurance policies required to be maintained with respect to the assets and properties of the Grantors under Section 6.07 of the Credit Agreement shall be payable to the Administrative Agent as loss payee under a “standard” or “New York” loss payee clause for the benefit of the Secured Parties and (ii) the Administrative Agent, for the benefit of the Secured Parties, shall be named as an additional insured under all liability insurance policies. Without limiting the foregoing, each Grantor will (a) keep all of its physical property insured with casualty or physical hazard insurance on an “all risks” basis, with broad form flood and earthquake coverages and electronic data processing coverage, with a full replacement cost endorsement and an “agreed amount” clause in an amount equal to 100% of the full replacement cost of such property, (b) maintain all such workers' compensation or similar insurance as may be required by law and (c) maintain, in amounts and with deductibles equal to those generally maintained by businesses engaged in similar activities in similar geographic areas, general public liability insurance against claims of bodily injury, death or property damage occurring, on, in or about the properties of such Grantor; business interruption insurance; and product liability insurance.

(b) Each Grantor shall furnish the Administrative Agent with certificates of insurance (in a form similar to those delivered on the Closing Date) evidencing compliance with the insurance provisions contained in Section 6.07 of the Credit Agreement in respect of each insurance policy existing on the Closing Date or renewed, extended or replaced following the Closing Date.

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**SUPPLEMENT NO. \_\_** dated as of [\_\_\_\_\_] (this “Supplement”), to the Amended and Restated Guarantee and Collateral Agreement dated as of April 24, 2013 (the “Guarantee and Collateral Agreement”), among Denny's, Inc., a Florida corporation, (the “Borrower”), Denny's Corporation, a Delaware corporation (“Parent”), DFO, LLC, a Delaware limited liability company (“DFO”), Denny's Realty, LLC, a Delaware limited liability company (“Denny's Realty”), each other Subsidiary Loan Party, and Wells Fargo Bank, National Association (“Wells Fargo”), as Administrative Agent (in such capacity, the “Administrative Agent”) for the Secured Parties (as defined herein).

A. Reference is made to the Amended and Restated Credit Agreement dated as of April 24, 2013 (as amended, supplemented, waived or otherwise modified from time to time, the “Credit Agreement”), among (i) the Borrower, (ii) Parent, DFO and Denny's Realty, as Guarantors, (iii) the Lenders party thereto (the “Lenders”), and (iv) Wells Fargo, as Administrative Agent.

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 and Collateral Agreement referred to therein.

C. The Grantors have entered into the Guarantee and Collateral Agreement in order to induce the Lenders to make Loans and the L/C Issuer to issue Letters of Credit. Section 7.16 of the Guarantee and Collateral Agreement provides that additional Subsidiaries may become Subsidiary Loan Parties under the Guarantee and Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “New Subsidiary”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Subsidiary Loan Party under the Guarantee and Collateral Agreement in order to induce the Lenders to make additional Loans and the L/C Issuer 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 7.16 of the Guarantee and Collateral Agreement, the New Subsidiary by its signature below becomes a Subsidiary Loan Party, a Grantor and a Guarantor under the Guarantee and Collateral Agreement with the same force and effect as if originally named therein as a Subsidiary Loan Party, a Grantor and a Guarantor, and the New Subsidiary hereby (a) agrees to all the terms and provisions of the Guarantee and Collateral Agreement applicable to it as a Subsidiary Loan Party, Grantor and Guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor and Guarantor 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 Obligations (as defined in the Guarantee and Collateral Agreement), does hereby create and grant to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties and 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 Guarantee and Collateral Agreement) of the New Subsidiary. Each reference to a “Subsidiary Loan Party”, a “Grantor” or a “Guarantor” in the Guarantee and Collateral Agreement shall be deemed to include the New Subsidiary. The Guarantee and Collateral Agreement is hereby incorporated herein by reference.

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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 (a) the Administrative Agent shall have received a counterpart of this Supplement that bears the signature of the New Subsidiary and (b) 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. 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 Article 9 Collateral of the New Subsidiary, (b) set forth on Schedule II attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary and (c) 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 Guarantee and Collateral Agreement shall remain in full force and effect.

**SECTION 6. THIS SUPPLEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE 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 STATE).**

SECTION 7. Any provision of this Supplement 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 in such jurisdiction of the remaining provisions hereof and of the Guarantee and Collateral Agreement; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate 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 Guarantee and Collateral Agreement.

SECTION 9. 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, disbursements and other charges of counsel for the Administrative Agent.

**IN WITNESS WHEREOF** , the New Subsidiary and the Administrative Agent have duly executed this Supplement to the Guarantee and Collateral Agreement as of the day and year first above written.

[Name of New Subsidiary]

By:

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Name:

Title:

Legal Name:

Jurisdiction of

Formation:

Location of Chief

Executive Office:

**wells fargo bank, NATIONAL ASSOCIATION** , as

Administrative Agent,

By:

Name:

Title:

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Schedule I  
to Supplement No. \_\_\_ to the  
Guarantee and  
Collateral Agreement

LOCATION OF ARTICLE 9 COLLATERAL

Description

Location

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PLEDGED STOCK

Number of Issuer Certificate	Registered Owner	Number and Class of Equity Interest	Percentage of Equity Interests

PLEDGED DEBT SECURITIES

Issuer	Principal Amount	Date of Note	Maturity Date

OTHER PROPERTY

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[FORM OF] PERFECTION QUESTIONNAIRE

**DENNY'S, INC.**, a Florida corporation (“ Denny's”, the “ Borrower”) hereby certifies the following to Wells Fargo Bank, National Association, as Administrative Agent (the “ Administrative Agent”) under that certain amended and restated credit agreement to be dated on or about April 24, 2013 among the Borrower, Denny's Corporation, a Delaware corporation (the “ Parent”), certain subsidiaries of the Borrower (together with the Parent, collectively, the “ Guarantors”; and together with the Borrower, the “ Credit Parties”), the lenders from time to time party thereto, and the Administrative Agent (the “ Credit Agreement”; capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto (a) in the most recent draft of the Credit Agreement circulated to the Borrower and (b) the Uniform Commercial Code, as applicable):

**A IDENTIFICATION MATTERS**

1. An organizational chart depicting the interrelationships of all Credit Parties is set forth on Schedule A1 attached hereto.

The information contained on Schedule A2 is true and correct.

2. Any names of a Credit Party (including trade names) not specified above in Item A.1. that such Credit Party has had during the five (5) years preceding the closing date of the Credit Agreement (the “ Closing Date”) are:

<b>Credit Party</b>	<b>Additional Names</b>

3. Set forth on Schedule A3 hereto is a complete and accurate list of all subsidiaries (including foreign subsidiaries) of each Credit Party, together with (a) the jurisdiction of incorporation/formation, (b) the number of shares of each class of capital stock or other equity interests outstanding, (c) the number and percentage of outstanding shares of each class owned (directly or indirectly) by such Credit Party and (d) an indication as to whether the shares are certificated.
-



Credit Party	Additional Names

- Set forth on Schedule A3 hereto is a complete and accurate list of all subsidiaries (including foreign subsidiaries) of each Credit Party, together with (a) the jurisdiction of incorporation/formation, (b) the number of shares of each class of capital stock or other equity interests outstanding, (c) the number and percentage of outstanding shares of each class owned (directly or indirectly) by such Credit Party and (d) an indication as to whether the shares are certificated.

**B LEGAL MATTERS**

- During the five (5) year period preceding the Closing Date no Credit Party has been party to any merger, consolidation, stock acquisition or purchase of all or a substantial portion of the assets of any Person, except as set forth on Schedule B1.**

**C LOCATIONS**

- Set forth on Schedule C1 a list of all real property owned by each Credit Party. Please include the following information for each location: a street address (including county), an indication of whether the location is the chief executive office of the applicable Credit Party and the fair market value.
- Set forth on Schedule C2 is a list of locations (other than those set forth on Schedule C2) where any Credit Party maintains any Inventory or Equipment having a value in excess of \$1,000,000. Please include the following information for each location: a street address (including county), an indication of whether the location is the chief executive office of the applicable Credit Party, the approximate value of any Collateral located on such premises, the annual rental value, an indication if such property is leased by the applicable Credit Party (and, if so, the name and address of the owner of the location), or operated by a third party, such as a warehouseman or processor (and, if so, the name and address of such third party).

**D SPECIAL COLLATERAL**

- All of the financial institutions at which any Credit Party maintains any deposit accounts, investment accounts, securities accounts or similar accounts or other investment property (other than certificated securities and other investment property set forth on Schedule D6), together with the name of account, account number and a description for each such account (including the recent value), are set forth on Schedule D1.
- All Letter-of-Credit Rights and Electronic Chattel Paper of any Credit Party having a value in excess of \$25,000 are set forth on Schedule D2.

3. All Instruments, Tangible Chattel Paper and Documents of each Credit Party having a value in excess of \$25,000 are set forth on Schedule D3.
4. All patents, trademarks and copyrights owned by each Credit Party as of the date hereof, all patent licenses, trademark licenses and copyright licenses to which such Credit Party is a party as of the date hereof, and all patent applications, trademark applications, and copyright applications made by each Credit Party as of the date hereof are listed on Schedule D4.
5. All commercial tort claims of any Credit Party reasonably estimated to exceed \$1,000,000 are set forth on Schedule D5.
6. The issued and outstanding equity interests and any other certificated securities having a value in excess of \$25,000 owned by each Credit Party is set forth on Schedule D6.

**E FINANCING MATTERS**

1. Any current creditors of any Credit Party that will be refinanced in connection with the funding of the initial Loans and any letters of credit currently outstanding on behalf of any Credit Party (together with an indication of whether any such letters of credit will be replaced or collateralized on the Closing Date) are as follows:

Credit Party	Creditors to be Refinanced	Letters of Credit / Replaced or Collateralized

CHAR1

1305063v2

CHAR1

1305063v2

**F INSURANCE**

1. A complete and accurate list of all insurance policies currently maintained by the Credit Parties is set forth on Schedule F1 hereto.

I hereby certify on behalf of the Credit Parties and not in my individual capacity that, as of the date hereof, the statements set forth in this Perfection Questionnaire and in the Schedules attached hereto are accurate and complete in all respects.

**DENNY'S, INC. ,**  
a Florida corporation

By:  
Name:  
Title:

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SCHEDULE TO  
perfection QUESTIONNAIRE

Schedule A1	Organizational Chart
Schedule A2	Identification Matters
Schedule A3	Subsidiaries
Schedule B1	Legal Matters
Schedule C1	Owned Locations
Schedule C2	Other Locations
Schedule D1	Deposit Accounts/Investment Property (other than as set forth on Schedule D6)
Schedule D2	Letter-of-Credit Rights & Electronic Chattel Paper
Schedule D3	Instruments, Tangible Chattel Paper & Documents
Schedule D4	Intellectual Property
Schedule D5	Commercial Tort Claims
Schedule D6	Equity Interests & Certificated Security Interests
Schedule F1	Insurance

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Schedule A1  
Organizational Chart

[See attached]

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Schedule A2  
Identification Matters

[TO BE COMPLETED FOR EACH CREDIT PARTY]

Legal Name of Credit Party:	
Previous Legal Names with the past five (5) years:	
State of Organization:	
Type of Organization:	
Jurisdictions Qualified to do Business Except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect :	
Address of Chief Executive Office:	
Address of Principal Place of Business:	
Business Phone Number:	
Organizational Identification Number (if any):	
Federal Tax Identification Number:	
Ownership Information (e.g. publicly held, if private or partnership-identity of owners/partners):	

1 Except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect

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Schedule A3

Subsidiaries

<b>Subsidiary</b>	<b>Jurisdiction of Incorp/ Formation</b>	<b>Number of Shares of Capital Stock</b>	<b>Number and Percentage of Outstanding Shares</b>	<b>Shares Certificated?</b>

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Schedule B1  
Legal Matters

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Schedule D2  
Letter-of-Credit Rights & Electronic Chattel Paper

Letter-of-Credit Rights:

<b>Credit Party</b>	<b>Description</b>

Electronic Chattel Paper:

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<b>Credit Party</b>	<b>Description</b>

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Schedule D3  
Instruments, Tangible Chattel Paper & Documents

Instruments:

<b>Credit Party</b>	<b>Description</b>

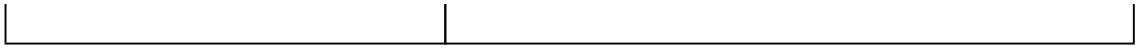
Tangible Chattel Paper:

---

<b>Credit Party</b>	<b>Description</b>

Documents:

<b>Credit Party</b>	<b>Description</b>





Schedule D4  
Intellectual Property

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Schedule D5  
Commercial Tort Claims

<b>Credit Party</b>	<b>Description</b>

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Schedule F1  
Insurance

CERTIFICATION

I, John C. Miller, certify that:

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

Date: May 1, 2013

By: /s/ John C. Miller  
John C. Miller  
President and Chief Executive Officer

CERTIFICATION

I, F. Mark Wolfinger, certify that:

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

Date: May 1, 2013

By: /s/ F. Mark Wolfinger  
F. Mark Wolfinger  
Executive Vice President,  
Chief Administrative Officer and  
Chief Financial Officer

CERTIFICATION

John C. Miller  
President and Chief Executive Officer of Denny's Corporation

and

F. Mark Wolfinger  
Executive Vice President, Chief Administrative Officer and Chief Financial Officer

Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Denny's Corporation (the "Company") on Form 10-Q for the period ended March 27, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John C. Miller, President and Chief Executive Officer of the Company, and I, F. Mark Wolfinger, Executive Vice President, Chief Administrative Officer and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 1, 2013

By: /s/ John C. Miller  
John C. Miller  
President and Chief Executive Officer

Date: May 1, 2013

By: /s/ F. Mark Wolfinger  
F. Mark Wolfinger  
Executive Vice President,  
Chief Administrative Officer and  
Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Denny's Corporation and will be retained by Denny's Corporation and furnished to the Securities and Exchange Commission or its staff upon request.