

# FIESTA RESTAURANT GROUP, INC.

## FORM 8-K (Current report filing)

Filed 05/08/12 for the Period Ending 05/07/12

Address	14800 LANDMARK BOULEVARD, SUITE 500 ADDISON, TX 75254
Telephone	972-702-9300
CIK	0001534992
Symbol	FRGI
SIC Code	5812 - Eating Places
Industry	Restaurants
Sector	Services
Fiscal Year	12/31

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

Date of Report (Date of earliest event reported) May 7, 2012

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**Fiesta Restaurant Group, Inc.**

(Exact name of registrant as specified in its charter)

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

**001-35373**  
(Commission  
File Number)

**90-0712224**  
(I.R.S. Employer  
Identification No.)

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

**13203**  
(Zip Code)

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

**N/A**

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

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

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

On May 7, 2012, Fiesta Restaurant Group, Inc. (the “Company”) entered into a Registration Rights Agreement (the “Registration Rights Agreement”), dated as of May 7, 2012, with Jefferies Capital Partners IV LP, Jefferies Employee Partners IV LLC and JCP Partners IV LLC (collectively, the “JCP Group”).

A description of the Registration Rights Agreement is included in the section titled “Certain Relationships and Related Party Transactions – Other” in the Information Statement filed as Exhibit 99.1 to the Company’s Registration Statement on Form 10, as amended, File No. 001-35373, and is incorporated by reference herein.

A copy of the Registration Rights Agreement is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

**ITEM 2.02. RESULTS OF OPERATIONS AND FINANCIAL CONDITION.**

The Company’s financial results for its first fiscal quarter ended April 1, 2012 along with related supplemental information are attached hereto as Exhibit 99.1 and are incorporated by reference herein.

On May 8, 2012, Carrols Restaurant Group, Inc. (“Carrols Restaurant Group”) issued a press release announcing the completion of the Spin-Off (as defined below). The text of the press release is attached hereto as Exhibit 99.2 and is incorporated by reference herein.

**ITEM 5.01. CHANGES IN CONTROL OF REGISTRANT.**

On May 7, 2012, Carrols Restaurant Group completed the spin-off (the “Spin-Off”) of the Company to its stockholders with each stockholder of Carrols Restaurant Group receiving one share of the Company’s common stock, par value \$0.01 per share, for every share of Carrols Restaurant Group’s common stock held of record at the close of business on April 26, 2012, the record date of the Spin-Off. In connection with the Spin-Off, Carrols Restaurant Group’s stockholders received 100% of the Company’s outstanding common stock. The Company’s common stock trades on The NASDAQ Global Select Market under the symbol “FRGI”. Carrols Restaurant Group’s common stock continues to trade on The NASDAQ Global Market under the symbol “TAST”.

In connection with the Spin-Off, on April 24, 2012, the Company, Carrols Restaurant Group and Carrols Corporation, a wholly-owned subsidiary of Carrols Restaurant Group, entered into a (i) Separation and Distribution Agreement, (ii) Tax Matters Agreement, (iii) Employee Matters Agreement and (iv) Transition Services Agreement (collectively, the “Spin-Off Agreements”). A description of the terms of the Spin-Off Agreements and the Company’s relationship with Carrols Restaurant Group is included in the section titled “Certain Relationships and Related Party Transactions” in the Information Statement filed as Exhibit 99.1 to the Company’s Registration Statement on Form 10, as amended, File No. 001-35373, and is incorporated by reference herein. Forms of the Spin-Off Agreements are attached as Exhibit 10.1, Exhibit 10.2, Exhibit 10.3 and Exhibit 10.4 to the Company’s Registration Statement on Form 10, as amended, File No. 001-35373, and are incorporated by reference herein.

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

On May 7, 2012, Daniel T. Accordino, Joel M. Handel and Clayton E. Wilhite resigned as members of the Company's Board of Directors in connection with the Spin-Off.

On May 7, 2012, Paul R. Flanders resigned as Vice President, Chief Financial Officer and Treasurer of the Company in connection with the Spin-Off. On May 7, 2012, Mr. Flanders was appointed interim Chief Financial Officer of the Company until such time as the Company hires a permanent Chief Financial Officer. A description of Mr. Flanders' biography is included in the section titled "Management – Executive Officers" in the Information Statement filed as Exhibit 99.1 to the Company's Registration Statement on Form 10, as amended, File No. 001-35373, and is incorporated by reference herein.

On May 7, 2012, Timothy J. LaLonde resigned as Vice President, Controller of the Company in connection with the Spin-Off.

On May 7, 2012, Timothy P. Taft, the Company's Chief Executive Officer and President, became a member of the Company's Board of Directors. A description of Mr. Taft's biography is included in the section titled "Management – Executive Officers" in the Information Statement filed as Exhibit 99.1 to the Company's Registration Statement on Form 10, as amended, File No. 001-35373, and is incorporated by reference herein.

On May 7, 2012, Stephen P. Elker became a member of the Company's Board of Directors. A description of Mr. Elker's biography is included in the section titled "Management – Board of Directors" in the Information Statement filed as Exhibit 99.1 to the Company's Registration Statement on Form 10, as amended, File No. 001-35373, and is incorporated by reference herein.

Mr. Elker serves on the Company's Audit Committee and the Corporate Governance and Nominating Committee. Mr. Elker serves as the Chairman of the Audit Committee.

The Company's 2012 Stock Incentive Plan (the "Fiesta Plan") became effective on May 7, 2012. A description of the terms of the Fiesta Plan is included in the section titled "Executive Compensation – Grants of Plan Based Awards – Fiesta Restaurant Group 2012 Stock Incentive Plan" in the Information Statement filed as Exhibit 99.1 to the Company's Registration Statement on Form 10, as amended, File No. 001-35373, and is incorporated by reference herein. A copy of the Fiesta Plan is attached hereto as Exhibit 10.2 and is incorporated by reference herein.

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**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.****(d) Exhibits**

- 10.1 Registration Rights Agreement, dated as of May 7, 2012, by and among Fiesta Restaurant Group, Inc., Jefferies Capital Partners IV LP, Jefferies Employee Partners IV LLC and JCP Partners IV LLC
- 10.2 Fiesta Restaurant Group, Inc. 2012 Stock Incentive Plan†
- 99.1 Financial results and related supplement information of Fiesta Restaurant Group, Inc. for the fiscal quarter ended April 1, 2012
- 99.2 Text of Carrols Restaurant Group, Inc. Press Release, dated May 8, 2012 (without financial tables)

† Compensatory plan or arrangement.

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## Signatures

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

FIESTA RESTAURANT GROUP, INC.

Date: May 8, 2012

By: /s/ Joseph A. Zirkman

Name: Joseph A. Zirkman

Title: Vice President, General Counsel and Secretary

**REGISTRATION RIGHTS AGREEMENT**

THIS REGISTRATION RIGHTS AGREEMENT (this “Agreement”) is made as of May 7, 2012 by and among Fiesta Restaurant Group, Inc., a Delaware corporation (the “Company”) and the Persons listed on the signature page hereto as investors (collectively referred to herein as the “Investors”).

The Investors own 6,559,739 shares of Carrols Restaurant Group, Inc., a Delaware corporation and the indirect parent company of the Company (“CRG”), as of date hereof. Upon the consummation of the spin-off (the “Spin-Off”) of the Company by CRG by way of a pro rata stock dividend to CRG’s stockholders whereby each holder of CRG common stock will receive one share of the Company’s Common Stock for each one share of CRG common stock held by such stockholder at the close of business on the record date of the Spin-Off, the Investors will own 6,559,739 shares (the “Shares”) of Common Stock. Unless otherwise provided in this Agreement, other capitalized terms used herein shall have the meanings set forth in Section 9 hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Effectiveness.

This Agreement shall become effective only upon the consummation of the Spin-Off.

2. Demand Registrations.

(a) Short-Form Registrations. The holders of a majority of the Registrable Securities, as a group, shall be entitled to request registration on Form S-3, or any similar form (each, a “Short-Form Registration”), in which the Company shall pay Registration Expenses as provided in Section 6 of this Agreement; provided that, except in the case of one non-underwritten Short-Form Registration (the “Excepted Registration”), the aggregate offering value of the Registrable Securities requested to be registered in any Short-Form Registration which is qualified under Rule 415 under the Securities Act must be equal to at least \$5,000,000 and which contemplates an underwritten offering must be equal to at least \$10,000,000. The offering contemplated by the Excepted Registration shall not be underwritten. Demand Registrations shall be Short-Form Registrations whenever the Company is permitted to use any applicable short form. The Company shall use its best efforts to make Short-Form Registrations on Form S-3 available for the sale of Registrable Securities. If a request for a Demand Registration is for a shelf registration pursuant to Rule 415 of the Securities Act, the Company shall use its reasonable best efforts to keep such shelf registration continuously effective for up to 9 months following such registration, but not later than the date on which all of the Registrable Securities covered by such shelf registration may be sold without limitation or restriction pursuant to Rule 144 under the Securities Act (or any successor provision having similar effect); provided, however, that prior to the termination of such shelf registration prior to the expiration of such maximum period for the reason that such Registrable Securities may be sold without limitation or restriction pursuant to Rule 144 under the Securities Act or any successor provision having similar effect, the Company shall first furnish to each holder of Registrable Securities participating in such shelf registration

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(i) an opinion, in form and substance reasonably satisfactory to the holders of a majority of the Registrable Securities, of counsel for the Company reasonably satisfactory to the holders of a majority of the Registrable Securities requesting such registration stating that such Registrable Securities are freely saleable without limitation or restriction pursuant to Rule 144 under the Securities Act (or any successor provision having similar effect) or (ii) a “No-Action Letter” from the staff of the Securities and Exchange Commission stating that the Securities and Exchange Commission would not recommend enforcement action if the Registrable Securities included in such shelf registration were sold in a public sale other than pursuant to an effective registration statement or Rule 144.

(b) Long-Form Registrations. At any time that a Short-Form Registration pursuant to paragraph 2(a) is not available, the holders of a majority of the Registrable Securities, as a group, shall be entitled to request registration on Form S-1, or any similar form (each, a “Long-Form Registration”), in which the Company shall pay Registration Expenses as provided in Section 6 of this Agreement; provided that (i) the aggregate offering value of the Registrable Securities requested to be registered in any Long-Form Registration must be equal to at least \$15,000,000; (ii) such holders shall not be permitted more than three (3) Long-Form Registrations hereunder; and (iii) each Long-Form Registration shall be an underwritten registration. A registration shall not count as one of the permitted Long-Form Registrations until it has become effective, and no Long-Form Registration shall count as one of the permitted Long-Form Registrations unless the person or group making such request is able to register and sell at least 90% of the Registrable Securities requested to be included in such registration; provided that in any event the Company shall pay Registration Expenses as provided in Section 6 of this Agreement in connection with any registration initiated as a Long-Form Registration whether or not it has become effective and whether or not such registration has counted as one of the permitted Long-Form Registrations.

(c) All registrations requested pursuant to this Section 2 are referred to herein as “Demand Registrations”. The holders of Registrable Securities shall not be permitted more than a total of five Demand Registrations hereunder. Each request for a Demand Registration shall specify the approximate number of Registrable Securities requested to be registered and the anticipated per share price range for such offering. Within ten days after receipt of any such request, the Company shall give written notice of such requested registration to all other holders of Registrable Securities and shall include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within 15 days after the receipt of the Company’s notice.

(d) Priority on Demand Registrations. The Company will not include in any Demand Registration any securities which are not Registrable Securities without the written consent of the holders of a majority of the Registrable Securities requesting such registration. If a Demand Registration is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities, if any, which can be sold therein without adversely affecting the marketability of the offering, the Company shall include in such registration prior to the inclusion of any securities which are not Registrable Securities the number of Registrable Securities requested to be included which in the opinion of such underwriters can be sold without adversely affecting the marketability of the offering, pro rata among the respective holders

thereof on the basis of the amount of Registrable Securities owned by each such holder. Notwithstanding the foregoing, no employee of the Company or any subsidiary thereof will be entitled to participate, directly or indirectly, in any such registration to the extent that the managing underwriter determines in good faith that the participation of such employee in such registration would adversely affect the marketability or offering price of the securities being sold in such registration. In the event the Company shall not, by virtue of this paragraph 2(d), include in any Demand Registration all of the Registrable Securities of any holder of Registrable Securities requesting to be included in such Demand Registration, such holder may, upon written notice to the Company given within five days of the time such holder first is notified of such matter, reduce the amount of Registrable Securities it desires to have included in such Demand Registration, whereupon only the Registrable Securities, if any, it desires to have included will be so included and the holders of Registrable Securities not so reducing shall be entitled to a corresponding increase in the amount of Registrable Securities to be included in such Demand Registration.

(e) Restrictions on Demand Registrations. The Company shall not be obligated to effect any Demand Registration within 180 days after the effective date of a previous Demand Registration or a previous registration in which the holders of Registrable Securities were given piggyback rights pursuant to Section 3 below. The Company may postpone for up to 120 days the filing or the effectiveness of a registration statement for a Demand Registration if the Company in good faith determines that such Demand Registration would reasonably be expected to have a material adverse effect on any proposal or plan by the Company or any of its Subsidiaries to engage in any acquisition of assets (other than in the ordinary course of business) or any merger, consolidation, tender offer, reorganization or similar transaction; provided that in such event, the holders of Registrable Securities initially requesting such Demand Registration shall be entitled to withdraw such request and, if such request is withdrawn, such Demand Registration shall not count as one of the permitted Demand Registrations hereunder and the Company shall pay Registration Expenses as provided in Section 6 of this Agreement in connection with such registration.

(f) Selection of Underwriters. The holders of a majority of the Registrable Securities requesting registration hereunder shall have the right to select the investment banker(s) and manager(s) to administer the offering, subject to the reasonable consent of the Company.

(g) Other Registration Rights. The Company may grant rights to other Persons to participate in Piggyback Registrations so long as such rights are subordinate to the rights of the holders of Registrable Securities with respect to such Piggyback Registrations as set forth in paragraphs 3(c) and 3(d) below.

### 3. Piggyback Registrations.

(a) Right to Piggyback. Whenever the Company proposes to register any of its securities under the Securities Act (other than pursuant to a Demand Registration) and the registration form to be used may be used for the registration of Registrable Securities (a “Piggyback Registration”), the Company shall give prompt written notice to all holders of Registrable

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Securities of its intention to effect such a registration and shall include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within 20 days after the receipt of the Company's notice.

(b) Piggyback Expenses. The Registration Expenses of the holders of Registrable Securities shall be paid by the Company as provided in Section 6 in all Piggyback Registrations.

(c) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability of the offering, the Company shall include in such registration (i) first, the securities the Company proposes to sell, (ii) second, the Registrable Securities requested to be included in such registration, pro rata among the holders of such Registrable Securities on the basis of the number of shares owned by each such holder, and (iii) third, other securities requested to be included in such registration.

(d) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of holders of the Company's securities, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability of the offering, the Company shall include in such registration (i) first, the securities requested to be included therein by the holders requesting such registration, (ii) second, the Registrable Securities requested to be included in such registration, pro rata among the holders of such Registrable Securities on the basis of the number of shares owned by each such holder, and (iii) third, other securities requested to be included in such registration.

(e) Reserved.

(f) Selection of Underwriters. If any Piggyback Registration is an underwritten offering, the Company shall select the investment banker (s) and manager(s) for the offering.

#### 4. Holdback Agreements.

(a) Each holder of Registrable Securities shall not effect any public sale or distribution (including sales pursuant to Rule 144) of equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, during the seven days prior to and the 180-day period beginning on the effective date of any underwritten Demand Registration or any underwritten Piggyback Registration in which Registrable Securities are included (except as part of such underwritten registration), unless the underwriters managing the registered public offering otherwise agree.

(b) Reserved.

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5. Registration Procedures.

Whenever the holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement, the Company shall use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof and pursuant thereto the Company shall as expeditiously as possible:

(a) prepare and file with the Securities and Exchange Commission a registration statement with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective (provided that before filing a registration statement or prospectus or any amendments or supplements thereto, the Company shall furnish to the counsel selected by the holders of a majority of the Registrable Securities covered by such registration statement copies of all such documents proposed to be filed, which documents shall be subject to the review and comment of such counsel);

(b) notify each holder of Registrable Securities of the effectiveness of each registration statement filed hereunder and prepare and file with the Securities and Exchange Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than 9 months and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(c) furnish to each seller of Registrable Securities such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(d) use its best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);

(e) notify each seller of such Registrable Securities, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, at the request of any such seller, the Company shall prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

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(f) cause all such Registrable Securities to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed or quoted;

(g) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(h) enter into such customary agreements (including underwriting agreements in customary form) and take all such other actions as the holders of a majority of the Registrable Securities being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including effecting a stock split or a combination of shares);

(i) in the case of an underwritten offering, use its reasonable best efforts to obtain (i) a “comfort letter” from the Company’s independent public accountants in customary form and covering such matters of the type customarily covered by comfort letters and (ii) opinions of counsel from the Company’s counsel in customary form and covering such matters of the type customarily covered in a public issuance of securities, in each case, in form and substance reasonably satisfactory to the underwriters and addressed to the managing underwriters;

(j) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company’s officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(k) otherwise use its best efforts to comply with all applicable rules and regulations of the Securities and Exchange Commission, and make available to its security holders, as soon as reasonably practicable but no later than 90 days after the end of any 12-month period, an earnings statement covering the period of at least twelve months beginning with the first day of the Company’s first full calendar quarter after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(l) in the event of the issuance of any stop order suspending the effectiveness of a registration statement, or of any order suspending or preventing the use of any related prospectus or suspending the qualification of any common stock included in such registration statement for sale in any jurisdiction, the Company shall use its best efforts promptly to obtain the withdrawal of such order; and

(m) permit any holder of Registrable Securities which holder, in its sole and exclusive judgment, might be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such holder and its counsel should be included.

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Cooperation by the Company and its management shall include, but not be limited to, management's attendance and reasonable presentations in respect of the Company at road shows with respect to the offering of Registrable Securities.

6. Registration Expenses.

(a) All expenses incident to the Company's performance of or compliance with this Agreement, including without limitation all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for the Company and all independent certified public accountants, underwriters (excluding discounts, commissions and underwriters' counsel fees) and other Persons retained by the Company (all such expenses being herein called "Registration Expenses"), shall be borne by the Company, except as otherwise provided in this Agreement. In addition to underwriting discounts, commissions and underwriters' counsel fees, the holders of the Registrable Securities included in the Excepted Registration shall bear the out-of-pocket Registration Expenses of the Excepted Registration. The Company shall, in any event, pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Company are then listed or on the FINRA automated quotation system.

(b) In connection with each Demand Registration (other than the Excepted Registration) and each Piggyback Registration, the Company shall reimburse the holders of Registrable Securities included in such registration for not more than \$75,000 in the aggregate of the reasonable fees and disbursements of one counsel chosen by the holders of a majority of the Registrable Securities included in such registration.

(c) To the extent Registration Expenses are not required to be paid by the Company, each holder of securities included in any registration hereunder shall pay those Registration Expenses allocable to the registration of such holder's securities so included, and any Registration Expenses not so allocable shall be borne by all sellers of securities included in such registration in proportion to the aggregate selling price of the securities to be so registered.

7. Indemnification.

(a) The Company shall indemnify, to the extent permitted by law, each holder of Registrable Securities, its affiliates and their respective officers, directors, managers, partners, members, shareholders, employees and agents and each Person who controls such holder (within the meaning of the Securities Act) against, and pay and reimburse any of the foregoing for any and all losses, claims, damages, liabilities and expenses, joint or several, to which any of the foregoing may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages, liabilities or expenses (or actions or proceedings, whether commenced or

threatened, in respect thereof) arise out of or are based upon (i) any untrue or alleged untrue statement of material fact contained in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto (including without limitation any “free writing prospectus” as defined in Rule 433 under the Securities Act (an “issuer free writing prospectus”), or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405 under the Securities Act), (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation by the Company of the Securities Act or any rule or regulation promulgated thereunder or any state securities laws applicable to the Company and relating to action or inaction required by the Company in connection with any such registration statement, and will pay and reimburse such holder, its affiliates and their respective officers, directors, managers, partners, members, shareholders, employees and agents for any legal or any other expenses actually and reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, liability, action or proceeding, except insofar as the same are caused by or contained in any information furnished in writing to the Company by such holder expressly for use therein or by such holder’s failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such holder with a sufficient number of copies of the same. In connection with an underwritten offering, the Company shall indemnify such underwriters, their officers and directors and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the holders of Registrable Securities.

(b) In connection with any registration statement in which a holder of Registrable Securities is participating, each such holder shall furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, shall indemnify the Company, its directors, officers, managers, partners, members, shareholders, employees and agents and each Person who controls the Company (within the meaning of the Securities Act) against, and pay and reimburse any of the foregoing for any and all losses, claims, damages, liabilities and expenses, joint or several, to which any of the foregoing may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages, liabilities or expenses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon (i) any untrue or alleged untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto (including without limitation any issuer free writing prospectus or that would otherwise constitute a “free writing prospectus” as referred to in Section 7(a) above), (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation by a holder of Registrable Securities of the Securities Act or any rule or regulation promulgated thereunder or any state securities laws applicable to such holder and relating to action or inaction required by such holder in connection with any such registration statement, but only to the extent that such untrue statement or omission is contained in, or such action or inaction relates to, any information or affidavit so furnished in writing by such holder, and such holder will reimburse the Company and each such director, officer and controlling Person for any legal or any other expenses actually and reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, liability, action or proceeding, provided that the obligation to indemnify shall be individual, not joint and several, for each holder and shall be limited to the net amount of proceeds received by such holder from the sale of Registrable Securities pursuant to such registration statement.

(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any Person's right to indemnification hereunder to the extent such failure has not prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). No indemnifying party shall, without the prior written consent of an indemnified party, effect any settlement of any pending or threatened action, suit or proceeding in respect of which such indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim.

(d) The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive the transfer of securities.

(e) In the event the Company's indemnification is unavailable for any reason, the Company also agrees to make such provisions, as are reasonably requested by any indemnified party for contribution to such party in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other as well as any other relevant equitable considerations. The relevant fault of the indemnifying party and the indemnified party will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. Notwithstanding the foregoing, the amount any holder of Registrable Securities will be obligated to contribute pursuant to this paragraph 7(e) will be limited to an amount equal to the net proceeds to such holder sold pursuant to the registration statement which gives rise to such obligation to contribute (less the aggregate amount of any damages which the holder has otherwise been required to pay in respect of such loss, claim, damage, liability or action or any substantially similar loss, claim, damage, liability or action arising from the sale of such Registrable Securities). The parties hereto agree that it would not be just and equitable if contribution pursuant to this paragraph 7(e) were determined by pro rata allocation or by any other method of allocation which does not take into account the equitable considerations referred to in this paragraph 7(e).

(f) No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

8. Participation in Underwritten Registrations.

No Person may participate in any registration hereunder which is underwritten unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements; provided that no holder of Registrable Securities included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such holder and such holder's intended method of distribution) or to undertake any indemnification obligations to the Company or the underwriters with respect thereto, except as otherwise provided in Section 7 hereof.

9. Definitions.

"Affiliate" of a Person other than an individual means any other Person, directly or indirectly controlling, controlled by or under common control with such Person or, with respect to any partnership, any partner thereof.

"Common Stock" means the Company's common stock, par value \$0.01 per share.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or department, agency or political subdivision thereof.

"Public Sale" means any sale of securities to the public pursuant to an offering registered under the Securities Act or to the public through a broker, dealer or market maker pursuant to the provisions of Rule 144 adopted under the Securities Act.

"Registrable Securities" means (i) the Shares and additional shares of Common Stock that may be acquired by the Investors after the date of the Spin-Off and (ii) any Common Stock issued or issuable with respect to such shares by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when they cease to be held by the Investors or any of their Affiliates.

The terms "register," "registered" and "registration" shall refer to registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

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“Securities Act” means the Securities Act of 1933, as amended from time to time.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

Unless otherwise stated, other capitalized terms contained herein have the meanings set forth in the Purchase Agreements.

10. Miscellaneous.

(a) No Inconsistent Agreements. The Company shall not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the holders of Registrable Securities in this Agreement.

(b) Rule 144 Reporting. With a view to making available to the holders of Registrable Securities the benefits of Rule 144 and any other rule or regulation of the Securities and Exchange Commission that may at any time permit the holders to sell the Registrable Securities to the public without registration, the Company agrees to use commercially reasonable efforts: (i) to make and keep public information available as those terms are understood in Rule 144, (ii) to file with the Securities and Exchange Commission in a timely manner all reports and other documents required to be filed by an issuer of securities registered under the Securities Act or the Securities Exchange Act pursuant to Rule 144, (iii) as long as any holder owns any Registrable Securities, to furnish in writing upon such holder’s request a written statement by the Company that it has complied with the reporting requirements of Rule 144 and of the Securities Act and the Securities Exchange Act, and to furnish to such holder a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed by the Company as may be reasonably requested in availing such holder of any rule or regulation of the Securities and Exchange Commission permitting the selling of any such Registrable Securities without registration and (iv) undertake any additional actions reasonably necessary to maintain the availability of a registration statement or the use of Rule 144.

(c) Remedies. Any Person having rights under any provision of this Agreement shall be entitled to enforce such rights specifically to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or other security) for specific performance and for other injunctive relief in order to enforce or prevent violation of the provisions of this Agreement.

(d) Amendments and Waivers. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or the holders of Registrable Securities unless such modification, amendment or waiver is approved in writing by the Company or the holders of a majority of the Registrable Securities, as the case may be. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

(e) Successors and Assigns. All covenants and agreements in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto whether so expressed or not; provided that the parties hereto may only assign their rights under this Agreement among its Affiliates, and provided that any restrictions contained in this Agreement shall continue to be applicable to the holders of Registrable Securities after any such assignment other than a Public Sale.

(f) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(g) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.

(h) Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

(i) Governing Law. The corporate law of the State of Delaware shall govern all issues and questions concerning the relative rights of the Company and its stockholders. All other issues and questions concerning the construction, validity, interpretation and enforcement of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(j) Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally to the recipient, sent to the recipient by reputable overnight courier service (charges prepaid) or mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the parties hereto at the address of each such party set forth in the records of the Company or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

(k) Further Assurances. Each party hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**COMPANY:**

FIESTA RESTAURANT GROUP, INC.

By: /s/ Joseph A. Zirkman

Name: Joseph A. Zirkman

Title: Vice President, General Counsel and Secretary

**INVESTORS:**

JEFFERIES CAPITAL PARTNERS IV LP,

JEFFERIES EMPLOYEE PARTNERS IV LLC and JCP PARTNERS IV

LLC

By: Jefferies Capital Partners IV LLC, as Manager

By: /s/ James L. Luikart

Name: James L. Luikart

Title: Managing Member

**FIESTA RESTAURANT GROUP, INC.**

**2012 STOCK INCENTIVE PLAN**

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**FIESTA RESTAURANT GROUP, INC.  
2012 STOCK INCENTIVE PLAN**

**1. ESTABLISHMENT AND PURPOSE .**

The Fiesta Restaurant Group, Inc. 2012 Stock Incentive Plan (the “Plan”) is established by Fiesta Restaurant Group, Inc., a Delaware corporation (the “Company”), to attract and retain persons eligible to participate in the Plan; motivate Participants to achieve long-term Company goals; and further align Participants’ interests with those of the Company’s other stockholders. The Plan is adopted as of April 16, 2012, subject to approval by the Company’s stockholders within 12 months after such adoption date. No Awards shall be granted hereunder prior to the approval of the Plan by the Company’s stockholders. The Plan is effective as of May 7, 2012 (the “Effective Date”) as a result of the distribution by Carrols on a pro rata basis to the holders of outstanding shares of common stock, par value \$.01 per share, of Carrols of all of the outstanding shares of Stock of Fiesta in a spin-off transaction (the “Distribution”) on May 7, 2012 (the “Distribution Date”). No Award shall be granted hereunder on or after the date 10 years after the Effective Date or such earlier date as of which the Plan is discontinued by the Board as provided herein. The Plan shall terminate on May 7, 2022 or such earlier time as the Board may determine. Certain terms used herein are defined as set forth in **Section 12** .

**2. ADMINISTRATION; ELIGIBILITY .**

The Plan shall be administered by the Compensation Committee of the Board, or such other Committee, appointed by the Board consisting of three (3) or more members of the Board all of whom are intended to be “non-employee directors” within the meaning of Section 16 of the Exchange Act and the regulations promulgated thereunder and “outside directors” within the contemplation of Section 162(m) of the Code; provided, however, that, if at any time no Compensation Committee or other Committee has been appointed or is eligible to act in the circumstances, the Plan shall be administered by the Board. As used herein, the term “Administrator” means the Board, the Compensation Committee or any of the Board’s other Committees as shall be administering the Plan or any individual delegated authority to act as the Administrator in accordance with this **Section 2** .

The Administrator shall have plenary authority to grant Awards pursuant to the terms of the Plan to Eligible Individuals. Participation shall be limited to such persons as are selected by the Administrator. Subject to Section 409A of the Code, Awards may be granted as alternatives to, in exchange or substitution for, or replacement of, awards outstanding under the Plan or any other plan or arrangement of the Company or a Subsidiary (including, subject to the requirements under the Plan, a plan or arrangement of a business or entity, all or a portion of which is acquired by the Company or a Subsidiary). The provisions of Awards need not be the same with respect to each Participant.

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Among other things, the Administrator shall have the authority, subject to the terms of the Plan:

- (a) to select the Eligible Individuals to whom Awards may from time to time be granted, provided that Outside Directors of the Company shall receive Outside Director Awards pursuant to **Sections 8 and 9** ;
- (b) to determine whether and to what extent Stock Options, Stock Appreciation Rights, Stock Awards or any combination thereof are to be granted hereunder;
- (c) to determine the number of shares of Stock to be covered by each Award granted hereunder;
- (d) to approve forms of agreement for use under the Plan;
- (e) to determine the terms and conditions, not inconsistent with the terms of this Plan, of any Award granted hereunder (including, but not limited to, the option price, any vesting restriction or limitation, any vesting acceleration or waiver of forfeiture, and any right of repurchase, right of first refusal or other transfer restriction regarding any Award and the shares of Stock relating thereto, based on such factors or criteria as the Administrator shall determine);
- (f) subject to **Sections 10(a) and 11(a)** , to modify, amend or adjust the terms and conditions of any Award, at any time or from time to time, including, but not limited to, with respect to (i) performance goals and targets applicable to performance based Awards pursuant to the terms of the Plan and (ii) extension of the post- termination exercisability period of Stock Options;
- (g) to determine the Fair Market Value; and
- (h) to determine the type and amount of consideration to be received by the Company for any Stock Award issued under **Section 6** .

The Administrator shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall, from time to time, deem advisable, to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreement relating thereto) and to otherwise supervise the administration of the Plan.

In order to assure the viability of Awards granted to Participants employed in foreign countries who are not subject to U.S. tax law, the Administrator may provide for such special terms as it may consider necessary or appropriate to accommodate differences in local law, tax policy, or custom. Moreover, the Administrator may approve such supplements to, or amendments, restatements, or alternative versions of, the Plan as it may consider necessary or appropriate for such purposes without thereby affecting the terms of the Plan as in effect for any other purpose; provided, however, that no such supplements, amendments, restatements, or alternative versions shall increase the share limitations contained in **Section 3** of the Plan.

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Except to the extent prohibited by applicable law, the Administrator may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any portion of its responsibilities and powers to any other person or persons selected by it. Any such allocation or delegation may be revoked by the Administrator at any time. The Administrator may authorize any one or more of their members or any officer of the Company to execute and deliver documents on behalf of the Administrator.

Any determination made by the Administrator or pursuant to delegated authority pursuant to the provisions of the Plan with respect to any Award shall be made in the sole discretion of the Administrator or such delegate at the time of the grant of the Award or, unless in contravention of any express term of the Plan, at any time thereafter. All decisions made by the Administrator or any appropriately delegated officer pursuant to the provisions of the Plan shall be final and binding on all persons, including the Company and Participants.

No member of the Administrator, and no officer of the Company, shall be liable for any action taken or omitted to be taken by such individual or by any other member of the Administrator or officer of the Company in connection with the performance of duties under this Plan, except for such individual's own willful misconduct or as expressly provided by law.

### **3. STOCK SUBJECT TO PLAN.**

Subject to adjustment as provided in this **Section 3**, the aggregate number of shares of Stock which may be delivered under the Plan shall not exceed 3,300,000 shares.

To the extent any shares of Stock covered by an Award are not delivered to a Participant or beneficiary thereof because the Award expires, is forfeited, lapses without exercise, canceled or otherwise terminated, any shares of Restricted Stock (as defined in **Section 6 and 9**) are forfeited, or shares of Stock are not delivered because the Award is settled in cash or are used to satisfy the applicable tax withholding obligation, such shares shall not be deemed to have been delivered for purposes of determining the maximum number of shares of Stock available for delivery under the Plan with respect to, and shall be available for, future grants of Awards.

Subject to adjustment as provided in this **Section 3**, (a) the maximum number of shares that may be covered by Stock Options, Stock Appreciation Rights, and Stock Awards, in the aggregate, to any one Participant during any calendar year shall be 300,000 shares and (b) in the case of a Covered Employee, if any such Awards are cancelled, the number of shares subject to such Award shall continue to count against the foregoing limit of 300,000 shares. Any Award settled in cash will be based on the Fair Market Value of the shares of Stock subject to such Award.

In the event of any Company stock dividend, special cash dividend, stock split, combination or exchange of shares, recapitalization or other change in the capital structure of the Company, corporate separation or division of the Company (including, but not limited to, a split-up, spin-off, split-off or other distribution to Company stockholders, other than a normal

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cash dividend), sale by the Company of all or a substantial portion of its assets (measured on either a stand-alone or consolidated basis), reorganization, rights offering, partial or complete liquidation, merger or consolidation in which the Company is the surviving corporation, or any other corporate transaction, Company share offering or other event involving the Company and having an effect similar to any of the foregoing, the Administrator may make such substitution or adjustments in the (a) number and kind of shares that may be delivered under the Plan, (b) additional maximums imposed in the immediately preceding paragraph, (c) number and kind of shares subject to outstanding Awards, (d) exercise price of outstanding Stock Options, Outside Director Stock Options, and Stock Appreciation Rights and (e) other characteristics or terms of the Awards as it may determine appropriate in its sole discretion to equitably reflect such corporate transaction, share offering or other event; provided, however, that the number of shares subject to any Award shall always be a whole number and any fractional share resulting from an adjustment or substitution provided for hereunder shall be rounded up to the nearest whole share.

In the event of the dissolution or liquidation of the Company, or a merger, reorganization or consolidation in which the Company is not the surviving corporation, then, except as otherwise provided herein and/or in the discretion of the Administrator, each Stock Option and Outside Director Stock Option, to the extent not theretofore exercised, shall terminate forthwith.

Notwithstanding the foregoing, no adjustment shall be made pursuant to this **Section 3** to the extent that such adjustment would violate Section 409A of the Code.

#### **4. STOCK OPTIONS.**

Stock Options may be granted alone or in addition to other Awards granted under the Plan and may be of two types: Incentive Stock Options and Non-Qualified Stock Options. Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

The Administrator shall have the authority to grant any Participant Incentive Stock Options, Non-Qualified Stock Options or both types of Stock Options. Incentive Stock Options may be granted only to associates of the Company and its subsidiaries (within the meaning of Section 424(f) of the Code). To the extent that any Stock Option is not designated as an Incentive Stock Option or, even if so designated, does not qualify as an Incentive Stock Option, it shall constitute a Non-Qualified Stock Option. Incentive Stock Options may be granted only within 10 years from the date the Plan is adopted or the date the Plan is approved by the Company's stockholders, whichever is earlier. A maximum of 1,500,000 shares of Stock may be subject to grants of Incentive Stock Options.

Stock Options shall be evidenced by option agreements, each in a form approved by the Administrator. An option agreement shall indicate on its face whether it is intended to be an agreement for an Incentive Stock Option or a Non-Qualified Stock Option. The grant of a Stock Option shall occur as of the date the Administrator determines, subject to FASB Statement 123(R) and guidance thereunder.

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Anything in the Plan to the contrary notwithstanding, no term of the Plan relating to Incentive Stock Options shall be interpreted, amended or altered, nor shall any discretion or authority granted under the Plan be exercised, so as to disqualify the Plan under Section 422 of the Code or, without the consent of the Optionee affected, to disqualify any Incentive Stock Option under Section 422 of the Code.

To the extent that the aggregate Fair Market Value of Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under all plans of the Company and its subsidiaries within the meaning of Section 424(f) of the Code) exceeds \$100,000, such Stock Options shall be treated as Non-Qualified Stock Options.

Stock Options granted under this **Section 4** shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Administrator shall deem desirable:

- (a) *Exercise Price* . The exercise price per share of Stock purchasable under a Stock Option shall be determined by the Administrator at the time of grant and set forth in the applicable option agreement; provided , however , that the exercise price per share shall be not less than the Fair Market Value per share on the date the Stock Option is granted, or in the case of an Incentive Stock Option granted to an individual who is a Ten Percent Holder, not less than 110% of such Fair Market Value per share on the date the Stock Option is granted.
- (b) *Option Term* . The term of a Stock Option shall be determined by the Administrator at the time of grant and set forth in the applicable option agreement, provided , however , that no Stock Option shall be exercisable more than 10 years after the date that the Stock Option is granted (or more than five years after the date that the Stock Option is granted in the case of an Incentive Stock Option granted to an individual who is a Ten Percent Holder).
- (c) *Vesting* . A Stock Option shall become vested and nonforfeitable as determined by the Administrator at the time of grant and set forth in the applicable option agreement, and unless otherwise provided in the Plan or applicable option agreement, no Stock Option shall become vested earlier than the first anniversary of the date of grant of such Stock Option or later than the seventh anniversary of the date of grant of such Stock Option; and provided , further , that the Participant shall have continuously remained in the active employment of the Company or an Affiliate until the applicable vesting date.

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- (d) *Exercisability* . Stock Options shall be exercisable to the extent vested; provided that the exercise of a Stock Option shall be subject to such additional terms and conditions, performance requirements, restrictions, forfeiture provisions, contingencies and limitations, if any, as shall be determined by the Administrator and listed in the applicable option agreement. If any Stock Option is exercisable only in installments, the Administrator may at any time waive such installment exercise provisions, in whole or in part, based on such factors as the Administrator may determine. In addition, the Administrator may at any time, in whole or in part, accelerate the exercisability of any Stock Option.
- (e) *Method of Exercise* . Stock Options may be exercised, in whole or in part, by giving written notice of exercise to the Company specifying the number of shares of Stock subject to the Stock Option to be purchased.

The option price of any Stock Option shall be paid in full in cash (by certified or bank check or such other instrument as the Company may accept) or, if permitted by the Administrator in its sole and absolute discretion, by one or more of the following: (i) in the form of shares of unrestricted and vested Stock already owned by the Optionee, based on the Fair Market Value of the Stock on the date the Stock Option is exercised; (ii) by certifying ownership of shares of Stock owned by the Optionee to the satisfaction of the Administrator for later delivery to the Company as specified by the Company; (iii) unless otherwise prohibited by law for either the Company or the Optionee, by irrevocably authorizing a third party to sell shares of Stock (or a sufficient portion of the shares) acquired upon exercise of the Stock Option and remit to the Company a sufficient portion of the sale proceeds to pay the entire exercise price and any tax withholding resulting from such exercise; or (iv) by any combination of cash and/or any one or more of the methods specified in clauses (i), (ii) and (iii). Notwithstanding the foregoing, a form of payment shall not be permitted to the extent it would cause the Company to recognize a compensation expense (or additional compensation expense) with respect to the Stock Option for financial reporting purposes.

Unless otherwise determined by the Administrator, if payment of the option exercise price of a Non-Qualified Stock Option is made in whole or in part in the form of stock that is subject to restrictions on transfer and/or forfeiture provisions (“Restricted Stock”), some or all of the Stock received upon such exercise shall be subject to the same restrictions as such Restricted Stock. The number of shares of Stock received upon such exercise that shall be subject to such restrictions shall equal the number of shares of Restricted Stock used for payment of the option exercise price.

No shares of Stock shall be issued upon exercise of a Stock Option until full payment therefor has been made. Upon exercise of a Stock Option (or a portion thereof), the Company shall have a reasonable time to issue the Stock for

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which the Stock Option has been exercised, and the Optionee shall not be treated as a stockholder for any purposes whatsoever prior to such issuance. No adjustment shall be made for cash dividends or other rights for which the record date is prior to the date such Stock is recorded as issued and transferred in the Company's official stockholder records, except as otherwise provided herein or in the applicable option agreement.

- (f) *Transferability of Stock Options* . Except as otherwise provided in the applicable option agreement, a Non-Qualified Stock Option (i) shall be transferable by the Optionee to a Family Member of the Optionee, provided that (A) any such transfer shall be by gift with no consideration and (B) no subsequent transfer of such Stock Option shall be permitted other than by will or the laws of descent and distribution, and (ii) shall not otherwise be transferable except by will or the laws of descent and distribution. An Incentive Stock Option shall not be transferable except by will or the laws of descent and distribution. A Stock Option shall be exercisable, during the Optionee's lifetime, only by the Optionee or by the guardian or legal representative of the Optionee, it being understood that the terms "holder" and "Optionee" include the guardian and legal representative of the Optionee named in the applicable option agreement and any person to whom the Stock Option is transferred (X) pursuant to the first sentence of this **Section 4(f)** or pursuant to the applicable option agreement or (Y) by will or the laws of descent and distribution. Notwithstanding the foregoing, references herein to the termination of an Optionee's employment or provision of services shall mean the termination of employment or provision of services of the person to whom the Stock Option was originally granted.
- (g) *Termination by Death* . Except as otherwise provided in the applicable option agreement, if an Optionee's employment or provision of services terminates by reason of death, any Stock Option held by such Optionee shall be fully vested upon such death and may thereafter be exercised for a period of one year from the date of such death or until the expiration of the stated term of such Stock Option, whichever period is shorter.
- (h) *Termination by Reason of Disability* . Except as otherwise provided in the applicable option agreement, if an Optionee's employment or provision of services terminates by reason of Disability, any Stock Option held by such Optionee shall be fully vested upon such termination of employment or provision of services and may thereafter be exercised by the Optionee for a period of one year from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Option, whichever period is shorter.
- (i) *Termination by Reason of Retirement* . Except as otherwise provided in the applicable option agreement, if an Optionee's employment or provision of services terminates by reason of Retirement, any Stock Option held by such

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Optionee, to the extent it was exercisable at the time of termination, may thereafter be exercised by the Optionee for a period of 12 months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Option, whichever period is shorter, and any Stock Option that is unvested or unexercisable at the date of termination shall thereupon terminate.

- (j) *Involuntary Termination Without Cause* . Except as otherwise provided in the applicable option agreement, if an Optionee's employment or provision of services terminates involuntarily without Cause, and for reasons other than death, Disability or Retirement, any Stock Option held by such Optionee may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of three months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Option, whichever period is shorter, and any Stock Option that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (k) *Involuntary Termination for Cause*. Except as otherwise provided in the applicable option agreement, if an Optionee's employment or provision of services terminates involuntarily for Cause, all Stock Options held by such Optionee, whether or not then vested and exercisable, shall thereupon terminate.
- (l) *Other Termination*. Except as otherwise provided in the applicable option agreement, if an Optionee's employment or provision of services is terminated by the Optionee for any reason other than death, Disability, Retirement, involuntary termination without Cause or involuntary termination for Cause any Stock Option held by such Optionee may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of 1 month from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Option, whichever period is shorter, and any Stock Option that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (m) *Exception to Termination* . If employment or provision of services by the Optionee to the Company or an Affiliate ceases as a result of a transfer of such Optionee from the Company to an Affiliate, or from an Affiliate to the Company, or from one classification of Eligible Individual to another classification of Eligible Individual, such transfer shall not be a termination of employment or provision of services for purposes of this Plan, unless expressly determined otherwise by the Administrator. Unless expressly determined otherwise by the Administrator, a termination of employment or provision of services shall occur for an Optionee who is employed by, or provides services to, an Affiliate of the Company if the Affiliate shall cease to be an Affiliate and the Optionee shall not immediately thereafter be employed by, or provide services to, the Company or an Affiliate .

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- (n) Notwithstanding the foregoing, to the extent permitted under Section 409A of the Code, the exercise period following a termination described in subsection (g), (h), (i), (j) or (l) above shall be tolled for any applicable window/blackout period restrictions under the Company's insider trading policy.

## **5. STOCK APPRECIATION RIGHTS .**

Stock Appreciation Rights may be granted under the Plan on a stand-alone basis only. The Administrator shall have the authority to grant Stock Appreciation Rights to any Participant. Except as otherwise provided herein, a Stock Appreciation Right shall terminate and no longer be exercisable as determined by the Administrator.

Stock Appreciation Rights shall be evidenced by stock appreciation right agreements, each in a form approved by the Administrator. The grant of a Stock Appreciation Right shall occur as of the date the Administrator determines, subject to FASB Statement 123(R) and guidance thereunder.

A Stock Appreciation Right may be exercised by a Participant as determined by the Administrator in accordance with this **Section 5** . Upon such exercise, the Participant shall be entitled to receive an amount determined in the manner prescribed in this **Section 5** .

Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined by the Administrator, including the following:

- (a) **Stock Appreciation Right Term.** The term of a Stock Appreciation Right shall be determined by the Administrator at the time of grant and set forth in the applicable stock appreciation right agreement, provided , however , that no Stock Appreciation Right shall be exercisable more than 10 years after the date that the Stock Appreciation Right is granted.
- (b) **Vesting.** A Stock Appreciation Right shall become vested and nonforfeitable as determined by the Administrator at the time of grant and set forth in the applicable stock appreciation right agreement, and unless otherwise provided in the Plan, no Stock Appreciation Right shall become vested earlier than the first anniversary of the date of grant of such Stock Appreciation Right or later than the seventh anniversary of the date of grant of such Stock Appreciation Right; and provided , further , that the Participant shall have continuously remained in the active employment of the Company or an Affiliate until the applicable vesting date.
- (c) **Exercisability.** Stock Appreciation Rights shall be exercisable to the extent vested; provided that the exercise of a Stock Appreciation Right shall be subject to such additional terms and conditions, performance requirements,

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restrictions, forfeiture provisions, contingencies and limitations, if any, as shall be determined by the Administrator and listed in the applicable stock appreciation rights agreement. If any Stock Appreciation Right is exercisable only in installments, the Administrator may at any time waive such installment exercise provisions, in whole or in part, based on such factors as the Administrator may determine. In addition, the Administrator may at any time, in whole or in part, accelerate the exercisability of any Stock Appreciation Right.

- (d) *Method of Exercise.* Subject to the provisions of this **Section 5**, Stock Appreciation Rights may be exercised, in whole or in part, by giving written notice of exercise to the Company specifying the number of shares with respect to which the Stock Appreciation Right is being exercised.
- (e) Upon the exercise of a Stock Appreciation Right, a Participant shall be entitled to receive an amount in cash or in shares of Stock, as set forth in the grant agreement, which in the aggregate are equal in value to the excess of the Fair Market Value of one share of Stock on the date of exercise over the Fair Market Value of one share of Stock on the date of grant, multiplied by the number of shares in respect of which the Stock Appreciation Right shall have been exercised.
- (f) *Transferability of Stock Appreciation Rights .* Except as otherwise provided in the applicable stock appreciation rights agreement, a Stock Appreciation Right (i) shall be transferable by the Participant to a Family Member of the Participant, provided that (A) any such transfer shall be by gift with no consideration and (B) no subsequent transfer of such Stock Appreciation Right shall be permitted other than by will or the laws of descent and distribution, and (ii) shall not otherwise be transferable except by will or the laws of descent and distribution. A stock Appreciation Right shall be exercisable, during the Participant's lifetime, only by the Participant or by the guardian or legal representative of the Participant, it being understood that the terms "holder" and "Participant" include the guardian and legal representative of the Participant named in the applicable stock appreciation rights agreement and any person to whom the Stock Appreciation Right is transferred (X) pursuant to the first sentence of this **Section 5(f)** or pursuant to the applicable stock appreciation rights agreement or (Y) by will or the laws of descent and distribution. Notwithstanding the foregoing, references herein to the termination of a Participant's employment or provision of services shall mean the termination of employment or provision of services of the person to whom the Stock Appreciation Right was originally granted.
- (g) *Termination by Death .* Except as otherwise provided in the applicable stock appreciation rights agreement, if a Participant's employment or provision of

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services terminates by reason of death, any Stock Appreciation Right held by such Participant shall be fully vested upon such death and may thereafter be exercised for a period of one year from the date of such death or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter.

- (h) **Termination by Reason of Disability.** Except as otherwise provided in the applicable stock appreciation rights agreement, if a Participant's employment or provision of services terminates by reason of Disability, any Stock Appreciation Right held by such Participant shall be fully vested upon such termination of employment or provision of services and may thereafter be exercised by the Participant for a period of one year from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter.
- (i) ***Termination by Reason of Retirement*** . Except as otherwise provided in the applicable stock appreciation rights agreement, if a Participant's employment or provision of services terminates by reason of Retirement, any Stock Appreciation Right held by such Participant, to the extent it was exercisable at the time of termination, may thereafter be exercised by the Participant for a period of six months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter and any Stock Appreciation Right that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (j) ***Involuntary Termination Without Cause*** . Except as otherwise provided in the applicable stock appreciation rights agreement, if a Participant's employment or provision of services terminates involuntarily without Cause, and for reasons other than death, Disability or Retirement, any Stock Appreciation Right held by such Participant may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of three months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter, and any Stock Appreciation Right that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (k) ***Involuntary Termination for Cause***. Except as otherwise provided in the applicable stock appreciation rights agreement, if a Participant's employment or provision of services terminates involuntarily for Cause, Stock Appreciation Rights held by such Participant, whether or not then vested and exercisable, shall thereupon terminate.

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- (l) *Other Termination.* Except as otherwise provided in the applicable stock appreciation rights agreement, if a Participant's employment or provision of services is terminated by the Participant for any reason other than death, Disability, Retirement, involuntary termination without Cause or involuntary termination for Cause, any Stock Appreciation Right held by such Participant may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of one month from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter, and any Stock Appreciation Right that is unvested or unexercisable at the date of termination shall thereupon terminate.
  - (m) *Exception to Termination .* If provision of services by the Participant to the Company or an Affiliate ceases as a result of a transfer of such Participant from the Company or an Affiliate, or from an Affiliate to the Company, or from one classification of Eligible Individual to another classification of Eligible Individual, such transfer shall not be a termination of employment or provision of services for purposes of this Plan, unless expressly determined otherwise by the Administrator. Unless expressly determined otherwise by the Administrator, termination of employment or provision of services shall occur for a Participant who is employed by, or provides services to, an Affiliate of the Company if the Affiliate shall cease to be an Affiliate and the Participant shall not immediately thereafter be employed by, or provide services to, the Company or an Affiliate .
  - (n) Notwithstanding the foregoing, to the extent permitted under Section 409A of the Code, the exercise period following a termination described in subsection (g), (h), (i), (j) or (l) above shall be tolled for any applicable window/blackout period restrictions under the Company's insider trading policy.

## **6. STOCK AWARDS .**

Stock Awards may be directly issued under the Plan (without any intervening options), subject to such terms, conditions, performance requirements, restrictions, forfeiture provisions, contingencies and limitations as shall be determined by the Administrator and set forth in the applicable award agreement. Subject to the provisions of this **Section 6**, Stock Awards may be issued which vest in one or more installments over the Participant's period of employment and/or other service to the Company or an Affiliate and/or upon the attainment of specified performance objectives, and/or the Company may issue Stock Awards which entitle the Participant to receive a specified number of vested shares of Stock upon the attainment of one or more performance goals and/or service requirements established by the Administrator. A Stock Award that is subject to restrictions on transfer and/or forfeiture provisions may be referred to as an award of "Restricted Stock" or "Restricted Stock Units." A Stock Award shall become vested and nonforfeitable as determined by the Administrator at

the time of grant and set forth in the applicable award agreement, and unless otherwise provided in the Plan, no Stock Award shall become vested earlier than the first anniversary of the date of such Stock Award or later than the seventh anniversary of the date of such Stock Award; and provided, further, that the Participant shall have continuously remained in the active employment of the Company or an Affiliate until the applicable vesting date. The determination of whether the Participant has continuously remained in the active employment of the Company or an Affiliate shall be made by the Administrator in its discretion, including, when applicable pursuant to principle described in **Section 4(m)**.

Shares representing a Stock Award shall be evidenced in such manner as the Administrator may deem appropriate, including book-entry registration or issuance of one or more certificates (which may bear appropriate legends referring to the terms, conditions and restrictions applicable to such Award). The Administrator may require that any such certificates be held in custody by the Company until any restrictions thereon shall have lapsed and that the Participant deliver a stock power, endorsed in blank, relating to the Stock covered by such Award. Restricted Stock Units shall be evidenced by a book entry in a notional account maintained under the Participant's name in the Company's books and records.

A Stock Award may be issued in exchange for any consideration which the Administrator may deem appropriate in each individual instance, including, without limitation:

- (a) cash or cash equivalents;
- (b) past services rendered to the Company or any Affiliate; or
- (c) future services to be rendered to the Company or any Affiliate ( provided that, in such case, the par value of the stock subject to such Stock Award shall be paid in cash or cash equivalents, unless the Administrator provides otherwise).

With respect to a Restricted Stock Award, a Participant, at his or her option, will be entitled to make the election permitted under Section 83(b) of the Code, to include in gross income in the taxable year in which the Restricted Stock Award is transferred to him or her, the fair market value of such shares at the time of transfer, notwithstanding that such shares are subject to a substantial risk of forfeiture within the meaning of the Code, or he or she may elect to include in gross income the Fair Market Value of the Restricted Stock Award as of the date or date on which such restrictions lapse. Notwithstanding the foregoing, the Administrator shall adopt, from time to time, such rules with respect to the return of executed award agreements as it deems appropriate and failure by a Participant to comply with such rules shall, without limitation, terminate the grant of such Restricted Stock Award to such Participant and/or cause the forfeiture of any Restricted Stock Award as to which restrictions have not yet lapsed.

Notwithstanding anything herein to the contrary and except as otherwise provided in the applicable award agreement, if a Participant's employment and provision of services is

terminated (A) by the Company for any reason other than Cause or (B) by reason of the Participant's death or Disability, all Stock underlying a Stock Award, to the extent unvested at the time of termination, shall become fully vested and non-forfeitable.

Notwithstanding anything herein to the contrary and except as otherwise provided in the applicable award agreement, if a Participant's employment or provision of services is terminated (A) by the Company for Cause or (B) by the Participant for any reason other than death or Disability, all Stock underlying a Stock Award, to the extent unvested at the time of termination, shall be forfeited.

Unless otherwise provided in an award agreement, until the expiration of all applicable restrictions, (i) the Restricted Stock shall be treated as outstanding, (ii) the Participant holding shares of Restricted Stock may exercise full voting rights with respect to such shares, and (iii) the Participant holding shares of Restricted Stock shall be entitled to receive all dividends and other distributions paid with respect to such shares while they are so held. Unless otherwise provided by the Administrator, if any such dividends or distributions are paid in shares of Stock, such shares shall be subject to the same restrictions as the shares of Restricted Stock with respect to which they were paid. Notwithstanding anything to the contrary, at the discretion of the Administrator, all such dividends and distributions may be held in escrow by the Company (subject to the same restrictions) until all restrictions on the respective Restricted Stock have lapsed.

## **7. PERFORMANCE AWARDS.**

- (a) *Performance Conditions* . The right of a Participant to exercise or receive a grant or settlement of any Award, and its timing, may be subject to performance conditions specified by the Administrator at the time of grant (except as provided in this **Section 7** ). The Administrator may use business criteria and other measures of performance it deems appropriate in establishing any performance conditions, and may exercise its discretion to reduce or increase amounts payable under any Award subject to performance conditions, except as limited under **Section 7(b)** hereof in the case of a Performance Award intended to qualify under Section 162 (m) of the Code.
- (b) *Performance Awards Granted to Designated Covered Employees* . If the Administrator determines that a Performance Award to be granted to a person the Administrator regards as likely to be a Covered Employee should qualify as "performance-based compensation" for purposes of Section 162(m) of the Code, the grant and/or settlement of such Performance Award shall comply with the requirements set forth in this **Section 7(b)** .
  - (i) *Performance Goals Generally* . The performance goals for such Performance Awards shall be based on one or more of the business criteria set forth in **Section 7(b)(ii)** and a targeted level or levels of performance with respect to such criteria, as specified by the

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Administrator consistent with this **Section 7(b)** . Performance goals shall be objective and shall otherwise meet the requirements of Section 162(m) of the Code, including the requirement that the level or levels of performance targeted by the Administrator result in the performance goals being “substantially uncertain.” The Administrator may determine that more than one performance goal must be achieved as a condition to settlement of such Performance Awards.

- (ii) *Business Criteria.* Unless and until the Company proposes for stockholder vote, and stockholders approve, a change in the business criteria set forth in this **Section 7(b)(ii)** , Awards (other than Stock Options and Stock Appreciation Rights) designed to qualify as “performance-based compensation” for purposes of Section 162(m) of the Code shall be based on one or more of the following business criteria, which shall be set forth in the applicable Performance Award agreement:
- (A) Earnings before any or all of interest, tax, depreciation or amortization (actual and adjusted and either in the aggregate or on a per-share basis);
  - (B) Earnings (either in the aggregate or on a per-share basis);
  - (C) Net income or loss (either in the aggregate or on a per-share basis);
  - (D) Operating profit;
  - (E) Cash flow (either in the aggregate or on a per-share basis);
  - (F) Free cash flow (either in the aggregate on a per-share basis);
  - (G) Non-interest expense;
  - (H) Costs;
  - (I) Gross revenues;
  - (J) Reductions in expense levels;
  - (K) Operating and maintenance cost management and employee productivity;
  - (L) Share price or total stockholder return (including growth measures and total stockholder return or attainment by the shares of a specified value for a specified period of time);
  - (M) Net economic value;

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- (N) Economic value added or economic value added momentum;
  - (O) Strategic business criteria, consisting of one or more objectives based on meeting specified revenue, sales, market share, market penetration, geographic business expansion goals, objectively identified project milestones, production volume levels, cost targets and goals relating to acquisitions or divestitures;
  - (P) Return on average assets or average equity;
  - (Q) Achievement of objectives relating to diversity, employee turnover or other human capital metrics;
  - (R) Results of customer satisfaction surveys or other objective measures of customer experience; and/or
  - (S) Debt ratings, debt leverage, debt service, financings and refinancings;

provided, however, that (I) the foregoing business criteria may be applied on a pre- or post-tax basis; and (II) the Administrator may, on the grant date of an Award intended to qualify as “performance-based compensation,” provide that the formula for such Award may include or exclude items to measure specific objectives, such as losses from discontinued operations, extraordinary gains or losses, the cumulative effect of accounting changes, acquisitions or divestitures, foreign exchange impacts and any unusual, non-recurring gain or loss.

- (iii) *Performance Period; Timing For Establishing Performance Goals* . Achievement of performance goals in respect of such Performance Awards shall be measured over such periods of at least 12 months’ duration as may be specified by the Administrator. Performance goals shall be established on or before the dates that are required or permitted for “performance-based compensation” under Section 162(m) of the Code. The levels of performance required with respect to any performance goals may be expressed in absolute or relative levels and may be based upon a set increase, set positive result, maintenance of the status quo, set decrease or set negative result. Performance goals may differ for Awards to different Participants. The Administrator shall specify the weighting (which may be the same or different for multiple performance goals) to be given to each performance goal for purposes of determining the final amount payable with respect to any such Performance Award. Any one or more of the performance goals or the business criteria on which they are based may apply to the Participant, a department, unit, division or function within the Company (except for total stockholder return or earnings per share criteria) or any one or more Subsidiaries, and may apply either alone or relative to the performance of other businesses or individuals (including industry or general market indices).

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- (iv) *Settlement of Performance Awards; Other Terms* . Settlement of Performance Awards may be in cash or Stock, or other Awards, or other property, in the discretion of the Administrator. Any cash-settled Performance Award will be based on the Fair Market Value of the shares of Stock subject to such Performance Award. The Administrator may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with such Performance Awards, but may not exercise discretion to increase any such amount payable in respect of a Performance Award subject to this **Section 7(b)** . Subject to the requirements of Section 162(m) of the Code, the Administrator shall specify the circumstances in which such Performance Awards shall be forfeited or paid in the event of a termination of employment at least six months prior to the end of a performance period or settlement of Performance Awards, and other terms relating to such Performance Awards. All determinations of the Administrator as to the achievement of the performance goals applicable to a Performance Award subject to this **Section 7(b)** shall be in writing prior to the payment of the Award.

## **8. OUTSIDE DIRECTOR STOCK OPTIONS .**

On the date of the first annual meeting of stockholders of the Company following the Distribution Date, and on the date of the annual meeting of Stockholders of the Company during each Company fiscal year thereafter, each Outside Director of the Company may, in the discretion of the Administrator, be granted an Outside Director Stock Option to purchase such number of shares of Stock as shall be determined by the Administrator.

Outside Director Stock Options shall be evidenced by option agreements, each in a form approved by the Administrator.

Outside Director Stock Options granted under this **Section 8** shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Administrator shall deem desirable:

- (a) *Exercise Price* . The exercise price per share of Stock purchasable under an Outside Director Stock Option shall be the Fair Market Value per share on the date the Outside Director Stock Option is granted.
- (b) *Option Term* . No Outside Director Stock Option shall be exercisable more than seven years after the date that the Outside Director Stock Option is granted.

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- (c) *Vesting*. An Outside Director Stock Option shall become vested and non- forfeitable with respect to one-fifth of the Stock underlying such Outside Director Stock Option on the first anniversary of the date of grant, with an additional one- fifth of the Stock underlying such Outside Director Stock Option becoming vested and non-forfeitable on each of the second, third, fourth and fifth anniversaries of the date of grant; provided that , in each case, the Outside Director shall have continuously remained a Director of the Company. Any Outside Director Stock Option that is unvested at the date of termination of the Outside Director's provision of services shall be forfeited upon such termination.
- (d) *Exercisability* . Outside Director Stock Options shall be exercisable to the extent vested.
- (e) *Method of Exercise* . Outside Director Stock Options may be exercised, in whole or in part, by giving written notice of exercise to the Company specifying the number of shares of Stock subject to the Outside Director Stock Option to be purchased.

The option price of any Outside Director Stock Option shall be paid in full in cash (by certified or bank check or such other instrument as the Company may accept) or, unless otherwise provided in the applicable option agreement, by one or more of the following: (i) in the form of shares of unrestricted and vested Stock already owned by the Outside Director, based on the Fair Market Value of the Stock on the date the Outside Director Stock Option is exercised; (ii) by certifying ownership of shares of Stock owned by the Outside Director to the satisfaction of the Administrator for later delivery to the Company as specified by the Company; (iii) unless otherwise prohibited by law for either the Company or the Outside Director, by irrevocably authorizing a third party to sell shares of Stock (or a sufficient portion of the shares) acquired upon exercise of the Outside Director Stock Option and remit to the Company a sufficient portion of the sale proceeds to pay the entire exercise price and any tax withholding resulting from such exercise; or (iv) by any combination of cash and/or any one or more of the methods specified in clauses (i), (ii) and (iii). Notwithstanding the foregoing, a form of payment shall not be permitted to the extent it would cause the Company to recognize a compensation expense (or additional compensation expense) with respect to the Outside Director Stock Option for financial reporting purposes.

If payment of the option exercise price of an Outside Director Stock Option is made in whole or in part in the form of Restricted Stock, some or all of the Stock received upon such exercise shall be subject to the same restrictions as such Restricted Stock. The number of shares of Stock received upon such exercise that shall be subject to such restrictions shall equal the number of shares of Restricted Stock used for payment of the option exercise price.

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No shares of Stock shall be issued upon exercise of an Outside Director Stock Option until full payment therefor has been made. Upon exercise of an Outside Director Stock Option (or a portion thereof), the Company shall have a reasonable time to issue the Stock for which the Outside Director Stock Option has been exercised, and the Outside Director shall not be treated as a stockholder for any purposes whatsoever prior to such issuance. No adjustment shall be made for cash dividends or other rights for which the record date is prior to the date such Stock is recorded as issued and transferred in the Company's official stockholder records, except as otherwise provided herein or in the applicable option agreement.

- (f) *Transferability of Outside Director Stock Options* . An Outside Director Stock Option (i) shall be transferable by the Outside Director to a Family Member of the Outside Director, provided that (A) any such transfer shall be by gift with no consideration and (B) no subsequent transfer of such Outside Director Stock Option shall be permitted other than by will or the laws of descent and distribution, and (ii) shall not otherwise be transferable except by will or the laws of descent and distribution. An Outside Director Stock Option shall be exercisable, during the Outside Director's lifetime, only by the Outside Director or by the guardian or legal representative of the Outside Director, it being understood that the terms "holder" and "Outside Director" include the guardian and legal representative of the Outside Director named in the applicable option agreement and any person to whom the Outside Director Stock Option is transferred (X) pursuant to the first sentence of this **Section 8(f)** or pursuant to the applicable option agreement or (Y) by will or the laws of descent and distribution. Notwithstanding the foregoing, references herein to the termination of an Outside Director's provision of services shall mean the termination or cessation of the Outside Director's status as an Eligible Individual.

## **9. OUTSIDE DIRECTOR STOCK AWARDS.**

The following Outside Director Stock Awards shall be granted pursuant to this **Section 9** :

- (a) Each individual who is or becomes an Outside Director on or immediately following Distribution Time shall be granted, within forty-five (45) days after the Distribution Date, a Stock Award comprised of a number of shares of Stock having an aggregate Fair Market Value of \$100,000 as of the date of grant.
- (b) Each individual (other than any individual receiving a Stock Award under **Section 9 (a)** ) who is appointed to the Board as an Outside Director after the Distribution Date shall be granted, as of the date of such Outside Director's appointment to the Board, a Stock Award comprised of that number of shares of Stock having an aggregate Fair Market Value of \$100,000 on the date of grant.

- (c) On the date of the first annual meeting of Stockholders of the Company following the Distribution Date, and on the date of each annual meeting of Stockholders of the Company during each Company fiscal year thereafter, each Outside Director of the Company shall be granted a Stock Award comprised of that number of shares of Stock having an aggregate Fair Market Value of \$25,000 or such other amount as is otherwise determined by the Administrator.
- (d) Notwithstanding anything to the contrary in this **Section 9**, within forty-five (45) days after the Distribution Date, (i) Jack A. Smith, the Chairman of the board of directors and an Outside Director, shall be granted a Stock Award comprised of that number of shares of Stock having an aggregate Fair Market Value of \$25,000, (ii) Stephen P. Elker, an Outside Director, shall be granted a Stock Award comprised of that number of shares of Stock having an aggregate Fair Market Value of \$100,000, (iii) Brian P. Friedman and Nicholas Daraviras, each an Outside Director, shall each be granted a Stock Award comprised of that number of shares of Stock having an aggregate Fair Market Value of \$100,000, provided that if either Mr. Friedman or Mr. Daraviras resigns as a director of the Company, any person nominated or otherwise designated by Jefferies Capital Partners IV L.P., Jefferies Employee Partners IV LLC, JCP Partners IV LLC (collectively, the “**JCP Group**”) or their respective affiliates to the Company’s Board to replace Mr. Friedman, Mr. Daraviras or any other director of the Company designated and nominated by the JCP Group or their affiliates, such person shall not receive a Stock Award pursuant to **Section 9(b)**.

The Stock subject to Outside Director Stock Awards granted under this **Section 9** shall vest and become nonforfeitable based on the Outside Director’s provision of services as a Director, and is therefore an award of “Restricted Stock.”

Outside Director Stock Awards may be directly issued under the Plan. Unless otherwise determined by the Administrator, and set forth in the applicable award agreement, an Outside Director Stock Award granted pursuant to Section 9(a), Section 9(b), Section 9(d)(ii) and Section 9(d)(iii) shall become vested and nonforfeitable as to one-fifth of the shares of Restricted Stock underlying such Outside Director Stock Award on the first anniversary of the date of grant, with an additional one-fifth of the Restricted Stock becoming vested and non-forfeitable on each of the second, third, fourth and fifth anniversaries of the date of grant; provided that, in each case, the Outside Director shall have continuously remained a Director of the Company. Unless otherwise determined by the Administrator, and set forth in the applicable award agreement, an Outside Director Stock Award granted pursuant to Section 9(c) and Section 9(d)(i) shall become vested and nonforfeitable as to one-third of the shares of Restricted Stock underlying such Outside Director Stock Award on the first anniversary of the date of grant, with an additional one-third of the Restricted Stock becoming vested and non-forfeitable on each of the second and third anniversaries of the date of grant; provided that, in each case, the Outside Director shall have continuously remained a Director of the Company. Any Outside Director Stock Award that is unvested at the date of termination of the Outside Director’s provision of services shall be forfeited upon such termination. The determination of whether the Participant has continuously remained a Director of the Company or an Affiliate shall be made by the Administrator in its discretion, including, when applicable pursuant to principle described in Sections 5(m) and 6(m).

Shares representing an Outside Director Stock Award shall be evidenced in such manner as the Administrator may deem appropriate, including book-entry registration or issuance of one or more certificates (which may bear appropriate legends referring to the terms, conditions and restrictions applicable to such Award). The Administrator may require that any such certificates be held in custody by the Company until any restrictions thereon shall have lapsed and that the Outside Director deliver a stock power, endorsed in blank, relating to the Stock covered by such Award.

Unless otherwise provided in an award agreement, until the expiration of all applicable restrictions, (i) the Restricted Stock shall be treated as outstanding, (ii) the Participant holding shares of Restricted Stock may exercise full voting rights with respect to such shares, and (iii) the Participant holding shares of Restricted Stock shall be entitled to receive all dividends and other distributions paid with respect to such shares while they are so held. Unless otherwise provided by the Administrator, if any such dividends or distributions are paid in shares of Stock, such shares shall be subject to the same restrictions as the shares of Restricted Stock with respect to which they were paid. Notwithstanding anything to the contrary, at the discretion of the Administrator, all such dividends and distributions may be held in escrow by the Company (subject to the same restrictions) until all restrictions on the respective Restricted Stock have lapsed.

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With respect to an Outside Director Stock Award, an Outside Director, at his or her option, will be entitled to make the election permitted under Section 83(b) of the Code, to include in gross income in the taxable year in which the Outside Director Stock Award is transferred to him or her, the fair market value of such shares at the time of transfer, notwithstanding that such shares are subject to a substantial risk of forfeiture within the meaning of the Code, or he or she may elect to include in gross income the Fair Market Value of the Outside Director Stock Award as of the date or date on which such restrictions lapse. Notwithstanding the foregoing, the Administrator shall adopt, from time to time, such rules with respect to the return of executed award agreements as it deems appropriate and failure by an Outside Director to comply with such rules shall, without limitation, terminate the grant of such Outside Director Stock Award to such Outside Director and/or cause the forfeiture of any Outside Director Stock Award (or any portion thereof) as to which restrictions have not yet lapsed.

#### **10. CHANGE IN CONTROL PROVISIONS.**

- (a) *Impact of Event* . Notwithstanding any other provision of the Plan to the contrary, in the event of a Change in Control:
- (i) The vesting and exercisability of any Stock Options, Outside Director Stock Options and Stock Appreciation Rights outstanding as of the date such Change in Control is determined to have occurred and not then vested and exercisable shall become fully vested and exercisable;
  - (ii) Any restrictions applicable to any outstanding Stock Awards and Outside Director Stock Awards shall lapse and the Stock relating to such Awards shall become free of all restrictions and fully vested and transferable; and
  - (iii) Provided that no material modification of the Award or any liability results under Section 409A of the Code, outstanding Awards shall be subject to any agreement of acquisition, merger or reorganization that effects such Change in Control and that provides for:
    - (A) The continuation of the outstanding Awards by the Company, if the Company is a surviving corporation;
    - (B) The assumption of the outstanding Awards by the surviving corporation or its parent or subsidiary;
    - (C) The substitution by the surviving corporation or its parent or subsidiary of equivalent awards for the outstanding Awards; or

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(D) Settlement of each share of Stock subject to an outstanding Award for the Change in Control Price (less, to the extent applicable, the per share exercise price), or, if the per share exercise price equals or exceeds the Change in Control Price, the outstanding Award shall terminate and be canceled.

(b) *Definition of Change in Control* .

(i) For purposes of the Plan, a “Change in Control” shall occur or be deemed to have occurred only if any of the following events occur:

(A) The acquisition, directly or indirectly, by any person or group (as those terms are defined in Sections 3(a)(9), 13(d) and 14(d) of the Exchange Act and the rules thereunder) of beneficial ownership (as determined pursuant to Rule 13d-3 under the Exchange Act) of securities entitled to vote generally in the election of directors (voting securities) of the Company that represent **50%** or more of the combined voting power of the Company’s then outstanding voting securities, other than:

- (1) An acquisition by a trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company; or
- (2) An acquisition of voting securities by the Company or a corporation owned, directly or indirectly by all of the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company.

Notwithstanding the foregoing, the following event shall not constitute an acquisition by any person or group for purposes of this subsection (a): an acquisition of the Company’s securities by the Company which causes the Company’s voting securities beneficially owned by a person or group to represent 50% or more of the combined voting power of the Company’s then outstanding voting securities; provided, however, that if a person or group shall become the beneficial owner of 50% or more of the combined voting power of the Company’s then outstanding voting securities by reason of share acquisitions by the

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Company as described above and shall, after such share acquisitions by the Company, become the beneficial owner of any additional voting securities of the Company, then such acquisition shall constitute a Change in Control; or

- (B) Individuals who, as of or immediately following Distribution Time, constitute the Board of Directors of the Company (as of the Distribution Time, the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the Distribution Date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least two-thirds of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of directors on the Board) shall be, for purposes of this Plan, considered as though such person were a member of the Incumbent Board; or
- (C) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) the acquisition of assets or stock of another entity, in each case other than a transaction:
  - (1) Which results in the Company’s voting securities outstanding immediately before the transaction continuing to represent (either by the remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company’s assets or otherwise succeeds to the business of the Company (the Company or such person, the “Successor Entity”)) directly or indirectly, at least a majority of the combined voting power of the Successor Entity’s outstanding voting securities immediately after the transaction; and
  - (2) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this clause (2) as beneficially owning 50% or more of combined voting power of the Successor

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- Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or
- (D) A sale or disposition of all or substantially all of the Company's assets; or
  - (E) The Company's stockholders approve a liquidation or dissolution of the Company.

The Committee shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto. Notwithstanding anything herein to the contrary, the Distribution shall not constitute a Change in Control.

- (ii) For purposes of **Section 10(b)**, stock ownership is determined under Section 409A of the Code.
- (c) *Change in Control Price*. For purposes of the Plan, "Change in Control Price" means the Fair Market Value (which may be the amount of consideration per share of Stock received by the holder of Stock in connection with the Change in Control transaction or, in the case of a tender or exchange offer, the highest price per share of Stock paid in such tender or exchange offer, in each case, as determined by the Administrator in accordance with **Section 12(n)** hereunder) of a share of Stock on the date of a Change in Control. To the extent that the consideration paid in any such transaction described above consists all or in part of securities or other non-cash consideration, the value of such securities or other non-cash consideration shall be determined in the sole discretion of the Board. The Participant shall receive the same form of consideration as holders of common stock, subject to the same restrictions and limitations and indemnification obligations as the holders of common stock and will execute any and all documents required by the Administrator to evidence the same.

## **11. MISCELLANEOUS.**

- (a) *Amendment*. The Board may at any time terminate, amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would adversely affect the rights of a Participant under an Award theretofore granted without the Participant's consent, except such an amendment (i) made to avoid an expense charge to the Company or an Affiliate under applicable law or regulation, (ii) made to permit the Company or an Affiliate a deduction under the Code, or (iii) made to avoid the violation of Section 409A of the Code. No such amendment or alteration shall be made without the approval of a majority vote of the Company's shareholders, present in person or by proxy

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at any special or annual meeting of the shareholders to the extent such approval is required by law, agreement or the rules of any stock exchange or market on which the Stock is listed.

The Administrator may amend the terms of any Stock Option or other Award theretofore granted, prospectively or retroactively, but except as provided in **Section 3** hereof no such amendment shall adversely affect the rights of a Participant without the Participant's consent.

- (b) *Unfunded Status of Plan.* It is intended that this Plan be an “unfunded” plan for incentive and deferred compensation. The Administrator may authorize the creation of trusts or other arrangements to meet the obligations created under this Plan to deliver Stock or make payments, provided that, unless the Administrator otherwise determines, the existence of such trusts or other arrangements is consistent with the “unfunded” status of this Plan.
- (c) *General Provisions.*
- (i) Unless the shares to be issued in connection with an Award are registered prior to the issuance thereof under the Securities Act of 1933, as amended, the Administrator may require each person purchasing or receiving shares pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares for his or her own account as an investment without a view to or for sale in connection with, the distribution thereof. The certificates for such shares may include any legend which the Administrator deems appropriate to reflect any restrictions on transfer.
- All certificates for shares of Stock or other securities delivered under the Plan shall be subject to such stock transfer orders and other restrictions as the Administrator may deem advisable under the rules, regulations and other requirements of the Commission, any stock exchange or market on which the Stock is then listed and any applicable Federal or state securities law, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.
- (ii) Nothing contained in the Plan shall prevent the Company or any Affiliate from adopting other or additional compensation arrangements for its employees.
- (iii) The adoption of the Plan shall not confer upon any employee, director, associate, consultant or advisor any right to continued employment, directorship or service, nor shall it interfere in any way with the right of the Company or any Subsidiary or Affiliate to terminate the employment or service of any employee, consultant or advisor at any time.

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- (iv) No later than the date as of which an amount first becomes includible in the gross income of the Participant for Federal income tax purposes with respect to any Award under the Plan, the Participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any Federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Unless otherwise determined by the Administrator, withholding obligations may be settled with Stock, including Stock that is part of the Award that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company, its Subsidiaries and its Affiliates shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participant. The Administrator may establish such procedures as it deems appropriate for the settlement of withholding obligations with Stock.
  - (v) The Administrator shall establish such procedures as it deems appropriate for a Participant to designate a beneficiary to whom any amounts payable in the event of the Participant's death are to be paid. In the event of the death of a Participant, a condition of exercising any Award shall be the delivery to the Company of such tax waivers and other documents as the Administrator shall determine.
  - (vi) Neither any Participant nor his or her legal representatives, legatees or distributees shall be or be deemed to be the holder of any share of Stock covered hereby unless and until a certificate for such share has been issued. Upon payment of the purchase price thereof, a share shall be fully paid and non-assessable.
  - (vii) The grant of an Award shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets, or issue bonds, debentures, preferred or prior preference stock ahead of or affecting the Stock, or take any other corporate act or proceeding whether of a similar character or otherwise.
  - (viii) If any payment or right accruing to a Participant under this Plan (without the application of this **Section 11(c)(viii)** ), either alone or together with other payments or rights accruing to the Participant from the Company or an Affiliate (“ Total Payments ”) would constitute a “parachute payment” (as defined in Section 280G of the Code and

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regulations thereunder), such payment or right shall be reduced to the largest amount or greatest right that will result in no portion of the amount payable or right accruing under this Plan being subject to an excise tax under Section 4999 of the Code or being disallowed as a deduction under Section 280G of the Code; provided, however, that the foregoing shall not apply to the extent provided otherwise in an Award or in the event the Participant is party to an agreement with the Company or an Affiliate that explicitly provides for an alternate treatment of payments or rights that would constitute “parachute payments.” The determination of whether any reduction in the rights or payments under this Plan is to apply shall be made by the Administrator in good faith after consultation with the Participant, and such determination shall be conclusive and binding on the Participant. The Participant shall cooperate in good faith with the Administrator in making such determination and providing the necessary information for this purpose. The foregoing provisions of this **Section 11(c)(viii)** shall apply with respect to any person only if, after reduction for any applicable Federal excise tax imposed by Section 4999 of the Code and Federal income tax imposed by the Code, the Total Payments accruing to such person would be less than the amount of the Total Payments as reduced, if applicable, under the foregoing provisions of this Plan and after reduction for only Federal income taxes.

- (ix) To the extent that the Administrator determines that the restrictions imposed by the Plan preclude the achievement of the material purposes of the Awards in jurisdictions outside the United States, the Administrator in its discretion may modify those restrictions as it determines to be necessary or appropriate to conform to applicable requirements or practices of jurisdictions outside of the United States.
- (x) The headings contained in this Plan are for reference purposes only and shall not affect the meaning or interpretation of this Plan.
- (xi) If any provision of this Plan shall for any reason be held to be invalid or unenforceable, such invalidity or unenforceability shall not effect any other provision hereby, and this Plan shall be construed as if such invalid or unenforceable provision were omitted.
- (xii) This Plan shall inure to the benefit of and be binding upon each successor and assign of the Company. All obligations imposed upon a Participant, and all rights granted to the Company hereunder, shall be binding upon the Participant’s heirs, legal representatives and successors.

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- (xiii) This Plan and each agreement granting an Award constitute the entire agreement with respect to the subject matter hereof and thereof, provided that in the event of any inconsistency between this Plan and such agreement, the terms and conditions of the Plan shall control.
  - (xiv) In the event there is an effective registration statement under the Securities Act pursuant to which shares of Stock shall be offered for sale in an underwritten offering, a Participant shall not, during the period requested by the underwriters managing the registered public offering, effect any public sale or distribution of shares of Stock received, directly or indirectly, as an Award or pursuant to the exercise or settlement of an Award.
  - (xv) None of the Company, an Affiliate or the Administrator shall have any duty or obligation to disclose affirmatively to a record or beneficial holder of Stock or an Award, and such holder shall have no right to be advised of, any material information regarding the Company or any Affiliate at any time prior to, upon or in connection with receipt or the exercise of an Award or the Company's purchase of Stock or an Award from such holder in accordance with the terms hereof.
  - (xvi) This Plan, and all Awards, agreements and actions hereunder, shall be governed by, and construed in accordance with, the laws of the state of Delaware (other than its law respecting choice of law).
  - (xvii) No Award granted pursuant to this Plan is intended to constitute "deferred compensation" as defined in Section 409A of the Code, and the Plan and the terms of all Awards shall be interpreted accordingly. If any provision of the Plan or an Award contravenes any regulations or Treasury guidance promulgated under Section 409A of the Code or could cause an Award to be subject to the penalties and interest under Section 409A of the Code, such provision of the Plan or Award shall be modified to maintain, to the maximum extent practicable, the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

## **12. DEFINITIONS .**

For purposes of this Plan, the following terms are defined as set forth below:

- (a) "*Affiliate*" means a corporation or other entity (i) controlled by the Company and which, in the case of grants of Stock Options, Outside Director Stock Options and Stock Appreciation Rights would, together with the Company, be classified as the "service recipient" (as defined in the regulations under Section 409A of the Code) with respect to an Eligible Individual, and (ii) is designated by the Administrator as such.

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- (b) “*Award*” means a Stock Appreciation Right, Stock Option, Stock Award, Outside Director Stock Option or Outside Director Stock Award.
- (c) “*Board*” means the Board of Directors of the Company.
- (d) “*Board Meeting*” means meeting of the Board of Directors of the Company.
- (e) “*Cause*” means (i) the commission by the Participant of any act or omission that would constitute a felony or any crime of moral turpitude under Federal law or the law of the state or foreign law in which such action occurred, (ii) dishonesty, disloyalty, fraud, embezzlement, theft, disclosure of trade secrets or confidential information or other acts or omissions that result in a breach of fiduciary or other material duty to the Company and/or a Subsidiary, (iii) continued reporting to work or working under the influence of alcohol, an illegal drug, an intoxicant or a controlled substance which renders Participant incapable of performing his or her material duties to the satisfaction of the Company and/or its Subsidiaries, or (iv) the Participant’s substantial disregard in the performance of the Participant’s duties and/or responsibilities with respect to the Company and/or a Subsidiary, which disregard shall continue after notice to the Participant and a reasonable opportunity to cure such behavior. Notwithstanding the foregoing, if the Participant and the Company or the Affiliate have entered into an employment or services agreement which defines the term “Cause” (or a similar term), such definition shall govern for purposes of determining whether such Participant has been terminated for Cause for purposes of this Plan. The determination of Cause shall be made by the Administrator, in its sole discretion.
- (f) “*Carrols*” means Carrols Restaurant Group, Inc. and any and all of its Subsidiaries whether now existing or hereafter formed.
- (g) “*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.
- (h) “*Commission*” means the Securities and Exchange Commission or any successor agency.
- (i) “*Committee*” means a committee of Directors appointed by the Board to administer this Plan. Insofar as the Committee is responsible for granting Awards to Participants hereunder, it shall consist solely of two or more directors, each of whom is a “non-employee director” within the meaning of Rule 16b-3, an “outside director” under Section 162(m) of the Code, an “independent director” as defined by the Sarbanes-Oxley Act of 2002, and “independent” as defined by the rules of any stock exchange or market on which the Stock is listed.

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- (j) “*Covered Employee*” means a person who is a “covered employee” within the meaning of Section 162(m) of the Code.
- (k) “*Director*” means a member of the Company’s Board.
- (l) “*Disability*” means mental or physical illness that entitles the Participant to receive benefits under the long-term disability plan of the Company or an Affiliate, or if the Participant is not covered by such a plan or the Participant is not an employee of the Company or an Affiliate, a mental or physical illness that renders a Participant totally and permanently incapable of performing the Participant’s duties for the Company or an Affiliate; provided, however, that a Disability shall not qualify under this Plan if it is the result of (i) a willfully self- inflicted injury or willfully self-induced sickness; or (ii) an injury or disease contracted, suffered or incurred while participating in a criminal offense. Notwithstanding the foregoing, if the Participant and the Company or an Affiliate have entered into an employment or services agreement which defines the term “Disability” (or a similar term), such definition shall govern for purposes of determining whether such Participant suffers a Disability for purposes of this Plan. The determination of Disability shall be made by the Administrator, in its sole discretion. The determination of Disability for purposes of this Plan shall not be construed to be an admission of disability for any other purpose.
- (m) “*Distribution*” has the meaning set forth in Section 1 of the Plan .
- (n) “*Distribution Date*” has the meaning set forth in Section 1 of the Plan .
- (o) “*Distribution Time*” means the time at which the Distribution is effective.
- (p) “*Effective Date*” has the meaning set forth in Section 1 of the Plan .
- (q) “*Eligible Individual*” means any (i) officer, employee, associate or director of the Company or a Subsidiary or Affiliate, (ii) any consultant or advisor providing services to the Company or a Subsidiary or Affiliate, or (iii) employees of (x) a corporation or other business enterprise which has been acquired by the Company or a Subsidiary, which, in the case of grants of Stock Options and Stock Appreciation Rights would, together with the Company and, if applicable, the Subsidiary, be classified as the “service recipient” (as defined in the regulations under Section 409A of the Code) with respect to such employees and (y) who hold options with respect to the stock of such corporation which the Company has agreed to assume.

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- (r) “*Exchange Act*” means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.
- (s) “*Fair Market Value*” means, as of any given date, the fair market value of the Stock, determined as follows: (i) if the Stock is listed on any established stock exchange or a national market system, including without limitation, the NASDAQ Global Market, its fair market value on such date shall be the reported closing selling price for the Stock on the principal securities exchange or national market system on which the Stock is at such date listed for trading; provided that if there are no sales of Stock on that date, then the reported closing selling price for the Stock on the next preceding date shall be determinative of fair market value; or (ii) if the Stock is listed on the OTC Electronic Bulletin Board, its fair market value on such date shall be the closing selling price on such date for the Stock as reported on the OTC Electronic Bulletin Board; provided that if there are no sales of the Stock on that date, then the reported closing selling price for the Stock on the next preceding date for which such closing selling price is quoted shall be determinative of fair market value; or, (iii) if the Stock is not traded on the OTC Electronic Bulletin Board, an exchange, or a national market system, or notwithstanding (i) and (ii) above, if a determination of Fair Market Value under (i) or (ii) above would violate the rules under Section 409A of the Code and the regulations thereunder with respect to the determination of fair market value, Fair Market Value of the Stock on such date shall be determined in good faith by the Administrator in accordance with Section 409A of the Code and the regulations issued thereunder, and such determination shall be conclusive and binding on all persons. In the event of a Change in Control, notwithstanding the foregoing provisions of this **Section 12(o)**, Fair Market Value of the Stock in connection with such Change in Control transaction shall be determined in good faith by the Administrator in accordance with Section 409A of the Code and the regulations issued thereunder, and such determination shall be conclusive and binding on all persons.
- (t) “*Family Member*” means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of a Participant (including adoptive relationships); any person sharing the Participant’s household (other than a tenant or employee); any trust in which the Participant and any of these persons have all of the beneficial interest; any foundation in which the Participant and any of these persons control the management of the assets; any corporation, partnership, limited liability company or other entity in which the Participant and any of these other persons are the direct and beneficial owners of all of the equity interests ( provided the Participant and these other persons agree in writing to remain the direct and beneficial owners of all such equity interests); and any personal representative of the Participant upon the Participant’s death for purposes of administration of the Participant’s estate or upon the Participant’s incompetency for purposes of the protection and management of the assets of the Participant.

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- (u) “*Incentive Stock Option*” means any Stock Option intended to be and designated as an “incentive stock option” within the meaning of Section 422 of the Code.
  - (v) “*Non-Qualified Stock Option*” means any Stock Option that is not an Incentive Stock Option.
  - (w) “*Optionee*” means a person who holds a Stock Option.
  - (x) “*Outside Director*” means a person who is a “non-employee director” of the Company within the meaning of Section 16 of the Exchange Act and the regulations promulgated thereunder (irrespective of whether Section 16 of the Exchange Act is applicable to the Company or such Director).
  - (y) “*Outside Director Award*” means an Outside Director Stock Option or Outside Director Stock Award.
  - (z) “*Outside Director Stock Award*” means an Award, other than a Stock Option, Stock Appreciation Right, Stock Award or Outside Director Stock Option, made in Stock or denominated in shares of Stock.
  - (aa) “*Outside Director Stock Option*” means an Option granted under **Section 8** .
  - (bb) “*Participant*” means a person granted an Award.
  - (cc) “*Performance Award*” means a right, granted to a Participant under **Section 7** , to receive Awards based upon performance criteria specified by the Administrator.
  - (dd) “*Representative*” means (i) the person or entity acting as the executor or administrator of a Participant’s estate pursuant to the last will and testament of a Participant or pursuant to the laws of the jurisdiction in which the Participant had his or her primary residence at the date of the Participant’s death; (ii) the person or entity acting as the guardian or temporary guardian of a Participant; (iii) the person or entity which is the beneficiary of the Participant upon or following the Participant’s death; or (iv) any person to whom a Stock Option has been transferred with the permission of the Administrator or by operation of law; provided that only one of the foregoing shall be the Representative at any point in time as determined under applicable law and recognized by the Administrator.
  - (ee) “*Retirement*” means termination of employment or provision of services without Cause, death or Disability on or after age 65 with 5 years of service including in such calculation all periods of service with the Company, or Carrols, or both prior to the Distribution.

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- (ff) “*Stock*” means the common stock, par value \$.01 per share, of the Company.
  - (gg) “*Stock Appreciation Right*” means a right granted under **Section 5** .
  - (hh) “*Stock Award*” means an Award, other than a Stock Option, Outside Director Stock Option, Stock Appreciation Right or Outside Director Stock Award, made in Stock or denominated in shares of Stock.
  - (ii) “*Stock Option*” means an option granted under **Section 4** .
  - (jj) “*Subsidiary*” means any company during any period in which it is a “subsidiary corporation” (as such term is defined in Section 424(f) of the Code) with respect to the Company.
  - (kk) “*Ten Percent Holder*” means an individual who owns, or is deemed to own, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any parent or subsidiary corporation of the Company, determined pursuant to the rules applicable to Section 422(b)(6) of the Code.

In addition, certain other terms used herein have the definitions given to them in the places they are first used.

**Fiesta Restaurant Group, Inc.**  
**Consolidated Statements of Operations**  
(in thousands except per share amounts)

	(unaudited)	
	Three Months Ended	
	March 31, (a)	
	2012	2011
<b>Revenues:</b>		
Restaurant sales	\$125,566	\$115,251
Franchise royalty revenues and fees	576	365
Total revenues	<u>126,142</u>	<u>115,616</u>
<b>Costs and expenses:</b>		
Cost of sales	40,784	36,344
Restaurant wages and related expenses (b)	33,825	31,633
Restaurant rent expense	3,967	4,060
Other restaurant operating expenses	15,829	14,743
Advertising expense	4,295	4,119
General and administrative expenses (b) (c)	11,080	8,921
Depreciation and amortization	4,840	4,797
Impairment and other lease charges	6,900	264
Total costs and expenses	<u>121,520</u>	<u>104,881</u>
Income from operations	4,622	10,735
Interest expense	7,969	4,845
Income (loss) before income taxes	(3,347)	5,890
Provision (benefit) for income taxes	(1,482)	2,276
Net income (loss)	<u>\$ (1,865)</u>	<u>\$ 3,614</u>
Basic and diluted net income (loss) per share	<u>\$ (0.08)</u>	<u>\$ 0.16</u>
Basic and diluted weighted average common shares outstanding	23,162	23,162

- (a) The Company uses a 52 or 53 week fiscal year that ends on the Sunday closest to December 31. For convenience, all references to the three months ended April 1, 2012 and April 3, 2011 are referred to as the three months ended March 31, 2012 and March 31, 2011, respectively, both of which included 13 weeks.
- (b) Restaurant wages and related expenses include stock-based compensation expense of \$4 and \$5 for the three months ended March 31, 2012 and 2011, respectively. General and administrative expenses include stock-based compensation expense of \$1,046 and \$411 for the three months ended March 31, 2012 and 2011, respectively.
- (c) General and administrative expenses include expenses related directly to Fiesta Restaurant Group and corporate expenses allocated from Carrols Corporation (our parent company until May 7, 2012). Such allocated expenses are for administrative support including executive management, information systems and certain accounting, legal and other administrative functions. General and administrative expenses for the three months ended March 31, 2012 included \$630 of allocated expenses related to our spin-off from Carrols Restaurant Group, Inc. Also included were \$1,071 of expenses related to the conversion of employee stock options to unrestricted and restricted common stock in connection with the spin-off and for the accelerated vesting of restricted common stock for the former Chairman of the Board.

**Fiesta Restaurant Group, Inc.**  
**Supplemental Information**

The following table sets forth certain unaudited supplemental financial and other data for the periods indicated (in thousands, except number of restaurants):

	(unaudited) Three Months Ended March 31,	
	2012	2011
<b>Segment Revenues:</b>		
Pollo Tropical	\$ 57,834	\$ 52,235
Taco Cabana	68,308	63,381
Total revenues	<u>\$126,142</u>	<u>\$115,616</u>
<b>Change in Comparable Restaurant Sales: (a)</b>		
Pollo Tropical	9.4%	13.5%
Taco Cabana	6.1%	2.0%
<b>Adjusted Segment EBITDA: (b)</b>		
Pollo Tropical	\$ 11,214	\$ 9,870
Taco Cabana	6,198	6,342
<b>Average Sales per Restaurant: (c)</b>		
Pollo Tropical	632	577
Taco Cabana	434	408
<b>Number of Company Owned Restaurants:</b>		
Pollo Tropical	86	90
Taco Cabana	157	156
<b>Total company owned restaurants</b>	<u>243</u>	<u>246</u>
<b>Restaurant openings:</b>		
Pollo Tropical	—	—
Taco Cabana	—	1
Total new restaurant openings	—	1
<b>Restaurant closings:</b>		
Pollo Tropical	(5)	(1)
Taco Cabana	(1)	—
Net change in restaurants	<u>(6)</u>	<u>—</u>

- (a) Restaurants are included in comparable restaurant sales after they have been open for 18 months.
- (b) Adjusted Segment EBITDA is defined as earnings attributable to the applicable segment before interest, income taxes, depreciation and amortization, impairment and other lease charges, stock-based compensation expense, and other income and expense. Adjusted Segment EBITDA is used because it is the measure of segment profit or loss reported to our chief operating decision maker for purposes of allocating resources to the segments and assessing each segment's performance. This may not be necessarily comparable to other similarly titled captions of other companies due to differences in methods of calculation.
- (c) Average sales for company-owned or operated restaurants are derived by dividing restaurant sales for such period for the applicable segment by the average number of restaurants for the applicable segment for such period.

**Fiesta Restaurant Group, Inc.**  
**Unaudited Consolidated Pro Forma Statement of Operations**  
**Three Months Ended March 31, 2012**  
(in thousands except per share amounts)

	<u>Historical</u>	<u>Pro Forma Adjustments (a)</u>	<u>Pro Forma</u>
<b>Revenues:</b>			
Restaurant sales	\$125,566	\$ —	\$125,566
Franchise royalty revenues and fees	576		576
Total revenues	<u>126,142</u>	<u>—</u>	<u>126,142</u>
<b>Costs and expenses:</b>			
Cost of sales	40,784		40,784
Restaurant wages and related expenses	33,825		33,825
Restaurant rent expense	3,967	1,932 (b)	5,899
Other restaurant operating expenses	15,829		15,829
Advertising expense	4,295		4,295
General and administrative expenses	11,080		11,080
Depreciation and amortization	4,840	(518) (b)	4,322
Impairment and other lease charges	6,900		6,900
Total costs and expenses	<u>121,520</u>	<u>1,414</u>	<u>122,934</u>
Income from operations	4,622	(1,414)	3,208
Interest expense	7,969	(2,587) (b)	5,382
Income (loss) before income taxes	(3,347)	1,173	(2,174)
Provision (benefit) for income taxes	(1,482)	469 (b)	(1,013)
Net income (loss)	<u>\$ (1,865)</u>	<u>\$ 704</u>	<u>\$ (1,161)</u>
Basic and diluted net income (loss) per share	<u>\$ (0.08)</u>	<u>\$ 0.03</u>	<u>\$ (0.05)</u>
Basic and diluted weighted average common shares outstanding	23,162	23,162	23,162

- (a) The unaudited consolidated pro forma statement of operations for the three months ended March 31, 2012 gives effect to the qualification for sale-leaseback accounting of certain real property leases (and the treatment of such leases as operating leases) due to the cure or elimination of certain provisions that previously precluded sale-leaseback accounting in the separate financial statements of Fiesta Restaurant Group causing these transactions to be accounted for under the financing method. This was primarily due to guarantees from Carrols Corporation, our parent company prior to the spin-off completed on May 7, 2012, which were considered guarantees from a related party. Such leases qualified for sale-leaseback accounting upon the spin-off from Carrols Restaurant Group. The pro forma data as presented, gives effect to this accounting treatment as if such events occurred as of January 1, 2012.
- (b) The increase in rent expense, which is net of the amortization of deferred gains from the recognition of proceeds from these transactions as sales, the decrease in depreciation expense and the decrease in interest expense reflect the qualification for sale-leaseback treatment of the leases described in (a) as operating leases, net of tax at 40%.



**FOR IMMEDIATE RELEASE**

**Investor Relations:  
800-348-1074, ext. 3333**

**Carrols Restaurant Group, Inc. Reports Financial Results for the First Quarter of  
2012 and Announces Completion of the Spin-off of  
Fiesta Restaurant Group, Inc.**

**Syracuse, NY. May 8, 2012 – (Businesswire)** – Carrols Restaurant Group, Inc. (“Carrols”) (NASDAQ: TAST) today announced financial results for the first quarter ended April 1, 2012. It also reported that it completed the spin-off of Fiesta Restaurant Group, Inc. (“Fiesta”) to its stockholders on May 7, 2012.

Financial results for the first quarter include Fiesta, which owns and operates the Pollo Tropical<sup>®</sup> and Taco Cabana<sup>®</sup> brands, as the spin-off was completed after the first quarter had concluded. Fiesta is now an independent, public company and its common stock is traded on The NASDAQ Global Select Market under the symbol FRGI.

**Highlights for the first quarter of 2012 versus the first quarter of 2011 include:**

- Total revenues grew 7.3% to \$211.6 million in the first quarter of 2012 compared to \$197.2 million in the first quarter of 2011. Revenues for Fiesta grew 9.1% to \$126.1 million from \$115.6 million in the year-ago period.
- Comparable restaurant sales increased 5.9% at Burger King<sup>®</sup>, 9.4% at Pollo Tropical, and 6.1% at Taco Cabana;
- Net loss for the first quarter of 2012 was \$3.5 million, or \$0.16 per diluted share, compared to net income of \$2.2 million, or \$0.10 per diluted share in the first quarter of 2011; and
- Earnings in the first quarter of 2012 included certain charges totaling \$9.8 million, or \$0.32 per diluted share after tax, consisting of impairment and other lease charges, stock-based compensation expense related to stock option conversion charges in connection with the spin-off and accelerated vesting of certain restricted stock, and spin-off and acquisition related expenses. Earnings in the first quarter of 2011 included impairment and other lease charges of \$1.1 million, or \$0.03 per diluted share after tax, and spin-off related expenses of \$0.3 million, or \$0.01 per diluted share after tax.

As of April 1, 2012, Carrols owned and operated 297 Burger King restaurants and Fiesta owned and operated 86 Pollo Tropical and 157 Taco Cabana restaurants, and franchised 38 restaurants. Seven restaurants were closed during the period, including one Burger King restaurant, five Pollo Tropical restaurants and one Taco Cabana restaurant.

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Commenting on Carrols' Burger King restaurant business, Dan Accordino, Chief Executive Officer of Carrols, said, "During the first quarter, Burger King generated a solid 5.9% increase in comparable restaurant sales along with an improvement in restaurant-level profitability. Burger King is undergoing a broad-based repositioning including changes and enhancements to its existing products and menu, food preparation, brand image and marketing. These are transformational strategic initiatives focused on expanding the brand's reach to a more diverse consumer base, which we believe will contribute to continued improvements in the performance of both the Burger King system and Carrols'."

Accordino continued, "With the Fiesta spin-off behind us, we are now solely focused on the considerable opportunities available to us within the Burger King system. We believe that our pending acquisition of 278 Burger King restaurants from Burger King Corporation, and particularly the strategic nature of this transaction, will position the Company for long-term growth."

Commenting on Fiesta's Pollo Tropical and Taco Cabana restaurant businesses, Tim Taft, Chief Executive Officer of Fiesta said, "Today is a momentous day for Fiesta as it officially began life as a separate public company. We are excited and confident about our future and look forward to Pollo and Taco reaching their full potential. Fiesta got off to a very strong start in 2012. Successful product promotions continued to drive strong comparable restaurant sales growth and improvements in overall restaurant profitability. We are certainly encouraged by our current positive momentum."

Taft continued, "Our strategic focus is three-fold: first, to grow comparable restaurant sales by accentuating our brands' competitive qualities; second, to develop new units and selectively remodel existing locations; and finally, to improve operating margins through sales leverage and supply chain initiatives. As our first quarter results suggest, we believe that we are executing well against these initiatives and are confident that both brands have compelling long-term opportunities."

### **First Quarter 2012 Financial Results**

Total revenues grew 7.3% to \$211.6 million in the first quarter of 2012 compared to \$197.2 million in the first quarter of 2011. Burger King revenues grew 4.7% to \$85.5 million in the first quarter of 2012 from \$81.6 million in the first quarter of 2011. Burger King comparable restaurant sales increased 5.9%.

Fiesta revenues grew 9.1% to \$126.1 million in the first quarter of 2012 from \$115.6 million in the first quarter of 2011. Pollo Tropical revenues grew 10.7% to \$57.8 million, including a comparable restaurant sales increase of 9.4%. Taco Cabana revenues grew 7.8% to \$68.3 million, including a comparable restaurant sales increase of 6.1%.

General and administrative expenses were \$17.4 million in the first quarter of 2012 compared to \$13.9 million in the year-ago period. Included in general and administrative expenses were \$1.5 million (\$0.05 per diluted share after tax) of expenses related to the spin-off of Fiesta and expenses incurred in connection with the planned acquisition of 278 Burger King restaurants from Burger King Corporation ("BKC"). Also included in the first quarter of 2012 were \$1.4 million (\$0.05 per diluted share after tax) of expenses (primarily stock-based compensation) related to the conversion of employee stock options to restricted stock in connection with the spin-off and for the accelerated vesting of restricted stock held by Fiesta's former Chairman of the Board.

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Impairment and other lease charges were \$6.9 million (\$0.22 per diluted share after tax) in the first quarter of 2012 and were related to the closure of five Pollo Tropical restaurants in New Jersey and for the impairment of two Taco Cabana restaurants.

Income from operations was \$1.3 million in the first quarter of 2012 compared to \$7.9 million in the first quarter of 2011.

Interest expense increased to \$6.3 million during the first quarter of 2012 from \$4.6 million in the year-ago period due to a higher debt balance and higher borrowing rates.

Net loss for the first quarter of 2012 was \$3.5 million, or \$0.16 per diluted share, compared to net income of \$2.2 million, or \$0.10 per diluted share, in the first quarter of 2011. Earnings in the first quarter of 2012 included the aforementioned charges totaling \$9.8 million, or \$0.32 per diluted share after tax. Earnings in the first quarter of 2011 included impairment and other lease charges of \$1.1 million, or \$0.03 per diluted share after tax, and spin-off related expenses of \$0.3 million, or \$0.01 per diluted share after tax.

### **Full Year 2012 Guidance**

The following annual outlook is being provided for Carrols and Fiesta, respectively.

#### *Carrols (Burger King Restaurants)*

- Comparable restaurant sales are expected to increase 3% to 5%;
- Commodity costs are expected to increase 3% to 4%;
- Two restaurants are expected to close in 2012;
- Annualized run rate for general and administrative expenses (excluding stock compensation) is expected to be approximately \$20 to \$22 million following the spin-off of Fiesta;
- The Company currently expects to record an income tax benefit for all of 2012 ranging from \$0.7 million to \$1.3 million due in part to the deductibility of stock compensation costs related to the conversion of outstanding stock options in the first quarter of 2012; and
- Capital expenditures of approximately \$30 million to \$35 million including \$19 million to \$24 million for remodeling more than 50 restaurants.

As previously announced, on March 26, 2012, Carrols entered into an asset purchase agreement for the purchase (through its operating subsidiary Carrols LLC) of 278 BKC company-owned restaurants in the Ohio, Indiana, Kentucky, Pennsylvania, North Carolina, South Carolina, and Virginia markets. Total cash consideration is approximately \$15.8 million including \$3.8 million to be paid over five years. Non-cash consideration to BKC includes a 28.9% equity ownership in Carrols Restaurant Group (subject to certain limitations).

The acquisition of BKC's restaurants is conditioned upon, among other things, completion of a financing, which along with anticipated operating cash flows, will be used to: (i) fund the remodeling of approximately 450 Burger King restaurants over the next three and half years, (ii) fund the cash paid to BKC in connection with the transaction, and (iii) refinance outstanding borrowings under Carrols LLC's existing senior secured credit facility. The Company currently anticipates the sale of \$140 million to \$150 million of senior secured second lien notes in a private offering and entering into a new senior secured revolving credit facility. The Company currently anticipates completion of the financing and the closing of the acquisition to occur in May 2012 although there can be no assurance that the financing or the acquisition will be completed within such timeframe or at all.

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The financial impact on Carrols of the potential acquisition, including expected operating improvements of the acquired restaurants and other synergies that may be realized over time, is not included in the outlook detailed above. Capital expenditures have been adjusted to reflect the Company's accelerated remodeling of its restaurants in anticipation of the acquisition.

*Fiesta (Pollo Tropical and Taco Cabana Brands)*

- Comparable restaurant sales are expected to increase approximately 6% to 7% for Pollo Tropical and 4% to 5% for Taco Cabana;
- Commodity costs are expected to increase 1% to 2% for Pollo Tropical and 2.5% to 3.5% for Taco Cabana;
- Approximately 10 to 12 new restaurants are expected to be opened and 6 restaurants are expected to close for the entire year;
- Annualized run rate for general and administrative expenses (excluding stock compensation) is expected to be approximately \$38 to \$40 million following the spin-off from Carrols;
- Effective tax rate of 41% to 43%; and
- Capital expenditures of approximately \$42 million to \$46 million.

**Conference Call Today**

The Company will host a conference call to discuss the first quarter of 2012 financial results today at 4:30 PM Eastern Time. Hosting the conference call will be Daniel T. Accordino, Chief Executive Officer of Carrols Restaurant Group, Inc., Paul Flanders, Chief Financial Officer of Carrols Restaurant Group, Inc. and Interim Chief Financial Officer of Fiesta Restaurant Group, Inc., and Tim Taft, Chief Executive Officer of Fiesta Restaurant Group, Inc.

The conference call can be accessed live over the phone by dialing 877-941-4775 or for international callers by dialing 480-629-9761. A replay will be available one hour after the call and can be accessed by dialing 800-406-7325 or for international callers by dialing 303-590-3030; the passcode is 4536686. The replay will be available until Tuesday, May 15, 2012. The call will also be webcast live from [www.carrols.com](http://www.carrols.com) under the investor relations section.

**About Carrols Restaurant Group, Inc.**

Carrols Restaurant Group, Inc. is Burger King Corporation's largest franchisee with 297 Burger King® restaurants as of April 1, 2012 and has operated Burger King® restaurants since 1976. Carrols common stock is traded on The NASDAQ Global Market under the symbol TAST.

**About Fiesta Restaurant Group, Inc.**

Fiesta Restaurant Group, Inc. owns and operates the Pollo Tropical® and Taco Cabana® restaurant businesses with 243 company-owned and operated restaurants as of April 1, 2012 and 38 franchised restaurants in the U.S., Puerto Rico, the Bahamas, Costa Rica, Ecuador, Honduras, Trinidad, and Venezuela. Fiesta common stock is traded on The NASDAQ Global Select Market under the symbol FRGI.

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## **Forward-Looking Statements**

Except for the historical information contained in this news release, the matters addressed are forward-looking statements. Forward-looking statements, written, oral or otherwise made, represent the Company's expectation or belief concerning future events. Without limiting the foregoing, these statements are often identified by the words "may," "might," "believes," "thinks," "anticipates," "plans," "expects", "intends" or similar expressions. In addition, expressions of our strategies, intentions or plans, (including, without limitation, the Company's anticipated acquisition of 278 restaurants from Burger King Corporation and the anticipated financing) are also forward-looking statements. Such statements reflect management's current views with respect to future events and are subject to risks and uncertainties, both known and unknown. You are cautioned not to place undue reliance on these forward-looking statements as there are important factors that could cause actual results to differ materially from those in forward-looking statements, many of which are beyond our control. Investors are referred to the full discussion of risks and uncertainties as included in the Company's and Fiesta's filings with the Securities and Exchange Commission.

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